

Environment Protection Vis-à-Vis Religious Beliefs in India: An Analysis of the Constitutional and Judicial Approach

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Abstract

The most prominent aspects of environment lie in- the sacredness of the land, the freshness of the air, the sparkle of water, the midst of dark woods, the music of the winds, the songs of the humming insects and the fragrance of the flowers. The relationship of trees, beasts, rivers, sky and furthermore, different aspects of nature are firmly sewn with the lives of individuals. The privilege to live in a perfect and solid condition is a standout amongst the most esteemed wellsprings of life. The Right to live in a hygienic atmosphere is not a recent right invented by Environment Jurisprudence in India. This right has been recognized by ancient Indian scriptures in the form of Vedas, Dharam- Shastras and Granthas under various religions. The major difference in the enjoyment of this right in the 21st century is that it has acquired the privilege of a 'Fundamental Right' the breach of which, the Constitution of India will not allow. The Constitution of India declares that 'Secularism' is the first and foremost doctrine that opposes all forms of inter-religious domination. However, in the name of religion, nature's gifts are exploited. This article is focused on the analysis of two important issues: (a) Different religious practices that lead to environmental pollution and (2) Paradox of two fundamental Constitutional rights namely 'Secularism' and 'Fundamental Right to live in the healthy environment'.

Keywords: Religious Practices, Environment Pollution, Fundamental Right to Live in Healthy Environment

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INTRODUCTION

"Our environment, the world in which we live and work, is a mirror of our attitudes and expectations [1]".

Earl Nightingale

It is beautifully expressed that: "I don't want to protect the environment; I want to create a world where the environment doesn't need protection [2]". This expression targets the core sentiments of human beings. Similarly, this article opens with an idea to pen-down the interrelationship between the religious practices followed by us in India and its impact on the gifts of God that is "Nature". In today's emerging jurisprudence, environmental rights, which encompass a group of collective rights, are described as "Third Generation Rights" [3].

The paradox is that on the one hand, the right to live in a clean and healthy environment is one of the cherished sources of life. The privilege to live in a perfect and sound condition is not a current right imagined by the higher legal in India. This privilege has been perceived by the legal framework specifically for over a century or thereabouts. The main distinction in the satisfaction is that it has achieved the status of a fundamental right the infringement of which, the Constitution of India won't allow [4].

On the other hand, the Constitution of India declares that every Indian citizen has a right to live with freedom and dignity in any part of the country. 'Secularism' is the basic doctrine that opposes all forms of inter-religious domination [5]. However,

Hindu religion is widely practised that has deep roots in the Vedas, Dharma-Shastra and Granths. The Vedic hymns, mantras, shlokas and shabads are universally acknowledged to be the most precious Indian heritage and full of virtue, nature-worship expressions, wisdom and spiritual cosmology. One of the most precious blessings of God is the "Natural Resources" on the earth. The importance of Air, Water, Earth and Greenery to life is very beautifully emphasised in Sikh Gurbani, Hindu scriptures as well as other Holy books. However, in the name of religion, nature's gifts are exploited.

FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION: A REFLECTION (ARTICLE 25-28 OF INDIAN CONSTITUTION)

India is a Secular State i.e., a State which observes an attitude of neutrality and impartiality towards all religions. A secular state is founded on the idea that the State is concerned with the relation between man and man and not with the relation between man and God which is a matter for individual conscience [6]. The State shall treat all the religions equally and with equal respect without any partiality. There is no legitimization for meddling in somebody's religious convictions by any methods.

As we realize that the "religious flexibility" and "ecological security" are two extraordinary entities, we can state that the two have possessed isolated ideas, despite the fact that there is covering between them here and there which is seen. For example, Article 19(1)(a) of the Constitution of India, states that, all residents might have appropriated to the right to speak freely and articulation; however, with some sensible limitations of conventionality, ethical quality, security of State, slander, induction of offense and so forth., and if this Article is translated as for religious opportunity even no religion endorsed that petition ought to be performed by irritating the bit of other nor it lectures that they ought to be through voice intensifiers or thumping of drums, along these lines, for this situation it

was pronounced that the privilege to religion under Articles 25 and 26 are liable to "open request, profound quality and wellbeing" and no religion recommends or lectures that supplications are required to be performed through voice enhancer or pounding drums [7].

Several Hindu festivals in India are performed at the banks of river or sea or water resources. According to Hinduism, it is mandatory to cremate the dead and scatter their ashes in a river. Hindus believe the dead will not attain salvation if the last remains are not immersed. At the time of 'Ganesha Visarjan', 'Kumbh Mela', 'Rath Yatra' and 'Durga Pooja', statues of Hindu Gods, flowers, sweets, pots and food are thrown into Indian rivers daily without a thought that is resulting into water pollution. This makes the streams dirty, which thus influences the widely varied vegetation. During the time of September and October, a large number of statues are submerged. Another Hindu practice incorporates drifting the cadavers of sacred men, pregnant ladies, and kids underneath five years of age in the water so as to decay.

