

LAW OF ENVIRONMENT PROTECTION IN INDIA.
AN ANALYSIS BY RAVISHANKAR.S.S. G.R.LAW FIRM
(5TH DECEMBER 2019)

Article 21 of the constitution clearly proclaims that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. It can be therefore be concluded that no other articles of the constitution can challenge or supersede Article 21 and whenever there is a challenge without any doubt Article 21 will have to upheld. It can be noted that time and again Article 21 has received its intended interpretation from the Courts and the supremacy of Article 21 has been ascertained, The decision of the Supreme Court in Maneka Gandhi vs. Union of India (AIR 1978 SC 597) only confirmed that Article 21 not only guarantees fundamental right to life with dignity but is very much inclusive of right to healthy environment, in this context it can be said that right to healthy environment and right to healthy life are inseparable.

The right to life in a healthy environment as part of Article 21 of the Constitution was recognized way back in the case of ‘Rural Litigation and Entitlement Kendra vs. State’ also well known as Dehradun Quarrying Case (AIR 1988 SC 2187). This case brought to the forefront the issues involving environment contamination and ecological balance, in which Hon’ble Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. In M.C. Mehta vs. Union of India, AIR 1987 SC 1086 the Supreme Court treated the right to

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live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.

The Environment contamination is purely man made and mainly results of air pollution, water pollution, soil pollution and also noise pollution. The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution guarantees right to clean and decent environment conditions which is conducive to live healthy life with dignity.

Additionally, fundamental duties of the Indian Constitution clearly provides for performance of national duty by every citizen to protect environment, Article 51-A (g), states that “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”

The Directive principles of the Indian constitution is directed towards ideals of welfare state. In this reference ‘Healthy environment’ is one of the prime ingredients of welfare state. Further, Article 47 proclaims that the ‘State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties’. Attaining highest level of public health is possible only when the protection and improvement of environment is ensured, without which public health can never be attained and ascertained to the best living standards.

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Article 48 deals with organization of agriculture and animal husbandry. It directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Article 48 -A of the constitution says that “the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”.

The Constitution of India under part III guarantees fundamental rights which are essential for the development of every individual which is again connected to Article 21 in ensuring all-round comprehensive development of people of India, in this reference right to healthy environment is paramount right without which optimum development of individual and society is impossible.

It is notable that in ‘Vellore Citizens Welfare Forum vs. Union of India (1996) 5 SCC 647, the Hon’ble Court contributed the theory of ‘the Precautionary Principle’ and ‘the Polluter Pays Principle’ are essential features of Sustainable Development.

World Health Organisation has complimented the world nations with several authentic scientific analysis and reports, which

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confirms the dreadful 'Air pollution' and 'Water pollution' as major environmental threat to the very survival of living beings.

The deteriorating levels of public health worldwide is a direct result of increasing polluted environment. It is a serious concern that air pollution negatively impacts humans by destroying health resulting in several dangerous health hazards, it's imperative to note that one third of deaths from stroke, lung cancer and heart disease are due to air pollution, its an established fact that pregnant women and children are more vulnerable to pollution.

Recent data released by the World Health Organization show that air pollution has a vast and terrible impact on child health and survival. Globally, 93% of all children live in environments with air pollution levels above the WHO guidelines. More than one in every four deaths of children under 5 years is directly or indirectly related to environmental risks. It's a recorded data that respiratory tract infections has resulted in 5,43,000 deaths in children under 5 years in the year 2016 alone.

The Air Quality Index (AQI) is based on the concentrations of five air pollutants, that is ground-level ozone, carbon monoxide, sulphur dioxide, nitrogen dioxide and particulate matter. The latter describes fine particles in the air between 2.5 and 10 microns across, roughly 1/28th the diameter of a strand of human hair.

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AQI values lower than 50 are considered good. When they exceed 100, they are considered to be “unhealthy for sensitive groups.” Big concerns come around 150-200. Anything over 300 is deemed as “hazardous.” New Delhi’s AQI many a times hit between 500 to 1000, this stage can be said alarming situation. While New Delhi being the capital of India only serves a top international example, most other cities and towns in India are already in danger levels continuously damaging the societal health resulting in major national issue.

