

RIGHT TO ENVIRONMENT

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Rights concepts

- # Divine Rights
- # Societal Rights
- # Individual Rights
- # Community Rights

Evolution of Environmental Rights

I generation right: Political rights

II generation right: Social and Cultural

III generation: Environmental Rights

Right to Live in a Healthy Environment - A Basic Human Right

UDHR 1948

- Article 3: Right to Life
- Article 25: Right to a standard of living adequate for the health and well being of himself and of his family

ICESCR 1966:

- Article 11: Right to an adequate standard of living for himself and his family and to the continuous improvement of living conditions.

Right to Live in a Healthy Environment

- A Basic Human Right

- Article 12 (1) : Right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- Article 12 (2) : Steps shall be taken by States for the improvement of all aspects of environmental and industrial hygiene.
- ❖ ICCPR, 1966: Article 6: Every human being has the inherent right to life.

Right to Live in a Healthy Environment

- A Basic Human Right

■ UNCHE Stockholm, 1972:

- Principle 1: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being

■ UNCED Rio 1992

- Human beings are at the center of our concern for Sustainable Development. They are entitled to a healthy and productive life in harmony with nature.

Draft Declaration of Principles on Human Rights and Environment

- Proposed by UN Sub-commission on Prevention of Discrimination and Protection of Minorities – Study on “Human Rights and the Environment” (Report of the Special Rapporteur UN.Doc.E/CN.4/Sub.2/1994 dated 6.7.1994.
- **Principle 1:** Human Rights and ecologically sound environment, Sustainable Development and peace are inter-dependent and indivisible.
- **Principle 2:** All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

Draft Declaration of Principles on Human Rights and Environment

- # Principle 5: All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries

Right to Environment – A Constitutional Right

- # *Greek Constitution, 1975: Art.24: “The protection of the natural and cultural environment constitutes a duty of the State”*
- # *Spanish Constitution, 1978: Art.45: “everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.*
- # *Netherlands Constitution: Art.21: “it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment”*

Right to Environment – A Constitutional Right

- # Constitution of Federal Republic of Brazil, 1988: Art.225: “ everyone is entitled to an ecologically balanced environment”
- # Constitution of India: (Combined reading of Art.48A and 51A): The State and citizens have fundamental duty to protect the environment (Directive Principles of State Policy)

Dilution of Locus Standi

- # The evolution of Public Interest Litigation [Art. 32 and 226]
- # Class Action and Citizen suit provision
- # The expansion of Art. 21
- # The Golden triangle Rule
- # The Directive interpretation

Evolution of the Right

People's movement

- Silent Valley agitation
- Chipko movement
- RLEK case
- Proactive Judgments in Article 21
- Ganga pollution
- Delhi air pollution

Declaration of Right by High Courts

✦ *Damodhar Rao v. Municipal Corporation, Hyderabad (AIR 1987 AP 170)*

- “there can be no reason why practice of violent extinguishments of life alone would be regarded as violative of Art.21 of Constitution. The *slow poisoning* by the *polluted atmosphere caused by environmental pollution and spoilation* should also be regarded as amounting to violation of Art.21 of the Constitution.”

Declaration of Right by High Courts

L.K.Koolwal v. State of Rajasthan (AIR 1988 Raj 2)

- “Maintenance of health, sanitation and environment falls within Art.21 thus rendering the citizens the fundamental right to ask for affirmative action.”

Attakoya Thangal v. Union of India (1990 KLT 580)

- “The right to sweet water, and the right to free air are attributes of the right to life, for these are the basic elements which sustain life itself”

Declaration of Right by High Courts

V. Lakshmi pathy v. State of Karnataka (AIR 1992 Kant 57)

- “Entitlement to clean environment is one of the *recognised basic human rights*.....The right to life inherent in Art.21 of the Constitution of India does not fall short of the required quality of life which is possible only in an environment of quality.”
- “Where on account of human agencies, the quality of air and quality of environment are threatened or affected, the Court would not hesitate to *use its innovative power*...to *enforce and safeguard* the right to life to *promote* public interest”

Declaration of Right by Supreme Court

- ✚ ***Chetriya Pardushan Mukti Sangarsh Samiti v. State of UP (AIR 1990 SC 2060)***
- “Every citizen has a *fundamental right* to have the *enjoyment of quality of life* and living as contemplated by Article 21 of the Constitution of India. *Anything*, which endangers or impairs that quality of life, is entitled to take recourse to Article 32 of the Constitution of India”

Declaration of Right by Supreme Court

Subhash Kumar v. State of Bihar (AIR 1991 SC 420)

- “the right to life enshrined in Art. 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. If anything *endangers or impairs* the quality of life, an affected person or a person genuinely interested in the protection of society would have *recourse to Art. 32.*”

Declaration of Right by Supreme Court

Virendra Gaur v. State of Haryana (1995 2 SCC 577)

- “Article 21 protects right to life as a fundamental right. Enjoyment of the life and its attainment including their right to life with human dignity encompasses within its *ambit, the protection and preservation of environment, ecological balance* free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts would cause environmental pollution. Environmental, ecological, air, water pollution etc., should be regarded as amounting to violation of Article 21.”

Declaration of Right by Supreme Court

- # ***B.L. Wadehra v. Union of India* {(1996) 2 SCC 594}.**
- # ***Vellore Citizens Welfare Forum v. Union of India* {AIR 1996 SC 2715}**
- # ***AP Pollution Control Board v. M.V. Nayudu* {(1999) 2 SCC 718}**

- **“Environmental concerns arising in the SC under Art. 32 or under Art.136 or under Art.226 in the High Courts are of equal importance as human right concerns. In fact, both are to be traced to *Art. 21* which deals with the *Fundamental Right to life and liberty*.” It was further observed “while environmental aspects concern ‘life’, human rights aspects concern ‘liberty’.”**

Judicial Activism

- # Ratlam Municipal Corporation case
- # Narmada Baccho Andolan case
- # Kamal Nath case
- # T. N Godavarman Thirumulkpad series
- # Idgah Slaughter house case
- # Samath v State of A.P
- # Ramji Patel and others V Nagrik Upbhokta Marg

Judicial Activism contd.

- # S. Jaganath v Union of India
- # Centre for Social Justice v Union of India
- # Goa Foundation v Union of India
- # Tehri Bandh Virodhi v State of U. P
- # Bangalore Medical Trust v B. S Muddappa
- # Almitra Patel v Union of India

Conclusion

- # Is the right to healthy environment guaranteed or is it illusory?
- # Your comments and observations