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RIGHT TO CLEAN ENVIRONMENT - A FUNDAMENTAL RIGHT UNDER THE INDIAN CONSTITUTION.

“Clean Environment provides good health, good health is good wealth, good wealth is good development of the Nation, good nation is an ideal and treasure to the future generation” –Dr. L.V.K. Prasad & Suneetha (the authors of this article)

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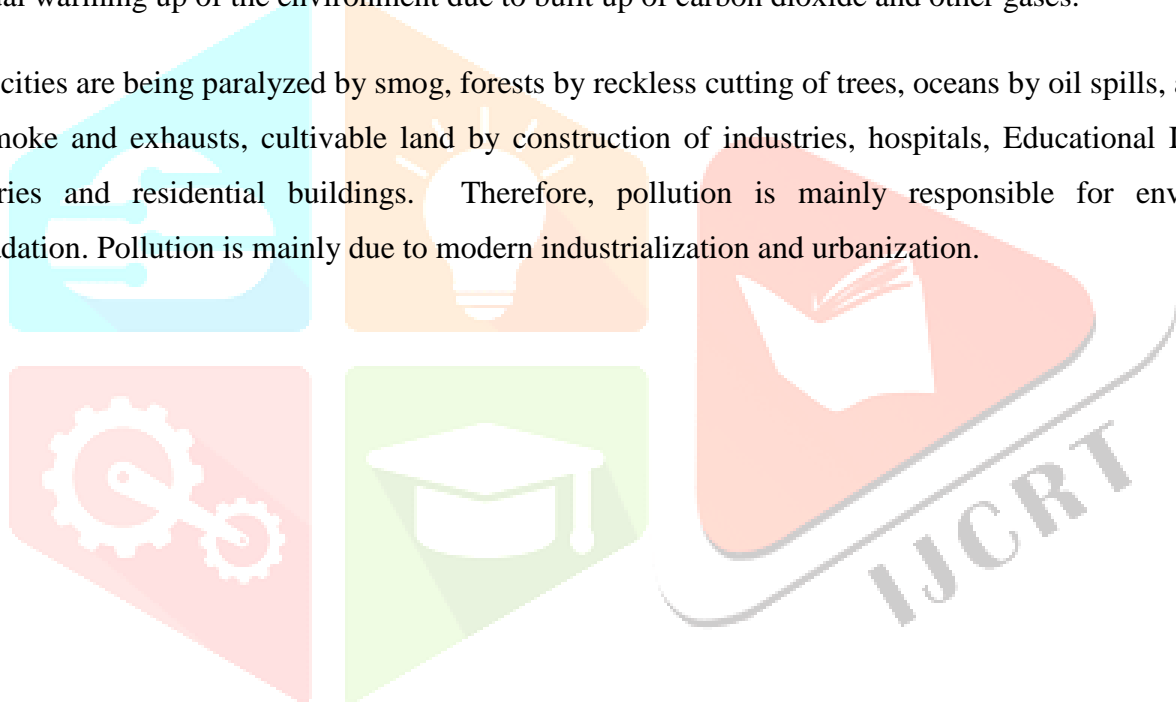
ABSTRACT: The global problem of the present day is the Environment pollution, which is a serious threat to the existence and survival of human race. Man in making variety of efforts for progress and development causes much damage to forests, wild life, land surface, water resources and to atmosphere, which are part and parcel of the environment. Serious problem is that of environmental pollution which every citizen faces either in the form of automobile pollution or the obnoxious smells emanating from drains near his house or the irritating sounds and noises from his locality or the dirty drinking water from his pipes. Man's activities through urbanization, industrialization, mining, and exploration are at the forefront of global environmental pollution. Life support system inbuilt in nature are being strained and vanished. For example, depletion of ozone layer is leading to gradual warming up of the environment due to built up of carbon dioxide and other gases. Environmental pollution is not a new phenomenon, yet it remains the world's greatest problem facing humanity, and the leading environmental causes of morbidity and mortality. Both developed and developing nations share this burden together, though awareness and stricter laws in developed countries have contributed to a larger extent in protecting their environment. Despite the global attention towards pollution, the impact is still being felt due to its severe long-term consequences. This Article examines the types of pollution-air, water, and soil; the causes and effects of pollution; and proffers solutions in combating pollution for sustainable environment and health.

INDEX TERMS: Environment, global warming, air pollution, water pollution, soil pollution, sustainable development, industrialization, urbanization.

