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# Right to health with special reference to healthy environment: An Indian perspective

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**Abstract**---Public health is the most relevant area of discussion of all times. This paper analyses the relation between health rights and environmental protection. There are no direct provisions under Part III of the Indian Constitution related to Health and the Environment. Thus, judicial interpretations accommodating Health and Clean Environment under Article 21 are examined. The nexus between public health and the environment is cross-checked with empirical data. The role of the judiciary in emphasising health and environmental rights is noteworthy. The constitutional interpretations and judicial recommendations paved way for legislative actions in these areas. The environmental legislations mostly give importance to public health along with environmental protection. Analysing the environmental laws, it is evident that the principle behind all those legislations is public health concerns. The role of NGT is remarkable in serving environmental justice. There is always a conflict between public health, environmental protection, and development which is hard to solve. In the light of the hardships faced by COVID-19, it is evident that environment and human health is closely related and only by giving importance to environmental protection, public health can be ensured.

**Keywords**---Health, Environment, Pandemic, NGT.

**Introduction**

“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”<sup>1</sup>. Health is the most valuable wealth of

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<sup>1</sup> WHO, <https://www.who.int/about/who-we-are/frequently-asked-questions> (Dec. 30, 2020, 08:10 AM).

a living being. Article 25 of the Universal Declaration of Human Rights states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”<sup>2</sup>. In every phase of life, health is of prior importance. Science, technology, developments (any), laws are all ultimately aiming at the life and better living conditions of men as well as other living beings. Thus, every activity of men revolves around the concept of ‘Health’.

Being one of the biggest democracies in the world, there are considerable number of legislations giving importance to the health of the people. Part IV of the Constitution of India contains provisions relating to the protection of the health of the people. Further, judicial interpretations of Part III, Article 21 also throws light on right to health.

### **Right to health under Indian constitution**

The World Health Organization has accepted the right to health as a human right<sup>3</sup> in its Constitution. Besides WHO, UDHR has also recognized health rights. While drafting the Indian Constitution right to health was not included as a Fundamental Right, but provisions related to health were included in the Directive Principles of State Policy.

Article 21<sup>4</sup> of the Constitution is generously interpreted by the Court to give different shades to the right to life and personal liberty. While interpreting Article 21, the right to health has been considered to be a part of the right to life in a dignified and decent manner in umpteen cases. Judicial decisions accord wide interpretation of Article 21, accommodating the right to health. In Francis Coralie v. Delhi<sup>5</sup>, Justice Bhagwati observed that “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings”.

“The right to life under Article 21 would include the right to food, clothing, decent environment and reasonable accommodation to live in suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual”.<sup>6</sup> It is the duty of the State to provide proper health care facilities to its people as it is paramount to protect the right to life. It is the duty of government hospitals to provide medical assistance to protect human life. The failure of providing proper treatment is considered to be a violation of Article 21.<sup>7</sup> “Right to health is integral to the right to life and the government has a constitutional obligation to provide

<sup>2</sup> UDHR, [https://www.un.org/en/universal-declaration-human-rights/\(Dec. 30,2020\).](https://www.un.org/en/universal-declaration-human-rights/(Dec. 30,2020).)

<sup>3</sup> The Constitution of WHO, 1946, A/RES/131.

<sup>4</sup> ‘No person shall be deprived of his life or personal liberty except according to a procedure established by law’. Constitution of India, 1950, Article 21.

<sup>5</sup> AIR 1981 SC 746

<sup>6</sup> Shantisar builders v. Narayanan Khimalal Totame (1990) 1 SCC 520.