Recently the debate on Noise Pollution and Loudspeakers has been decided by the Delhi High Court on 12 January 2018 where the Delhi government on a plea seeking a ban on loudspeakers atop religious structures in the national capital has banned loudspeakers [8]. The plea also referred to the landmark judgement of the apex court K.S. Puttaswamy v. Union of India (2017) which declared the Right to Privacy as a Fundamental Right. Earlier also the case of Church of God (Full Gospel) in India v. K.K.R. Majestic Coloney Welfare Assn. [9]. The Supreme Court held that "the Court may issue directions in respect of controlling noise pollution, even if such noise was a direct result of and was connected with religious activities [10]". It said, "Undisputedly, no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums [11]. In a

civilized society in the name of religion, activities which disturb old or infirm persons, patients, old age people, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted”.

INDIAN CONSTITUTIONAL PROVISIONS ON ENVIRONMENT PROTECTION: BRIEF OVERVIEW

In India, from time to time various laws for the protection of environment, flora and fauna have been enacted [12]. However, the Indian Constitution is perhaps the first Constitution in the world which contains specific provisions for the protection and improvement of the environment. It reflects the human rights approach to environmental protection through various constitutional mandates [13].

Preamble of the Indian Constitution

The Preamble is the key to open the minds of the founding fathers of our Constitution. The preamble of the Constitution of India provides that our country is based on “Socialist” [14] pattern of society where the State pays more attention to the social problems than on any individual problems. The basic aim of socialism is to provide “decent standard of life to all”, which can be possible only in a pollution free environment [15].

Fundamental Duty to Protect and Improve Natural Environment: Part IV-A [Article 51-A (g)]

The *Constitution (Forty-Second Amendment) Act, 1976*, added a new Part IV-dealing with “Fundamental Duties” in the Constitution of India [16]. Article 51-A of this Part enlists ten fundamental duties. It is interesting to note that this Part was added after the recommendations of the *Swarn Singh Committee* bringing the Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights [17].

Article 51-A (g) specifically deals with the fundamental duty with respect to the environment. It provides:

“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”.

Article 51-A (j) further provides:

“It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements”.

The central obligations are proposed to advance people groups' support in rebuilding and building a welfare society. The assurance of the earth involves established need. The problem is the concern of every citizen. Neglect of it is an invitation of disaster [18].

The true scope of Article 51-A (g) has been best explained by the Rajasthan High Court in *L.K. Koolwal v. State* [19]. The brief facts of this case were that the Municipal authority under the *Rajasthan Municipalities Act, 1959*, was charged with “primary duty” to clean public streets, places and sewers and all spaces, not being private property, which is open to the enjoyment of public, removing of noxious vegetation and all public nuisance, and to remove filth, rubbish, night soil, odour or any other noxious or offensive matter. Mr. L.K. Koolwal moved the High Court under Article 226 (Writ Jurisdiction) and featured that the Municipality has neglected to release its “essential obligation” bringing about the intense sanitation issue in Jaipur which is unsafe to the life of the subjects of Jaipur [20].

The Court allowed the petition and explained the true scope of Article 51-A in the following terms:

“We can call Article 51-A ordinarily as the duty of the citizens, but in fact it is the *right* of the citizens as it *creates the right* in favour of citizens to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51-A gives a right to the citizens to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State [21]”.

The Court also pointed out that “Right and duty co-exist. There cannot be any right without any duty and there cannot be any duty without any right”.

Directive Principles of State Policy in Context of Environment

Part IV of the Constitution deals with the Directive Principles of State Policy. These Directive Principles represent the socio-economic goals which the nation is expected to achieve. These directive principles are designed to guide the destiny of the nation by obligating three wings of the State, i.e., Legislature, Judiciary and Executive to implement these principles.

Article 47 of the Constitution is one of the Directive Principles of State Policy and it provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its *primary duties*. The improvement of public health will also include the protection and improvement of the environment without which public health cannot be assured [22].

The *Constitution (Forty-Second Amendment) Act, 1976*, added a new Directive Principle in Article 48-A dealing specifically with protection and improvement of the environment. It provides:

The State shall endeavor to protect and improve the environment and safeguard the forests and wild life of the country [23].

Article 37 of the Constitution provides:

“The provisions contained in this Part (Part IV) shall not be enforceable by any court, but the principles therein laid down are nevertheless *fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws*. (emphasis supplied)”.

In view of Article 137 of the Constitution, “the Court may not be able to actively enforce the directive principles by compelling the State to apply them in the making of law. The Court can, if the State commits a breach of its duty by acting contrary to these directive principles, prevents it from doing so. The non-enforceable nature of the directive principles does not

preclude the judiciary from declaring any law unconstitutional which is in violation of the directive principles [24]”. The directive principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves [25].

