

# A Critical Study on the Human Right to Healthy and Wholesome Environment: Constitutional & Human Prospective

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## ABSTRACT:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”<sup>1</sup>

Human beings are rational animals and hence every human being by the very virtue of his birth is entitled to certain basic, inalienable rights which are also known as ‘Human Rights’. They not only ensure to establish ones identity as a human being but also make sure that humans are treated in a right and dignified way by every element in their surroundings. Nature is no exception to this rule and so right to a clean, healthy environment holds a special place to be one of the rudimentary rights of human beings. Our Indian constitution not only takes pride in being an extensive document but also as the one having specific provisions with regard to environment and its protection. But in all these attempts to exercise his rights, man is not on the same page with nature.

With the advantages of development and new innovations also come the disadvantages. But whether we are really using our intellect and conscience to keep the balance between nature and development is an aspect which needs introspection. This paper attempts to highlight the level of environmental degradation caused due to human interventions and to ameliorate human mindset through judicial decisions and doctrines for the sake of present and future generations.

This paper tries to analyze the various rights available to humans in a plethora of documents and legislations with respect to natural environment and its use, misuse and violations by the right holders.

**Keywords:** Environment, present and future generations, nature, rights, Environmental Protection.

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## I. INTRODUCTION AND GENESIS OF ENVIRONMENTAL AWARENESS

“It is not the law of nature to be always taking gifts with outstretched hands like beggars. To give and take is the law of nature.”<sup>2</sup> The most recent catchphrase today is ‘Environmental Consciousness’. The amount of glamour this phrase has today is like never before. But this new found environmental sensitivity is just more visible today than earlier. Ancient texts and documents have vast and interesting commentaries on environmental protection, rainfall cycles and other like issues which affect the environmental balance and peace. They reveal full cognizance of undesirable effects caused to nature due to man-made factors. Respect for environment and urge to regulate potentially damaging anthropological activities date back to the evolution of Homo sapiens on this planet. All pre-historic civilizations are found to be nature worshipping patrons. Vedic

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<sup>1</sup> Declaration of the United Nations Conference on the Human Environment, 1972, Principle 1

<sup>2</sup> Swami Vivekanand

literature which is known to be rich in its hymns worships nature in all its manifestations. The *Prithvi Sukta* found in Atharva Veda is not only one of the most ancient eulogies to nature's bounty, but also admonishes mankind to not commit trespasses which would oppress mother earth. According to Rig Veda, deities like *Mitra, Varun, Aditya, Indra and Maruts* are responsible for maintaining the requisite levels of functioning for all elements of nature like rivers and mountains but, human interventions have only disturbed the cycle leading to unwanted patterns of nature's anguish. There are several writings, which prove that in ancient India every individual had a practice the *dharma* to protect and worship nature.<sup>3</sup> Like their counterparts today, the political leaders even then were interested only in the physical and worldly comforts whereas the religious leaders were strictly against deforestation and had a fundamentally positive approach towards the environment.

The Environment is not just pretty trees and tigers, threatened plants and ecosystems. It is literally the entity on which we all subsist, and on which the entire agricultural and industrial development depends. Development can take place only until a point. Beyond that point it will be like a foolish man who was trying to cut every branch on which he was sitting. Development without concern for the environment is short-term development. In the long term, it can only be anti-development and can go on only at the cost of enormous human sufferings, increased poverty and oppression. India may be rapidly approaching that point.<sup>4</sup>

Ecology is the science of intricate web of relationships between living and non living organisms and their living and nonliving surroundings. These interdependent living and nonliving parts makeup ecosystems.<sup>5</sup> At the heart of all definitions lie the connection man shares with his surroundings. There is an integral link that keeps the natural cycle moving smoothly and must be respected and adhered to by all the elements of nature including human race.