<sup>7</sup> Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others AIR1996SC2426.

health facilities".<sup>8</sup> It is the obligation of the State to provide health facilities and services.<sup>9</sup>

Public Interest Litigations have continuously been filed seeking the protection of the health rights of the poor and downtrodden. The scope of Article 21 is stretched to protect the rights of children in jail to get proper treatment.<sup>10</sup> In *Vincent Panikurlangara vs Union of India & Ors*<sup>11</sup>, a public-spirited lawyer came forward to ban the import, manufacture, sale, and distribution of harmful drugs banned in western countries but still in circulation in India. Similarly, the Supreme Court exercised its jurisdiction, by acting upon a letter received from a voluntary organization regarding the inhuman treatment of women staying at Care Homes.<sup>12</sup> Even the free medical services have to be with utmost care and caution which should not harm the health of the patient.<sup>13</sup> Immediate medical help for the injured is now treated as a fundamental right and the hospitals or medical practitioners are not to deny necessary treatment to the injured under any circumstances.<sup>14</sup> In *Consumer Education and Research Centre v. Union of India*<sup>15</sup>, occupational accidents and diseases were considered to be another health hazard and it availed compensation and necessary legislative measures to the workers of asbestos industries. It is observed that 'The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of the person and to live a life with dignity and equality'.<sup>16</sup> Likewise, public smoking and its effect on passive smokers are treated as a violation of Article 21.<sup>17</sup> The right to health is now treated as a part and parcel of Article 21.

Right to life is given utmost importance by our Apex Court and it is reflected in the case of activist Varavara Rao health issue. Being an 81 years old under-trial prisoner<sup>18</sup>, he faced many health issues and was almost bedridden. The NIA Court rejected his bail application and the family approached the High Court of Bombay for better medical treatment and facilities as his health condition was deteriorating. Meanwhile, he was tested COVID positive and was hospitalized. National Human Rights Commission intervened in the matter. After a long battle, his case was considered to be a 'special Case'. Medical care while in state custody is a part of the right to health under Article 21.<sup>19</sup> But, it is certain that justice delayed is justice denied.

Apart from Article 21, Directive Principles of State Policy encompass health-related provisions. It directs the State to take the necessary steps and legislations

<sup>8</sup> *State of Punjab v. Mohinder Singh Chawla* (1997) 2 SCC 83.

<sup>9</sup> *State of Punjab v. Ram Lubhaya Bagga* (1998) 4 SCC 117.

<sup>10</sup> *Sheela Barse v. Union of India* (1986) 3 SCC 596.

<sup>11</sup> AIR 1987 SC 990.

<sup>12</sup> *Vikram v. State of Bihar* AIR 1988 SC 1782.

<sup>13</sup> *S. Mittal v. State of UP* AIR 1989 SC 1570.

<sup>14</sup> *Parmanand Kataria v. Union of India* (1989) 4 SCC 286; AIR 1989 SC 2039.

<sup>15</sup> (1995) 3 SCC 42.

<sup>16</sup> *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42.

<sup>17</sup> *Murli S Deora v. Union of India* (2001) 8 SCC 765.

<sup>18</sup> *Bhima Koregaon Conspiracy case* (2018)

<sup>19</sup> <https://www.theleaflet.in/why-did-varavara-rao-petition-courts-for-access-to-basic-healthcare-in-prison/#> (Dec. 29,2020 7:30PM)

to improve the health conditions of its citizens. The welfare of the people is the primary concern of a democratic State and the good health of the people is important for welfare. Thus, Article 38 implicitly stands for public health concerns as well. State support and assistance for the old age, sick and, disabled are envisaged in Article 41 of the Constitution. The protection of the right of mothers through maternity benefits is contemplated in Article 42. Article 47 stands for the standard of living of the people where it is the responsibility of the State to ensure nutritious food and prohibit intoxicating drinks and drugs injurious to health. A healthy environment is inevitable for the healthy life of men and the same is considered under Article 48A. These directives influence governmental policies and legislation relating to health-associated matters.

Public health, sanitation, hospitals, and dispensaries are the subjects come under the State list<sup>20</sup>. While drafting the Constitution, the efforts to make 'Public health' as a concurrent subject or union subject could not succeed<sup>21</sup> whereas the public health is included in the State List. However, In this Federal State, 'Public Health' was considered to be of prior importance and every State would focus more attention on it according to their need. The benefit of making 'Public Health' a State Subject is more palpable during the pandemic period<sup>22</sup>, where each State handles the situation in its territory according to the specific conditions and needs.