Introduction

The global problem of the present day is the Environment pollution, which is a serious threat to the existence and survival of human race. As food, clothing and shelter are the basic human needs. “Unpolluted Air (to breathe), uncontaminated water (to drink) and nutritious food and hygienic condition to live in are “sine quo non” for human personality. Man in making variety of efforts for progress and development causes much damage to forests, wild life, land surface, water resources and to atmosphere, which are part and parcel of the environment. Serious problem is that of environmental pollution which every citizen faces either in the form of automobile pollution or the obnoxious smells emanating from drains near his house or the irritating sounds and noises from his locality or the dirty drinking water from his pipes. The growing scale of industrialization and urbanization is investing the relationship between man and nature with many complexities.¹ Life support system inbuilt in nature are being strained and vanished. For example, depletion of ozone layer is leading to gradual warming up of the environment due to built up of carbon dioxide and other gases.

The cities are being paralyzed by smog, forests by reckless cutting of trees, oceans by oil spills, atmosphere by smoke and exhausts, cultivable land by construction of industries, hospitals, Educational Institutions, poultries and residential buildings. Therefore, pollution is mainly responsible for environmental degradation. Pollution is mainly due to modern industrialization and urbanization.



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1. C. Basavaraju - Environmental Protection- A Constitutional mandate, Indian Bar Review, Vol XXVIII(1), 2001, The Bar Council of India Trust, New Delhi.

Post independent India has registered great progress in industrial activity in the cities and towns which are known for their great industrial expansion and growth. In the recent times, the industrial expansion in the cities and towns of our country is so much that it may prove to be a boon or blight to the people of our country. Ourselves in a paradoxical situation because India being a developing country needs economic development

and industrial growth. At the same time, we can not afford to have too much of development at the cost of environmental protection. Therefore, what we need is environment for sustainable development which means balanced, well organised development without damaging the environment in which we live. The purpose of this paper is to highlight the significance of environmental protection and suggest suitable strategies for protecting the planet earth in general and the people of India in particular.

Constitutional provisions for Environmental Protection:

The Constitution of India came into force on 26th January 1950. Originally, the Constitution contains no specific provisions for environmental protection. However, certain specific provisions have been incorporated by the Constitution (Forty Second Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the very few Constitutions in the world, which provides for specific provisions for the protection and improvement of the environment. The Constitution being the fundamental law of the land has a binding force on citizens, non citizens as well as the State. The Fundamental Rights and the Directive Principles of State Policy underline our national commitment to protect and improve the environment.²

Constitution-Forty Second Amendment:

In 1976, under the leadership of the then Prime Minister Smt. Indira Gandhi, the Constitution (Forty Second Amendment) Act was passed and the provisions relating to the protection of environment for the first time were incorporated by adding a new provision Article 48-A in the chapter, Directive Principles of State Policy.³ According to Article 48A “the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”

2. Constitution of India and Women Empowerment: A brief study –By Kamaluddin Khan, 2009, Lecturer in Law College, Patna University, Patna.

3. Directive Principles for the establishment of the welfare state –By Kamaluddin Khan, 2009.

Further a new provision Article 51A in the form of "Fundamental Duties" was also incorporated by the 42nd Amendment. According to the sub-clause (g) of Article 51-A “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. The above two provisions impose twofold responsibilities.

On the one hand, it gives directive to the State for protection and improvement of environment and on the other hand it imposes a duty on every citizen to help in the preservation of natural environment.

Fundamental Rights: Part III of the Constitution, containing Articles 12 to 35, deals with Fundamental Rights. Articles 15 (2) (b), Article 21, Article 24 provide for specific provisions for environmental protection.

Articles 15 (2)(b) : According to Articles 15 (2)(b) , “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to: the use of wells, bathing ghats, roads and places of public resort, maintained wholly or partly out of state funds or dedicated to the use of general public.” In simple words, Article 15(2) prohibits discrimination on the ground of sex, race, religion, caste, place of birth etc., to make use of the public places for the general public. The public places, which are part and parcel of the human environment, should be made available to the public. The preamble to our constitution ensures socialistic pattern of the society and decent standard of life, which can be pollution free environment.