In India, the judicial attitude in protecting and improving the environment provides a testimony of the fact that directive principles are not mere “guiding principles” of policy but they have to be given effect to.

In *Shri Sachchidanand Pandey v. the State of W.B.* [26], the Supreme Court pointed out that whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Articles 48-A and 51-A(g) of the Constitution. The Court further observed:

“When the Court is called upon to give effect to the Directive Principles and the fundamental duty, (Articles 48-A and 51-A(g) in this case), the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least the Court may do is to examine whether appropriate consideration is borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant consideration, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority [27]”.

In *M.C. Mehta v. Union of India* [28], (popularly known as CNG case) the Court observed that Articles 39(e), 47 and 48-A by themselves and collectively cast a duty on the State to secure the health of the

people, improve public health and protect and improve the environment.

Status of Fundamental Rights v Right to Live in Healthy Environment as Unremunerated Right in Indian Constitution

In order to treat a right as a fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution dealing with fundamental rights. The provisions of Parts III and IV, dealing with fundamental rights and directive principles, respectively, are supplementary and completing each other. Fundamental rights are means to achieve the goal indicated in Part IV and thus must be construed in the light of the directive principles [29]. A right can be recognized as a complementary right even though not expressly mentioned in Part III. In other words, there are various unremunerated fundamental rights in Part III and judicial activism in India has taken a lead in interpreting various unremunerated rights in Part III of the Constitution [30]. Environment protection is one of them. In spite of the fact that particular arrangements are found in the Directive Principles (Part IV) and Fundamental Duties (Part IV-A), yet ideal to live in a sound situation has been deciphered by the legal authority into different arrangements of Part III managing 'Fundamental Rights'. In this way, the legal authority in India has given a stimulus to the Human Rights approach for the assurance of condition.

RIGHT TO LIVE IN A HEALTHY ENVIRONMENT: JUDICIAL APPROACH

Article 21 is "the heart of fundamental rights" and its scope has been having expanded from time to time and right to live in a healthy environment is also interpreted in it. For healthy existence and preservation of the essential ingredients of life, stable ecological balance is required. Article 21 guarantees a fundamental right to life - a life of dignity, to be lived in a proper environment, free of the danger of disease and infection. It is an established fact that there exists a close link between life and environment. The talk of fundamental rights and, in particular, right to

life would become meaningless if there is no healthy environment [31]. The judicial grammar of interpretation has made "right to live in a healthy environment" as the *sanctum sanctorum* of Human Rights.

The first indication of recognizing the right to live in healthy environment as a part of Article 21 was evident from the case of *R.L. and E. Kendra, Dehradun v. State of U.P* [32]. In this case, for this situation, the Rural Litigation and Entitlement Kendra, Dehradun and a gathering of nationals kept in touch with the Supreme Court against the dynamic mining which bared the Missouri Hills of trees and timberland cover and quickened soil disintegration bringing about avalanches and blockage of underground water channels which nourished numerous waterways and springs in the valley. The Court requested the registry to regard the letter as writ appeal under Article 32 of the Constitution (epistolary jurisdiction).

In *Narmada Bachao Andolan v. Union of India* [33] (2000) the Supreme Court of India declared that "water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India. It is a matter of great concern that even after half a century of freedom, water is not available to all citizens even for their basic drinking necessity violating human right resolution of UNO and Article 21 of the Constitution of India". This case was filed by an NGO against the environmental clearance given by the Government for construction of the Sardar Sarovar Dam across the Narmada River.

The Supreme Court in *T.N. Godavarman Thirumalpad v. Union of India* [34] held that right to life guaranteed in Article 21 of the Constitution of India includes the right to an environment adequate for health and wellbeing. In this case, it was alleged that mining activities were adversely affecting the flora and fauna in and around Kudremukh National Park, a part of the Western Ghats.

In *Ranji Patel v. Nagrik Upbhokta Marg Darshak Manch* [35] the Supreme Court drew a nexus between the protection of the environment and Article 21 of the

Constitution. It held that “any disturbance of the basic environmental elements, namely, air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of Article 21 of the Constitution”.

In *State of M.P. v. Kedia Leather and Liquor Limited* [36] (2003), the Supreme Court held that “Environmental, ecological, air and water pollution amount to a violation of the right to the life assured by Article 21 of the Constitution of India. The hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment”. This is a case where the Sub-Divisional Magistrate of the area concerned served orders in terms of Section 133 of the Criminal Procedure Code directing the respondents who owned industrial units to close their industries on the allegation that serious pollution was created by the discharge of effluents from their respective factories and thereby a public nuisance was caused.