### **Nexus between right to health and environmental rights**

The changing human environment has upsurged environmental pollution and consequential issues. The exploitation of the natural environment and the developmental activities of men have imprinted tremendous changes in human life. The repercussion of environmental pollution, directly and indirectly, affects the healthy life of living beings. It is the most dangerous and alarming threat to life. Health and a clean environment are closely connected to each other. Environmental degradation and pollution keep the health of living beings at peril. The health issues caused by pollution are countless. From curdle to grave life is affected by pollution. Safety cannot be ensured even inside the womb of the mother.

Diseases like stroke, ischaemic heart disease, chronic obstructive pulmonary disease, lung cancer, acute lower respiratory infections in children, etc...are mainly caused due to indoor and outdoor air pollution.<sup>23</sup> About 500,000 newborns, less than one-month-old, lost their lives in 2019 due to air pollution.<sup>24</sup> In India, infant mortality due to air pollution was 116,000 in number.<sup>25</sup> The statistics show that around 12% of global death is due to air pollution (6.67 million).<sup>26</sup> The reports claim that people with heart and lung diseases are vulnerable to COVID 19.<sup>27</sup> Considering all these facts, it is evident that health and

<sup>20</sup>Constitution of India, 1950, Article 246, Seventh Schedule, List II, Entry 6.

<sup>21</sup>Constituent Assembly Debates, Vol VII.

<sup>22</sup> COVID 19.

<sup>23</sup> WHO Report, <https://www.who.int/mediacentre/news/releases/2014/air-pollution/en/> (Dec. 29,2020 9:17 PM).

<sup>24</sup> State of Global Air 2020 Report, October 21, 2020, P.23. <https://www.stateofglobalair.org/> (Dec.26,2020 2:15 PM).

<sup>25</sup> *Id.* at 23.

<sup>26</sup> *Id.* at 23.

<sup>27</sup> *Id.* at 23.

the environment are closely connected and these rights exist conjointly in Constitution as well as legislation.

### **Right to clean environment under article 21**

Environmental rights are not explicit in Part III of the Indian Constitution. Indian Judiciary featured with independence from other organs have manifested innovative interpretation to accommodate the right to clean and healthy environment within the ambit of Article 21. After 1970s, Apex Court entertains more environmental litigations with a positive attitude. Public Interest Litigations were answered by the judiciary to secure the environmental rights of the poor and illiterate.

In *M C Mehta and Anr v Union of India & Ors*<sup>28</sup> the escape of poisonous gas having the potential to affect the life and health of the people had found to be a violation of Article 21 of the Constitution. Supreme Court declared that the right to clean and healthy environment was an integral part of the right to life under Article 21.<sup>29</sup> In *Virendra Gaur v State of Haryana*<sup>30</sup> the Court observed that “Art. 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to a violation of Art. 21”. Protection of the environment has been observed as a constitutional mandate<sup>31</sup>. This view is reiterated in *A.P. Pollution Control Board v Prof. M.V. Nayadu (Retd.)*<sup>32</sup>. All these judgments interpret, the Article 21 includes the right to a clean and healthy environment as an integral part.

Recently, in *Sterlite Industries (India) Ltd. v Union of India*<sup>33</sup>, it is held that environmental clearance is not the sole criteria for an industry to work. If the industry continues to pollute after environmental clearance, it is a violation of Article 21.<sup>34</sup> Likewise, there are a lot of judgments ensuring the right to clean and healthy environment<sup>35</sup> as a fundamental right of the people. Nonetheless, the judiciary in some cases has prioritized development over environmental rights.<sup>36</sup>

<sup>28</sup> 1987 AIR 1086, 1987 SCR (1) 819 (*Shriram Foods & Fertilizers case*).

<sup>29</sup> *Subhash Kumar v State of Bihar* AIR 1991 SC 420.

<sup>30</sup> 1995 (2) SCC 577, 580.

<sup>31</sup> *Vellore Citizens Welfare Forum v Union of India* AIR 1996 SC 2715.

<sup>32</sup> AIR 1999 SC 812.

<sup>33</sup> (2013) 4 SCC 575.

<sup>34</sup> *M.C. Mehta v. Union of India and others* (1987) 4 SCC 463.