Article 21: According to Article 21 of the Constitution “ no person shall be deprived of his life or personal liberty except according to procedure established by Law.” Article 21 is the heart of the Fundamental Rights and has received expanded meaning from time to time after the decision of the Supreme Court in Maneka Gandhi V. Union of India⁴. Article 21 guarantees a Fundamental Right to Life- a life of dignity to be lived in a proper environment, free of danger of disease and infection. The Right to Live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of Rural Litigation and Entitlement Kendra V. State of U.P.⁵

4. AIR 1978 SC 597

5. AIR 1988 SC 2187 popularly known as Dehradun Quarrying case

Directive Principles of State Policy: Article 47: Art.47 provides that 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. The improvement of public health also includes the protection and improvement of environment without which public health can not be assured.

Article 48: It deals with organisation of agriculture and animal husbandry. Art.48 directs the state to take steps to organise 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. Prohibition of slaughter of cows and other cattle, which is part and parcel of the human environment and decent standard of life, and ensures pollution free environment.

Fundamental Duties (Article 51-A): Article 51-A was added under the Constitution (42nd Amendment) Act, 1976, which deals with 'Fundamental Duties' under Part IV-A. Article 51A enlists ten fundamental duties designed for restructuring and building a welfare society state. Article 51A (g) specifically deals with the fundamental duty with respect to environment. It provides "it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for living creatures".

Legislative Provisions for protection of Environment: There are about 200 central and state Legislations on environmental protection. The most important environmental legislation, passed by the Parliament under Article 249 of the Constitution are The Water (Prevention and control of Pollution) Act, 1974; The Air (Prevention and control of Pollution) Act, 1974; The Air (Prevention and control of Pollution) Act, 1981; The Environment (protection) Act, 1986; The Forest Conservation Act, 1980; The Wildlife (protection) Act, 1972; The Public Liabilities Insurance Act, 1991 etc.

Provisions under Indian Penal Code, 1860⁶: The Indian Penal Code has a Chapter on offences affecting the Public Health, safety, convenience⁷. Section 268 provides that "a person is guilty of a public nuisance who does any act or is guilty of an illegal commission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. Section 272 to 276 deal with the adulteration of food, drinks and drugs. Section 277 aims to prevent water pollution.

6. Sec 268 – 294 A of IPC, 1860

7. Chapter XIV of IPC 1860

Criminal Procedure Code, 1973: The code of Criminal Procedure Code, 1973 provide for certain Provisions for preventing and controlling Public Nuisance causing air, water and noise pollution. Chapter X, Part- B containing Sections 133 to 143 and Part C containing Section 144 provide for most effective and speedy remedies.

Judicial Interpretation to Right to Life and Free Environment: The courts in India have also given a new interpretation to the Constitutional provision relating to protection and improvement of the environment. The Supreme Court

In *Maneka Gandhi V. Union of India*⁸ states that Article 21 guarantees a Fundamental Right to Life. A life of dignity to be lived in a proper environment, free of danger of disease and infection. The right to live in a

healthy environment as part of Article 21 of the Constitution was first recognized in the case of Rural Litigation and Entitlement Kendra V. State of U.P.⁹. It is the first case of this kind in India, involving issues relating to environment and ecological balance. The R.L&E. Kendra and others in a letter to the Supreme Court complained about the illegal / unauthorized mining in Mussoorie. Dehradun belt. As a result, the ecology of the surrounding area has adversely affected and it led to the environmental disorder. The supreme court treated the letter as a writ petition under Article 32 of the Constitution and directed to stop the excavation (illegal mining) under the Environment (Protection) Act 1986. The respondents contended that the writ petition was registered in 1983 and environment (Protection) Act was passed in 1986 and hence the criminal proceedings can not be initiated with retrospective effect. The court rejected the contention of the respondents and held that the provisions of procedural law shall apply to ordinary criminal cases and not to the environmental cases. The court directed the central and state governments to take necessary steps to prevent illegal mining and to re –afforestation in the area of mining.

In M.C.Mehta V. Union of India¹⁰ , in this case the supreme court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.

8. AIR 1978 SC 597;

9. AIR 1988 SC 2187;

10. AIR 1987 SC 1086(Popularly known as Oleum Gas Leak case)

The A.P High Court in T. Damodar V. S.O Municipal Corporation, Hyderabad¹¹ laid down that right to live in healthy environment was specially declared to be part of Article 21 to the Constitution.

In Subhash Kumar V. State of Bihar¹², the court observed that ‘right to life guaranteed by Article 21 includes the right to enjoyment of pollution free water and air for full enjoyment of life. Through this case the court recognized the right to a wholesome environment as part of the fundamental right to life.