## II. CONSTITUTIONAL AND OTHER PROVISIONS TO PROTECT ENVIRONMENT:

In 1976, four years after the Declaration of United Nations Conference on Human Environment, the Constitution of India was introduced to the forty second<sup>6</sup> amendment with certain significant provisions for the environment. The directive principles of state policy under Part IV of the constitution of India are directed towards achieving a welfare state and guide the state in moulding its laws. Healthy environment being a basic human right is a quintessential part of the welfare state. The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.<sup>7</sup> The State shall Endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for

<sup>3</sup> CM Jariwala, 'Changing Dimensions of Indian environmental law' in P Leelakrishnan Law and Environment, 1992, p 1 at p2. like

<sup>4</sup> Agarwal; Politics Of Environment- Ii, In Centre For Science And Environment; The State Of India's Environment 1984-85: The Second Citizen's Report, 362(1986)

<sup>5</sup> United States Council On Environmental Quality, Environmental Quality: First Annual Report, 6(1970)

<sup>6</sup> The constitution (forty second amendment) Act 1976, which came into force with effect from 3<sup>rd</sup> January 1977.

<sup>7</sup> Constitution of India, 1950, Article 48A

preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.<sup>8</sup> Apart from these it also casts a duty on itself to raise the standards of nutrition and health for every citizen in the country.<sup>9</sup> Amidst the fundamental duties of the citizens under part IVA of the constitution is the duty to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures<sup>10</sup> Article 21<sup>11</sup> of the Constitution of India under part III, also known as the mother of all articles, implies the right to life and development of individual to realize his or her full potential for which right to environment is an important facet. The Supreme Court has also treated the right to life in a healthy environment a part of Article 21 of the Constitution of India.<sup>12</sup> This right was first recognized in the Dehradun Quarrying case<sup>13</sup> where the Apex court directed to stop the excavation under the Environmental Protection Act, 1986 to maintain the environmental and ecological balance. Right to Life is a Fundamental Right which includes the Right to enjoyment of pollution free water and air for full enjoyment of life.<sup>14</sup> Article 19 (1) a<sup>15</sup> when read with Article 21 of the Constitution of India guarantees the right to live in a noise-free environment. The Kerala High Court held<sup>16</sup> that freedom of speech under article 19 (1) (a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers can be controlled under article 19 (1) (a) of the constitution. A citizen cannot carry on business activity, if it is health hazards to the society or general public<sup>17</sup> The Apex court has held that if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations<sup>18</sup>. Public Interest Litigation under Article 32 and 226 of the constitution of India resulted in a number of environmental litigation. The leading environmental cases decided by the Supreme Court includes case of closure of limestone quarries in the Dehradun region, the installation of safeguard at a chlorine plant in Delhi<sup>19</sup> and more. The Court observed that “the Precautionary Principle” and “the Polluter Pays Principle” are essential features of “Sustainable Development.”<sup>20</sup> At local and village levels as wells constitution has empowered Panchayats to take appropriate decisions with regards to soil erosion,

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<sup>8</sup> Constitution of India, 1950, Article 48

<sup>9</sup> 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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Constitution of India, 1950, Article 47

<sup>10</sup> Constitution of India, 1950, Article 51A(g)

<sup>11</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>12</sup> M.C. Mehta vs. Union of India, AIR 1987 SC 1086

<sup>13</sup> Rural Litigation and Entitlement Kendra vs. State, AIR 1988 SC 2187

<sup>14</sup> Subhash Kumar vs. State of Bihar and Ors. (1991)

<sup>15</sup> All citizens have a right to freedom of speech and expression

<sup>16</sup> PA Jacob vs. The Superintendent of Police Kottayam, AIR 1993 Ker 1

<sup>17</sup> All citizens have a right to practise any profession, or to carry on any occupation, trade or business Article 19 (1) (g) of the Constitution of India

<sup>18</sup> Cooverjee B. Bharucha Vs Excise commissioner, Ajmer (1954, SC 220)

<sup>19</sup> M.C. Mehta V. Union of India, AIR 1988 SC 1037

<sup>20</sup> Vellore Citizens Welfare Forum vs. Union of India (1996) 5 SCC 647

water management and other aspects. The constitution of India incorporates the skeleton of protection and preservation of nature to enjoy life to the fullest. The knowledge of these provisions regarding environment protection is need of the hour to bring greater public participation and environmental education to sensitize people to preserve ecology and environment. In 1948 the Universal Declaration of Human Rights was an attempt made to document all the essential rights in one place and ever since has become the grundnorm for all the human rights. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.<sup>21</sup> Right to standard of living can be attained only in a healthy, pollution-free environment, which has to be created by us humans only.