<sup>35</sup> (Stayed the construction of 5 Star hotel of Taj Group as it caused disturbance to migratory birds ) *Shri Sachidanand Pandey v State of W.B.* AIR 1987 SC 1109; (*Kanpur tanneries polluting Ganga river*) *M.C. Mehta v Union of India* AIR 1988 SC 1115; (*Stone crushing activities in and around Delhi*) *M.C. Mehta v Union of India* (1992) 3 SCC 256; (*cancellation of mining licences, Sariska Case*) *Tarun Bharat Sangh, Alwar v Union of India* AIR 1992 SC 514; (*Principle of inter-generational equity*) *State of Himachal Pradesh v Ganesh Wood Products* (1995) 6 SCC 363; (*Coastal Regulation Zone protection*) *Indian Council for Enviro-Legal Action v Union of India* (1996) 5 SCC 281; (*Taj trapezium Zone*) *M.C. Mehta v Union of India* (1997) 2 SCC 353; (*Shrimp farming culture industry*) *S. Jagannath v Union of India* (1997) 2 SCC 87; (*Vehicular emission*) *M.C. Mehta v Union of India* (1998) 9 SCC 589; (*Delhi Vehicular Pollution*) *M.C. Mehta v Union of India* AIR 1998 SC 2963; (*Delhi Industrial relocation case*) *M.C. Mehta v UOI* AIR 2001 SC 1544; (*CNG for public transport*) *M.C. Mehta v Union of India* (2002) 4 SCC 356; (*Right to information and community participation as an integral part of right to clean and healthy environment*) *Research Foundation for Science Technology National Resource*

Directive Principles of State Policy are no more ineffective constitutional provisions. The judiciary has harmonised and settled its approach towards the Directives in *Minerva Mills Ltd. v Union of India*.<sup>37</sup> Part IV contains provisions related to the environment which entrust the State to take necessary steps to protect the environment. Article 48A states that 'the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country'.<sup>38</sup> Apart from the Directives, Article 51A(g) establishes a duty on citizens to protect and improve the environment<sup>39</sup>. Even though it is an unenforceable provision, most of the environment-friendly judgments make the citizen remember their duty to protect the environment. It can be considered as the most emphasised fundamental duty.

### **National green tribunal: switching green justice**

After decades of striving, the most prominent development in the area of Indian environmental jurisprudence is National Green Tribunal (NGT). Supreme Court in *M C Mehta v Union of India*<sup>40</sup>, *Indian Council for Enviro-Legal Action v Union of India*<sup>41</sup>, *A P Pollution Control Board v M V Nayudu*<sup>42</sup> and *A P Pollution Control Board v M V Nayudu II*<sup>43</sup> have observed the need for Environmental Courts and recommended for Environmental Courts<sup>44</sup>. Subsequent to the unsuccessful attempts through the National Environment Tribunal Act, 1995 (repealed)<sup>45</sup> and National Environment Appellate Authority Act, 1997 (repealed)<sup>46</sup>, the Law Commission of India recommended to constitute environmental courts<sup>47</sup>. Accordingly, the National Green Tribunal Act, 2010<sup>48</sup> was enacted.

The green court is set up as a tribunal with the Supreme Court as its appellate authority. The effective working of NGT always depended upon the support of the Supreme Court.<sup>49</sup> In *Samir Mehta v Delta Shipping Marine Services SA*<sup>50</sup> NGT imposed 100 crores on the owner and broker of the ship for causing marine pollution due to oil spillage. In *Prafulla Samatray Vs. Union of India*<sup>51</sup>, NGT suspended the environmental clearance for POSCO (steel project) and this was

Policy v Union of India (2005) 10 SCC 58; (Bellary mining) *Samaj Parivartana Samudaya v State of Karnataka* AIR 2012 SC 2326.

<sup>36</sup> *Naramada Bachao Andolan v Union of India* (2001) 2 SCC 62; *N.D. Jayal v Union of India* (2004) 9 SCC 362; *G.*

*Sundarajan v Union of India* (2013) 6 SCC 620; *Lafarge Umiyam Mining (P) Ltd v Union of India* (2011) 7 SCC 338.