In Shanti Star Builders V. Narayan Totame¹³ the Supreme Court held that the right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment.

In Vellore Citizens Welfare Forum V. Union of India¹⁴ the supreme court held that industries are vital for the country’s development but having regard to pollution caused by them principle of ‘sustainable Development’

has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country.

In T.N Godavarman Thirumalpad V. Union of India¹⁵ and WWF V. Union of India¹⁶ cases have led to the orders that no forest, national parks or sanctuaries can be de reserved without the approval of the Supreme Court, no non – forest activity is permitted in any National Park or sanctuary even if prior approval under the Forest (Conservation) Act,1980 had been obtained, new authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

11. AIR 1987 AP 171;

12. (1991) 1 SCC 598;

13. 1990 (1) SCC 520;

14. AIR 1996 SC 2715;

15. 2000 SC 1636;

16. WP NO 337/95;

In noise pollution V. In Re¹⁷, the cries of a rape victim for help went unheeded in the blaring noise of loudspeaker in the neighborhood. The victim committed suicide .Public Interest Litigation was filed. The court said that Article 21 of the Constitution guarantees life and personal liberty to all the persons... it guarantees a right of persons to life with human dignity .Any one who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him . No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to the degree and the surrounding circumstances, the place and the time.

In Karnataka Industrial Areas Development Board V. C. Kenchappa and others¹⁸, in consonance with the principal of sustainable development; a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

Strategies and remedial measures to tackle industrial and other pollution:

The dangerously expanding industrial complex urbanization and modernization and increasing population will not only be a curse or blight, but not a boon to the people of our country. The problem of Industrial pollution is on the increase with the growth of Petro-Chemical industry in India which is now poised for a take off by the end of this century. More so because of the mass production of soaps, drugs, pharmaceuticals, petro-chemicals, polystyrene, synthetic, fiber etc; Adding fuel to the fire, the production of various fertilizers is on the increase by leaps and bounds. All this is an indication of industrial progress and economic development of our country in general, and the major cities and towns of our country in particular. However, unless the necessary checks and balances are introduced in an organized manner with necessary safeguards along with Prosperity, this development may spell disaster which may go beyond our control causing environmental pollution and ecological degradation.

17. (2005) 5 SCC 733/Pr 10;

18. WP No 7405/2005

In order to achieve socio-economic upliftment of our growing population, establishment of new industries is essential to meet the increasing demand of employment opportunities and necessities of life to keep pace with the increasing population. At the same time, safety and environmental protection are essential factors of developmental process to bring about the balance between production and reproduction.

Among many factors that contribute to our pollution, vehicular pollution is primary. Automobiles also constitute the largest single group of the noise menace. In a city 60-70% of noise may come from road traffic. Slow speed of Five to Ten kmph during peak hours increase the emission rate of atmospheric and noise pollution¹⁹. However, the number of vehicles playing in India have been responsible for aggregating the air pollution menace, Particulates emitted by motor vehicles pose a hazard to the health of animals and plants and also to the longevity of structures and properties, the gaseous components discharge into air due to

vehicular emissions causes burning of eyes, nose and throat irritation²⁰. Chronic pulmonary diseases like Bronchitis and Asthma are aggregated due to vehicular pollution. Carbon Monoxide found in the smoke combines with the hemoglobin in the blood and consequently increase stress on those suffering from cardiovascular and pulmonary diseases. Certain heavy metals like Lead, emitted by the motor vehicles may enter the human body through lungs and cause poisoning. The main source of Lead is urban atmosphere is the automobile. Inorganic Lead acts as an agent, which causes various human health disorders, abnormalities, gastrointestinal damage, liver and kidney damage and infertility. It also affects the mental health of Children.

The discharge of any sewage or trade effluent of any liquid, gaseous or solid substance into water whether directly or indirectly, as may create nuisance or render such water harmful to public health or safety or to the life and health of animals or plants or of aquatic organism²¹. The main cause of water pollution is the discharge of solid or liquid waste products containing pollutants. They are domestic and commercial wastes, Industrial wastes, air pollution, chemical substances, thermal wastes, agricultural wastes, radio active substances, suspended matters etc.