In India, there are different celebrations (like Deepawali, Durga Puja, marriage festivities, and so on) when the people express their sentiments of joy by blasting firecrackers in private and open. It has been seen by the courts on different events that privilege to religion under articles 25 and 26 is not a flat outright and it is liable to sensible confinements. Indeed, even the Ramleela and Akhanda Path cannot be permitted to disperse inordinate clamor which constrains a man to tune in to undesirable/undesired/unagreeable commotion. Since the privilege to proclaim and caused by amplifiers can be checked in the light of a legitimate concern for wellbeing, it can be controlled by order.

The Delhi High Court in *Free legal Aid cell Shri Suman Chand Aggarwal v. Govt. of NCT of Delhi* [37] declared: “noise can be regarded as pollutant because it contaminates environment, causes nuisance and affects the health of a person and would, therefore, offend right to life, Article 21, if it exceeds reasonable limits. It was also observed by the court that effect of noise on health has not yet got full attention of our judiciary”.

The Bombay High Court in *State of Bombay v Narasu Appa Mali* [38] asked authorities to regulate the use of loudspeakers during the night when the Ganesh and Navratri festivals were being celebrated. The Court ordered the strict implementation of Environmental Acts. Nobody can object on the celebration of festivals, but their means of celebration must not disturb the peace and tranquility of the neighborhood was the strict view of the Judiciary”.

“Loudspeakers not intrinsic to any religion” [39] Sanjiv, in his PIL, traced the advent of all religions in India to say:

“Hinduism is 4,000 years old, Jainism is 2,600 years old, Buddhism is 2,500 years old, Christianity is 2,000 years old, Islam is 1,400 years old, Sikhism is 500 years old and on the other hand, Moving coil current loudspeakers are not even 100 years old. Thus, it’s beyond doubt, and as facts and truth speaks for itself per se, loudspeakers were never a part of any religion”.

CONCLUSION

“Religion is the clearest telescope through which we can behold the beauties of creation and the good of our Creator”.

William Scott Downey

As the spirit of Religious preaching lies in the ‘Purification of Soul’, similarly ‘Purification of Environment’ must be absorbed by our spirits. Religious practices are important; however, not at the stake of our nature. “Cleanliness” is the very heart of our environment. Healthy nature is an index of how well we are doing in sustainable development. The future of human civilization is depended on man’s ability to protect, conserve and make sustainable use of natural flora and fauna. Even though we have come a long way from the crude caves in deep forests to sky-scrappers in concrete jungles, we cannot really boast of being a step ahead in competing with nature. In the new millennium, the struggle to save the global environment and biodiversity is much more difficult. The man has been endowed with the power to create so that he can add to what he has been given by God. But up to now, he has not been a creator, only a destroyer with several religious beliefs.

Laws have worked on a wide gamut of functional areas that have a crucial impact on the entire phase of sustenance. The Government has set up a 'Green Journalism Award' to encourage reporting on environment-related issues. The government has also announced imposing of a voluntary 'green tax' on vehicle owners. The tax collected is likely to go into creating a corpus environment fund that will be utilized to implement steps to make the state carbon-neutral. The Government has also launched 'Polythene Hatao Paryavaran Bachao' campaign on Earth Day to associate masses and for generating awareness among all sections of the society. In order to bring environmental consciousness among the tourists and the locals, National Green Tribunal and the Environment and Pollution Control Department has printed literature of 'Dos and Don'ts' which is being distributed at the entry points. Stress is also being laid on sensitizing children and youth and a nine-point Environment protection code have been issued to all schools besides starting the Green School Assessment Programme.

Supreme Court of India has connected 'The Polluter Pays Principle' and 'Precautionary Principle'; which are the establishments of Sustainable Development. The courts in India have, along these lines, satisfied the need of great importance, and have made huge commitments in developing new standards and cures in the field of natural security. Along with efforts of Law and Courts; we, the people of India should not forget our responsibilities. Being environmental friendly, we can change the destiny of our country.

According to the Vedas the seven sacred rivers are Ganga (River Ganges), Yamuna (River Jamuna) Sindhu (River Indus), Sarasvati, Narmada, Godavari and Kaveri. This hymn is in Ahnika Sutravali (verse 106):

***Gange cha Yamune chaiva Godavari
Sarasvati
Narmadhe Sindho Kaveri Jalesmin
Sannidhim Kuru
—Ahnika Sutravai, Verse 106***

Hindu religion worships rivers and water bodies as goddesses; however, our old age belief system compels us to throw sweets, idols, flowers, ashes, dead bodies, clothes, hair without having a second thought. In the name of religion, people pollute rivers, water resources and water bodies. In the name of development, new experiments and construction are demolishing the beauty of nature. Yes, the right to live in a healthy environment is a fundamental right; however, the absolute responsibility lies on our shoulders to keep this beauty as it has been gifted to us by the Creator of Cosmos.

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