<sup>37</sup> AIR 1980 SC 1789, 1806.

<sup>38</sup> Article 48A, Constitution of India, 1950.

<sup>39</sup> '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'. Constitution of India, 1950, Art. 51A (g).

<sup>40</sup> 1986 (2) SCC 176.

<sup>41</sup> AIR 1996SC 1446.

<sup>42</sup> AIR 1999 SC 812.

<sup>43</sup> 2001 (2) SCC 62.

<sup>44</sup> NAWNEET VIBHAW, ENVIRONMENTAL LAW :AN INTRODUCTION, 236 (2016); SHYAM DIVAN AND ARMIN ROSENCRANZ, ENVIRONMENTAL LAW AND POLICY IN INDIA(2002).

<sup>45</sup> ACT NO.27 OF 1995.

<sup>46</sup> ACT NO. 22 OF 1997.

<sup>47</sup> Law Commission of India, 186<sup>th</sup> Report, 2003 DO No.6(3)84/2003-LC(LS).

<sup>48</sup> ACT NO.19 OF 2010.

<sup>49</sup> Nupur Chowdhury, *Sustainable Development as Environmental Justice: Exploring Judicial discourse in India* (2016) VOL. LI (26 & 27) EPW 84, 92.

<sup>50</sup> Original Application No. 24 of 2011 and M.A. No. 129 of 2012, M.A. Nos. 557 and 737 of 2016.

<sup>51</sup> Original Application No. 8/2011.

considered as a radical step in favour of local communities and protection of forests which grasped much media attention. Another landmark decision of NGT is against the open burning of plastic waste.<sup>52</sup> NGT decisions are mostly environment friendly like *Mustak Kadri v State of Gujarat*<sup>53</sup> and *Harvinder Sekhon Vs. Union of India & Others*<sup>54</sup> where strong judgments were delivered against vehicular pollution. Ban on plastic below 50 microns is a crucial and effective decision of NGT<sup>55</sup> and the States took measures for eliminating plastic use.

The role of NGT is remarkable as its members look into all technical and legal aspects of the matters concerned. The most relevant and recent example of the impartial involvement of NGT for the protection of natural resources is reflected in *Art of Living case*.<sup>56</sup> The NGT bench under the chairmanship of Justice Swatanter Kumar, found that, Sri Sri Ravishanker's Art of Living Foundation by conducting the World Culture Festival responsible for polluting Yamuna flood plains. A fine of Five Crores was imposed on the Foundation which is to be used for the restoration of flood plains. Delhi Development Authority was entrusted to carry out the restoration works and at the same time, an Expert Committee was constituted to assess the real cost of restoration. The Committee submitted its report stating the restoration cost as 13.29 Crores and the restoration process would take up to ten years. Delhi Development Authority came up with the 'Yamuna Floodplain Development Programme' for the restoration.

The death of 15 and hundreds affected in LG Polymers gas leak where NGT took up the matter on suo moto<sup>57</sup> basis, shows up the alertness and effectiveness of a separate green court. Unlike any other tribunal, the suo moto jurisdiction of NGT is upheld by the Supreme Court of India<sup>58</sup>. The existence and effectiveness of NGT depend on the support of the Supreme Court and so far, NGT is one of the effective green courts in the world.

### **Legislative Approach Need to Sync Health Concerns in Environmental Legislations**

Economic progress and social progress are inevitable in the present-day world of development. Twentieth-century has witnessed economic and technological developments which also resulted in environmental degradation ultimately affecting human health<sup>59</sup>. The development befalls in health care facilities and technologies, but at the same time, it diagnoses many new health hazards (at present the world is facing such a crisis ie. COVID 19).

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<sup>52</sup> *Almitra H. Patel vs. Union of India*, Original Application No. 199 OF 2014.

<sup>53</sup> Original Application No. 478 OF 2019.

<sup>54</sup> Original Application No. 21 OF 2014, 95 of 2015 and 303 of 2015.

<sup>55</sup> *CPCB v State of Andaman & Nicobar & Ors.* O.A NO 247/2017.