19. Dr. SAK Azad-Automobile Pollution, Environment and Law, Indian Bar Review, Vol.XXX(2&3),2003, The Bar Council of India Trust, New Delhi;

20. P.S.Sangal, Air pollution by Motor Vehicles- A strategy for Control (Environmental Pollution and Control Ed.by Gerg, Biswal and Tiwana, P.50);

21. Sec 2 (e) of the Water (Prevention and Control of Pollution) Act, 1974

Water pollution causes deleterious effects on the environment, which includes Public health and safety, plants and animal life, land, property etc. The extent of water pollution in India is very obvious since all the 14 major rivers are highly polluted. It is estimated that more than 60% of the diseases in India are due to the pollution of water.

Conclusion and Suggestions:

In spite of various provisions in the Constitution, Legislature enactments, decisions and courts' monitoring the situation is not encouraging and conducive for the protection and preservation of environment. Because, many provisions in Air, Water and Environment Protection Act as well as in the Factories Act are not being applied and implemented in a true spirit, to regulate pollution disseminated by industries and to fix industrial and collective liability. The strict application of the provisions of the above enactments in their true spirit is what is required urgently for the very existence of the society and mankind. Therefore, with a view to protect the mankind against the growing menace of environmental pollution and to secure clean and unpolluted environment, the following measures are required to be adopted.

1. New industries or factories shall be established only after getting clearance certificate from the State and Central Boards which is required to conduct environmental impact assessment before giving clearance to newly started industry or factory in the country. However, the genuineness of such assessments have to be further scrutinized periodically by a high power committee since the veracity of the assessment is likely to be vitiated by corruption, political and other types of undue influence.
2. Industries prone to causing air pollution by discharging pollutants like toxic gases are required to have gas chambers to burn the used and excess gas, so that it will not contaminate the clean air in the atmosphere and the chimneys letting out such gases must be raised to a reasonable height so that the discharged gases can be dispersed in the atmosphere without getting stationed at a lower level. All major industries are required to install water treatment plants and raise the chimneys in accordance with the standards prescribed by Central and State Governments, so that the pure drinking water (both surface and ground water) will not be contaminated.
3. The hazardous industries like chemical and fertilizer factories, they have to be established far away from the residential colonies and necessary precautions must be taken to see that no one resides near by such industries and there must be greenery and vegetation in and around the factory premises or industrial complex. Then only even if pollution is caused, the damage can be reduced to a minimum level.
4. Special 'Environmental Courts' must be established to try cases relating violation of environmental laws. Such courts must be assisted by experts having special knowledge and experience in the field of environmental protection.
5. Legal aid clinics/bodies shall educate the people about their rights and duties to achieve the goal of protecting and improving environment by preventing pollution. Their clinics should also take up the environmental issues before the courts so as to ensure pollution-free environment. Free legal aid camps should be conducted at rural and urban areas to educate the people.
6. As some times, the aggrieved persons are unable to approach court for enforcing their right to have clean environment, courts should encourage Public Interest Litigation to deal with the problem of environmental pollution.
7. Supreme Court should liberally interpret Article 21 and declare the right to have unplugged environment as a fundamental right.
8. The courts should provide damage for the violation of the 'right to life and personal liberty' on account of environmental pollution.
9. If the citizens fail to preserve and protect environment, as provided in **Article 51A (g)**, they must be given severe punishment under the law.
10. Persons, who violate the provisions of various enactments relating to environment, must be imposed

heavy penalties. Wherever it is desirable, industrialists or the managers should be made personally liable for the violation of environmental laws.

11. The voluntary organizations and the Academicians in the universities and colleges are called upon to undertake the task of creating awareness amongst the people of our country about the need for developing the culture of environment inside and outside their residential colonies so that people can be motivated to react responsibly whenever the situation arises to respond to the call of environmentalists and other progressive politicians and leaders of the State and Centre, so that the cities and towns of our country in particular can be saved from the malady of environmental pollution and ecological degradation .
12. Every responsible citizen of the country to undertake the task of cleaning the cities, towns and rural areas and greening the minds of the people with a view to achieve the goal of 'Clean India', so that the possibility of damage due to any kind of pollution can be avoided. Even if the damage is caused, it can be stabilized at a minimum level.
13. The authorities must take action against the persons who are changing the horns of the vehicles against the companies mandate and penalties must be imposed.
14. The authorities must insist the use of CNG to all the Public Transporters.
15. The authorities must insist the persons to play only devotional songs instead of cine songs during Vinayaka Chaviti and Dasara Utsavams and permission should not be given to play any songs after 8.30 P.M.