Arijit Pasayat, J. has rightly stated that “Environmental law is an instrument to protect and improve the environment and control or prevent any act or omission polluting or likely to pollute the environment.”<sup>22</sup> Environmental Protection Act, 1986 is umbrella legislation. It facilitated delegation of powers regarding the decision making for environmental strategies like Environmental impact assessment (EIA) and public hearing. It gives an inclusive definition of Environment to include water, air and land and the inter relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.<sup>23</sup> However exhaustive the law claims itself to be, it is saddening to know that the law fails to establish a fear in minds of people to deter from committing environmental trespasses. The loopholes and lacunae in law are such that even after several attempts by the judiciary to fill the yawning gaps, environmental crimes seem to see no low. Inadequate quanta of liability, improper delegation of power, lazy implementation are some major thwarts that the law is undergoing. There is an increasing need to review the provisions to ultimately secure our right as humans to live in a healthy environment.

A number of international conferences and summits have also proven to be a major influence in preserving the environment and have helped many countries including India to draft the law for environmental protection. The United Nations conference on human environment held in 1972 in Stockholm was a landmark conference towards protecting the deteriorating environment. It suggested that the endless human capabilities must be used to make fruitful use of the environment and not to degrade the surroundings. It had warned that the misuse of human brains would result in incalculable harm to the environment and consequently to human life. The United Nations conference on environment and development (UNCED) held in Rio de Janerio in 1992, laid down a global partnership for the protection of environment.<sup>24</sup> In 2002, the world summit on sustainable development held in Johannesburg committed themselves to develop a human, equitable and caring society.

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<sup>21</sup> Article 25 of the Universal Declaration of Human Rights

<sup>22</sup> K.M Chinnappa vs. Union of India (AIR 2003 SC 724)

<sup>23</sup> Section 2 (a) of the Environmental Protection Act, 1986

<sup>24</sup> Sir Maurice Strong’s closing statement at the Rio Conference.

### III. ENVIRONMENTAL DEGRADATION AND SPECIMENS :

In 2015, two residents of Mumbai, India's financial hub, started spending their weekends collecting the trash that had washed up along the city's Versova Beach. Two years later, their Saturday chore has turned into a movement that has inspired thousands to join their efforts. In 2017, the Versova Beach clean-up marked its 100th week. More than 7 million kilograms of plastic have now been collected. This example from India demonstrates two very important realities of our time: that pollution is overwhelming our lives, and that when people are inspired, they act.<sup>25</sup> Apart from having brains, another significant characteristic that differentiates human being from other animals are emotions such as Greed and lust. We are ruthlessly chopping forests, making seas and oceans our own dump yards, buying cars for luxuries and indirectly melt the glaciers and icebergs. But like they say, 'Nature is the best teacher.' Recently the iconic Mumbai Marine drive turned into a garbage dump yard when a high tide of the sea dumped around a whopping 9 metric tonnes of garbage. Around 2 dozen labourers, 2 trucks and other equipments were deployed to clear the mess. This is just one of the instances where nature is trying to indicate that its capacity to take in human trash is now exhausted. Animals have always helped mankind in different roles. Narwhals are a kind of whales that help scientists to track the rate of global warming, Octopi are a species of Octopus that build homes with marine debris and thanks to human waste they have now learned to make their homes from plastic bottles and other human wastes. Bees use their keen sense of smell to detect environmental contaminants, mules measure radiation levels. There is just so much to learn from these little creatures. There is a mythological tale told in India of how a squirrel inspired humans to build a bridge for lord Ram in order to cross the sea. It's time now, that we get inspired from these little creatures to revive this green planet and sustain it for the future generations. Dolphins are protected species<sup>26</sup> under the Wildlife Protection Act, 1972. But these dolphins are seen to be washed ashore dead on many sea shores. They communicate through sound waves in the seas but because of the plastic trash, oil spills and other human interventions in the sea life, they have lost their track and are now on the verge of becoming an extinct species.