<sup>56</sup> *Promod Kumar Tyagi v Art of Living International Centre and ors* , OA No. 76/2016; *Manoj Misra v Delhi Development Authority and ors*, OA No. 65/2016; *Anand Arya v Delhi Development Authority and ors*, OA No. 81/2016.

<sup>57</sup> *In Re Gas leak at LG Polymer Chemical Plant in R R Venkatapuram village Vishakhapatnam at Andhra Pradesh* Original Application No. 73 of 2020.

<sup>58</sup> *Corporation of Greater Mumbai v Ankita Sinha and Ors.* (Civil Appeal No. 12122- 12123 of 2018) .

<sup>59</sup> *Jayasree D E, Development, Environment and Urban Health in India*, 92 GEOGRAPHY 158–160 (2007).

Increased standard of living and rising of income of the people can be considered as an advantage of the developments and at the same time, the urban life reflects its disadvantages. Developments at the cost of the environment reflect its negative impact on urban life than villages. Congestion, lack of housing facilities, increasing slums, drinking water shortage and pollution, poor sanitation, waste disposal issues, and air pollution are increasing at the other side of development<sup>60</sup>. The aftermath of these are health issues and the outbreak of new diseases. When more data is collected on the effects of pollutants on human health, the concern increases. Children are most likely to be affected by pollution (especially air pollution) and undergoing chronic respiratory diseases<sup>61</sup>.

World Health Organization (WHO), shows the statistics of 2.21 million cases of lung cancer in 2020<sup>62</sup>. Ultraviolet radiation and exposure to polluted air including Radon are among the reasons for cancer risk<sup>63</sup>. WHO data reveals that 99% of the global population does not breathe fresh air as it exceeds the pollutant levels exceeding WHO guideline limits<sup>64</sup>. Outdoor as well as household pollution together contribute 7 million premature deaths per year resulting from 'stroke, heart diseases, lung cancer, acute respiratory infection and chronic obstructive pulmonary disease'<sup>65</sup>. The death linked with the environment is calculated to be 24 percentage of the global total deaths (ie. 13. 7 million)<sup>66</sup>.

Health and the environment are closely related thus most of the environmental legislations impart health rights concerns. The aim of most of such legislation is to ensure a healthy environment for living beings that is free from pollution and so free from health hazards. Apart from environmental legislation, there are other legislations that take up health and environmental matters together.

Indian Penal Code contains provisions for the safety of public health. Chapter XIV talks about offenses affecting public health<sup>67</sup>. In the criminal realm, section 133 of the Code of Criminal Procedure, 1973 empowers the Magistrate to make conditional orders when 'a trade or occupation or keeping of any goods or merchandise is injurious to the health or physical comfort to the community'.<sup>68</sup>

The Environment (Protection) Act, 1986<sup>69</sup>, being umbrella legislation, authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds. Under this Act, Rules and Regulations are made to protect living beings from health hazards include Hazardous wastes (management and handling) rules, 1989, The Hazardous Micro-organisms Rules, 1989, The Biomedical Waste (Management

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<sup>60</sup> See Jayasree, *Supra* note 58.

<sup>61</sup> Douglas M. Costle, *Health and the Environment*, 4 EPA J. 2 (1978).

<sup>62</sup> See, WHO, CANCER, <https://www.who.int/news-room/fact-sheets/detail/cancer> (Oct. 04, 2021, 11.53 am.)

<sup>63</sup> *Id.*

<sup>64</sup> See, WHO, AIR POLLUTION, <https://www.who.int/news-room/fact-sheets/detail/cancer> ( (Oct. 04, 2021, 12.05 PM).

<sup>65</sup> *Id.*

<sup>66</sup> See, WHO, ENVIRONMENTAL HEALTH, [https://www.who.int/health-topics/environmental-health#tab=tab\\_1](https://www.who.int/health-topics/environmental-health#tab=tab_1) (Oct. 04, 2021, 12.15 PM ).

<sup>67</sup> Indian Penal Code, 1860 Sections 268, 272, 277, 278 and 284, No. 45, Acts of Parliament, 1860.

<sup>68</sup> Municipal Council, Ratlam vs Shri Vardhichand & Ors 1981 SCR (1) 97.