There seems to be some disconnections between our prime Minister Shri.Narendra Modi’s maiden ‘SWATCH BHARATH’ program and Constitutional provisions in reference to Environment protection and other Environment Laws in force. That is the reason the most needed program ‘Swatch Bharath’ is not delivering expected results in spite of huge investment of public money into this project. Unless the disconnections are set right, there cannot be much expectation of this swatch Bharath initiative.

India is a permanent member of United Nations, however India has nearly neglected the policies, programs and pacts of UN, this apathy of government of India is also one of the main reason amongst others for the environment damage.

India should also think and work in tandem with the policies of the United Nations Environment Programme (UNEP) which is the leading environmental authority in the United Nations system. Its

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high time that India connects itself in partnership with its maiden lifesaving swatch Bharath program by taking honest and strong steps to curtail corruption which is a major obstacle in the way of establishing, implementing and strengthening the necessary processes, institutions, laws, policies and programs to achieve measured sustainable development.

We from G.R. Law Firm have taken legal initiative by filing impleading application in respondent capacity in “DOCTORS FOR YOU Vs. UNION OF India” for our client “VERVE FOUNDATION” a Bangalore based NGO which case is still for mysterious reasons kept pending from last 3 years! This case if decided will be a landmark case and is certain to minimise the impact of harmful substances and hazardous waste in the environment thereby immensely help in construction of human and Animal health / preserve and safeguard Aquatic life and save the earth from plastic pollution. A fair judgement in this case can drastically reduce risks to human health and the environment.

When we look for the reasons for ever increasing pollution levels paralysing the healthy growth of India, the following factors prominently stand to shame India, they are

- Gross neglect of Constitutional provisions on Environment protection.
- Lack of public awareness and ignorance of raising pollution.
- High level of Corruption in important organs of the State.
- Poverty.

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- State's inefficiency in scientific management of waste, failure in recycling and reuse of plastic.
- Successful lobbying of strong industrial and business houses with the Government, which are by large responsible for air, water, plastic pollution.
- Poor implementation of existing laws, total exempt of punitive punishments to heads of Industries responsible for damaging the environment.
- Unstopped destruction of forest areas.
- Ineffective laws in reference to Environment.
- State's incapacity to curtail preventable health risks arising out of pollution and failure to meet the growing needs of hospitalisation and treatment. etc.,

In this scenario, we the people have no option but to be collectively concerned on serious escalation of pollution resulting in irrecoverable damage to the environment, if we don't act today our tomorrows are doubtful.

The table below defines the Air Quality Index scale as defined by the US-EPA 2016 standard:

AQI	Air Pollution Level	Health Implications	Cautionary Statement (for PM2.5)
0 - 50	Good	Air quality is considered satisfactory, and air pollution poses	None

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AQI	Air Pollution Level	Health Implications	Cautionary Statement (for PM2.5)
		little or no risk	
51 -100	Moderate	Air quality is acceptable; however, for some pollutants there may be a moderate health concern for a very small number of people who are unusually sensitive to air pollution.	Active children and adults, and people with respiratory disease, such as asthma, should limit prolonged outdoor exertion.
101-150	Unhealthy for Sensitive Groups	Members of sensitive groups may experience health effects. The general public is not likely to be affected.	Active children and adults, and people with respiratory disease, such as asthma, should limit prolonged outdoor exertion.
151-200	Unhealthy	Everyone may begin to experience health effects; members of sensitive groups may experience more serious health effects	Active children and adults, and people with respiratory disease, such as asthma, should avoid prolonged outdoor exertion; everyone else, especially children, should limit prolonged outdoor exertion
201-300	Very Unhealthy	Health warnings of emergency conditions. The entire population is more likely to be	Active children and adults, and people with respiratory disease, such as asthma, should

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AQI	Air Pollution Level	Health Implications	Cautionary Statement (for PM2.5)
		affected.	avoid all outdoor exertion; everyone else, especially children, should limit outdoor exertion.
300+	Hazardous	Health alert: everyone may experience more serious health effects	Everyone should avoid all outdoor exertion

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