India is one of the bottom five countries on the Environmental Performance Index (EPI) 2018. It overall ranks 177<sup>th</sup> of 180<sup>27</sup> countries to be amongst the most polluted countries of the world. It ranks 178<sup>th</sup> of 180 countries as far as air quality is concerned.

The judiciary, a spectator to the environmental dislocation, has played a pivotal role in setting precedents to minimize the pollution rate. It has acted as a public educator like in *M. C Mehta vs. Union of India*<sup>28</sup> by

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<sup>25</sup> <https://www.unenvironment.org/annualreport/2017/index.php?page=0&lang=en>

<sup>26</sup> Schedule II of Wildlife Protection Act, 1972.

<sup>27</sup> <https://epi.envirocenter.yale.edu/2018/report/category/hlt>

<sup>28</sup> AIR 1992 SC 382

directing to broadcast ecology programmes on the electronic media and include environmental study in school and college curricula, policy maker like in *S. Jagannath vs. Union of India*<sup>29</sup> by prohibiting non-traditional aquaculture along the coast and super administrator like in *T.N Godavarman Thirumulkpad vs. Union of India*<sup>30</sup> directing judicial supervision over the implementation of natural forest law. It has given time to time directions to review the procedures and policies like the recent direction to look into the matter of the marine lines mishap. But just this would not suffice. The efficiency of controlling boards and government together needs to undergo a strict change. The Environmental Impact Assessment certificate rules needs to be more stringent. Quantum of liability in instances of trespasses has to be huge and impactful. The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.<sup>31</sup>

Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.<sup>32</sup> Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to protect and improve the environment in order to enable man to develop in every respect.<sup>33</sup>

Environmental protection is a global issue and the most influential organizations have now taken it on priority to combat it. Over 4,000 heads of state, ministers, business leaders, UN officials, civil society representatives, activists and celebrities came together for the third UN Environment Assembly, which was held in Nairobi from 4-6 December under the overarching theme of pollution. If every promise made at the summit is met,

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<sup>29</sup> AIR 1997 SC 811

<sup>30</sup> AIR 1997 SC 1228

<sup>31</sup> Declaration of the United Nations Conference on the Human Environment, 1972, Principle 5

<sup>32</sup> Proclamation to Declaration of the United Nations Conference on the Human Environment, 1972, Point 3

<sup>33</sup>, Declaration of the United Nations Conference on the Human Environment, 1972, Principle 19

nearly 1.5 billion more people will breathe clean air, 30 per cent of the world's coastlines will be cleaned up, and \$18.6 billion will be mobilized for research, development and innovative programmes to combat pollution.<sup>34</sup>

#### IV. CONCLUSION:

Peace, development and environmental protection are interdependent and indivisible.<sup>35</sup> An extensive study of all the reports and legislations collectively suggest that even our day to day decisions make a huge impact on the environment. Sustainable Development is the golden bridge between development and environmental protection. We must realize that if we wish to protect our human right to live in a healthy environment, we must preserve it for present and future generations. Choosing to throw eatables packets after eating them in the dustbin instead of the roadside ensures proper disposal of the garbage, opting to travel by public transport in place of private vehicle does not just ensure less emission of carbon-dioxide but also decides the fate of low-lying coastal regions, raising the area of construction over water-bodies not just poses a threat of its collapse but also decides the future of birds and animals who are natural inhabitants of that place. Whether we buy energy-efficient products or segregate garbage properly everything indirectly boils down to the deep-rooted connections man has with environment and its conservation.



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<sup>34</sup> <https://www.unenvironment.org/annualreport/2017/index.php?page=2&lang=en>

<sup>35</sup> The Rio Declaration on Environment and Development, 1992, Principle 25