<sup>69</sup> Act No.29 of 1986.

and Handling) Rules, 1998, Recycled Plastics Manufacture and "Usage Rules, 1999, Municipal solid wastes (management and handling) rules, 2000, Noise pollution (regulation and control) rules 2000, The Ozone Depleting Substances (Regulation and Control) Rules, 2000 etc...

Other environmental legislation like The Water (Prevention and Control of Pollution) Act, 1974<sup>70</sup>, The Air (Prevention and Control of Pollution) Act, 1981<sup>71</sup>, The Atomic Energy Act, 1982<sup>72</sup>, The Public Liability Insurance Act, 1991<sup>73</sup> and Rules and Amendment, 1992 are aiming at securing public health and appropriate remedial measure.

### **COVID-19 and environmental health**

Human health is mostly affected by the lifestyle of modern men<sup>74</sup>. "A damaged and weak immune system of present-day men is due to the willing or unwilling exposure to various environmental hazards affecting the functioning of their immune system<sup>75</sup>. Food adulteration, water pollution, and climate change can also be the reasons for the immunity dimension among humans and animals. The quality of breathing air is the most important factor that affects the respiratory system<sup>76</sup>. Aerosol transmission is one of the methods of COVID 19 spread. The meteorological conditions which help the aerosol transmission are 'temperature, wind speed, and air relative humidity'<sup>77</sup>. Studies reveal that the oxidants in the polluted air can cause DNA damage in the virus, resulting in increasing infectivity, and exposure to the dangerous environmental pollutants would affect the vaccine response in children<sup>78</sup>.

There was a considerable reduction in emissions from factories and vehicles during the lockdown but, on the other side, the household emissions increased along with the domestic waste<sup>79</sup>. Wide use of sanitisers and disinfectants results in the release of chemical agents and habitual use of gloves, masks, face shields, personal protective equipment (PPE kit), etc. increasing the plastic waste<sup>80</sup>. The impacts of such pandemics in the future can be controlled only through effective strategies. One such strategies are 'environmental health'. "Both improvements of the health status of the general population, and protection of the aggregate of the

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<sup>70</sup> Act No. 6 OF 1974.

<sup>71</sup> Act No.14 of 1981.

<sup>72</sup> Act No. 33 of 1962.

<sup>73</sup> Act No. 6 OF1991.

<sup>74</sup> See, Trivedi GY, Saboo B. *The risk factors for immune system impairment and the need for lifestyle changes*. J Soc Health Diabetes, (2020).

<sup>75</sup> See, Norval M, Cullen AP, De Gruijl FR, et al. , *The effects on human health from stratospheric ozone depletion and its interactions with climate change*, Photochem Photobiol Sci. (2007).

<sup>76</sup> *Supra* note at. 63.

<sup>77</sup> See, Mele M, Magazzino C. *Pollution, economic growth, and COVID-19 deaths in India: a machine learning evidence*, Environ Sci Pollut Res.( 2021); See also, Tang S, Mao Y, Jones RM, et al. *Aerosol transmission of SARS-CoV-2? Evidence, prevention and control*, Environ Int. ( 2020 ).

<sup>78</sup> See, Cardenas A. Et.al. , *Arsenic exposure and prevalence of the varicella zoster virus in the United States: NHANES (2003–2004 and 2009–2010)*,123 No. 6 Environ Health Perspect., 590-596, ( 2015 ). <https://doi.org/10.1289/ehp.1408731> (Oct. 05, 2021, 03: 35 PM ).

<sup>79</sup> See, Du W, Wang G, *Indoor air pollution was nonnegligible during COVID-19 lockdown*, Aerosol Air Qual Res. ( 2020 ).

<sup>80</sup> Aquatic life is mostly affected by these waste and chemicals. See, Zhang H, Tang W, Chen Y, Yin W. *Disinfection threatens aquatic ecosystems*, Science, ( 2020 ).

environmental factors that affect both, directly and indirectly, human health are of paramount importance against the ongoing and future health crises”<sup>81</sup>.

World nations have confronted economic crisis due to the lockdown and related agonies. That cannot be an excuse to lower environmental standards and disregard Sustainable Development Goals (SDGs). United Nations Organisation appealed to the nations not to reduce the environmental standards and enforcements which may result in long term negative impacts on human rights<sup>82</sup>. Environmental degradation is a pivotal reason for the spread of ‘zoonoses’<sup>83</sup> and COVID 19 is considered to be one among them. “Deforestation, industrial agriculture, illegal wildlife trade, climate change and other types of environmental degradation increase the risk of future pandemics, raising the probability of major human rights violations”<sup>84</sup>. A healthy environment can only prevent future health hazards. Therefore, suspending environmental regulations and weakened initiatives towards SDGs would create negative effects.

Hence economic crisis or deadlock during the pandemic cannot be considered as an excuse for a step back from environmental protection. The pandemic cannot be a reason for the violation of the human rights of the vulnerable including women, children, indigenous people, poor, and minorities.

## Conclusion

Analysing and dissecting the ambit of Article 21 and other constitutional provisions, it is clear that environmental protection and health rights cannot be separated. Both the rights should be given prior importance to achieve the object. In congruity with the constitutional provisions and giving effect to the Directive Principles of State Policy, the legislature has enacted laws for attaining this object. In most of the environmental legislation, public health is given importance. When it comes to environmental litigations where public health is affected, judicial decisions are mostly environment friendly.

With a close delve into the judicial decisions and governmental policies, it is apparent that there is a conflict between public health, environmental protection, and development. In many instances, while implementing such decisions or policies, public health and environmental rights get compromised with developmental concerns. In a developing nation with a huge population, it is an arduous task to achieve the balance between development and health rights but it is inevitable for future generations. The role of governments is nothing less than the judiciary in safeguarding the environment and public health.

The risk of new diseases and pandemics are, directly or indirectly, the results of environmental degradation and destruction. The repercussions of environmental degradation affect the whole world in different ways. Thus, taking positive steps towards environmental protection cannot be categorised or limited under the

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<sup>81</sup> Sotirios Maipas, Et. al., *COVID-19 Pandemic and Environmental Health: Effects and Immediate Need for a Concise Risk Analysis*, 15ENVIRONMENTAL HEALTH INSIGHTS 3, 1-3 ( 2021 ).

<sup>82</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25794> (Oct.15,2021, 03: 15 PM ).

<sup>83</sup> A zoonosis is any disease or infection that is naturally transmissible from vertebrate animals to humans. <https://www.who.int/news-room/fact-sheets/detail/zoonoses> ( Oct.15,2021, 03: 20 PM).

<sup>84</sup> *Supra* note at. 81.

criteria of developed, developing, and underdeveloped countries. It is time to give due weightage to environmental concerns by all the world nations and economic crisis cannot vindicate the responsibility towards the environment.

Health is most important for all life forms and environmental stability is ineludible in all aspects. The concept of sustainable development<sup>85</sup> needs more stringent interpretation giving more importance to the environment than development. The principle to be followed in environmental matters is the 'seventh generation sustainability principle'<sup>86</sup>. The ambit of the powers conferred to NGT by the National Green Tribunal Act, 2010 is wide within its mandate. Supreme Court took a purposive interpretation giving effect to the legislative purpose of establishing NGT while dealing with the issue of its 'suo moto' jurisdiction<sup>87</sup>. NGT can initiate suo moto action when exigencies demand and NGT is considered as the environmental watchdog of the country<sup>88</sup>. The effective working of NGT can serve environmental justice and protect public health.

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<sup>85</sup> Bruntland Commission Report , 1987, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." <https://en.unesco.org/themes/education-sustainable-development/what-is-esd/sd> (Oct. 22, 2021, 11. 05 AM) .

<sup>86</sup> "All the decision making to withstand for the benefit of seven generations down the time".

<sup>87</sup> Corporation of Greater Mumbai v Ankita Sinha and Ors. ( Civil Appeal No. 12122- 12123 of 2018) .

<sup>88</sup> *Id.* Steps were taken by NGT on an online news article about the mismanagement of solid waste and its impact on public health and environment. The suo moto jurisdiction exercised by NGT was challenged in the Apex Court.