
IS DEGRADATION OF ENVIRONMENT OVER DEATH CEREMONY ACCEPTABLE?

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The customs play a contemplated role in making laws for society. Professor Holland asserts that “*custom is the generally observed course of conduct*”. He illustrates the process of formation of custom by Simile “sometimes in a grassy land, a track is formed, by the constant passing of the people on the land on a similar path, either intentionally or accidentally”. Eventually, once the track is formed another follows the same track and thus a way is made. In a similar behavior, a custom once established becomes a course of conduct in a society. Although, in this day and age law-bound body of the world is leading to the declination of custom because of the amelioration in the power of the state and consequently the legislation. It is also formed out that there is progress and alteration in the living of humankind which is an additional reason for these changes.

The *ab antiquo*¹ custom that is causing harm to the environment is admiring the sovereign body to substitute the aged-old law with the novel law. When lawmakers and judges have given choice in choosing the customary law or safeguarding the environment, it is always contentious between them. History classes consistently reminded me of the conflict aroused whenever there is the question to alter the customary law. The problem faced in abolishing Sati Pratha is an exemplification that has been taught in history classes or displayed in movies. In recent times we have vexed the dispute of the Sabarimala temple.

In such a wise, the confrontation between religious practices and the environmental statute generally occurred. The cremation ceremony on the banks of the holy rivers raises the pollution in the water and its surrounding. The standing with a question against this ceremony will be given the moment to vehement debate. Though, the ascending of environmental pollution with such practices can't be neglected.

¹ from the ancient period

In this context, the first question is whether cremation ceremonies are deleterious to the environment and contravention of nature's environmental policy or not.

Regardless of what part of the world human civilization exists religious practice will always in some form be connected to humankind. In different ritual human burial is considered one of the significant parts. It conceived of different methods for the disposal of the dead on the basis of their theology and the circumstances in which the believers lived. Where there was plenty of wood, the individuals thought of disposal of their dead by burning with wood, but where there was a scarcity of wood or if people could not afford the cost of the traditional cremation system, they immersed the dead body into the river. A different approach has been seen all around the world.

In Hinduism, the cremation ground is located near a river, if not on the riverbank itself. According to the tradition, a dead body is washed by the family members in the river water before being put on a wood pyre with feet facing south. The Hindus believe that the soul of a dead person must be completely detached from the body to attain 'moksha'. For this, an open cremation is needed so that the soul can be released easily as soon as the body is set on fire. After, the burning of the body the ashes are collected from the pyre on which the dead body was placed to set on fire. Then these ashes are later immersed in the holy river for example Ganga, therefore completing the rite of the cremation. This traditional method of cremation is carried out by the Hindus because they have their own religious belief in that traditional method. Therefore, Article 25 of the Constitution of India guarantees every citizen of India shall have the freedom of conscience and shall have the right to profess, practice, and propagate the religion of his or her own choice.

In addition to other prominent cases of *M.C Mehta v. Union of India*², the court directed that the practice of throwing corpses and semi-burnt corpses into the river Ganga should be immediately ended. Steps should be taken by the Kanpur Nagar, Mahapalika, and the police authorities to ensure that the dead bodies or half-burnt bodies were not thrown into the river Ganga.

The cremation ceremonies, bathing areas for the ritual performers, and the disposal of ashes in the holy river are part of their practices. In *Commissioner, Hindu Religious Endowments,*

² *M.C Mehta v. Union of India* 1988 AIR 1115

Madras v. LakshmindraThirtha Swamiar of Sri Shirur Mutt³ Supreme Court developed the concept of “**Doctrine of Essentiality**” in order to test whether such practice is integral to the religion or not and if the court is satisfied that the practice is not integral to the religion then only it supervenes.

Moreover, under Section 3 of the Environment (Protection) Act, 1986, the central government planned out programs such as the Ganga Action Plan for the prevention, control, and cleaning of Ganga pollution but it has been considered a failure for many reasons.⁴

The pollution caused in the river comes under the purview of public nuisance which is widespread and affects the lives of a large number of people and statutes can be formed other punitive laws.

The second point of thought is cremation at the riverbank are violative of the International Agreements?

In 1972 United Nations Conference in the Stockholm⁵ was first world conference to make the environment a major issue. This conference reflected a growing interest in conservation issues worldwide and laid the foundation for global environmental governance. The final declaration was a statement of human rights as well as an acknowledgment of the need for environmental protection. Principle 6 of the Declaration provides that the discharge of toxic substances or of other substances and release of heat in such quantities or concentrations as to exceed the capacity of the environment to render them harmless must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems.⁶ The fact cremation ceremonies at the riverbank which are not meeting the set environmental standards, thereby degrading the environment and causing harm to the river. Also, rivers like Ganga, Indus, and others as the river flows through certain other countries which are in the treaty, as to not inflict harm upon the ecosystem.

The other International statute which India is agreed on **Earth Summit (1992)**. The United Nations Conference on Environment and Development (UNCED), known as Earth Summit

³ Madras v. LakshmindraThirtha Swamiar of Sri Shirur Mutt (AIR 1954 SC 282)

⁴ Sec. 3, environmental Protection act, 1986

⁵ Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc.A/CONF.48/14, at 2 and Corr.1 (1972)

⁶ Principle 6, Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc.A/CONF.48/14, at 2 and Corr.1 (1972)

was held in 1992 at Rio de Janeiro. This was the largest UN conference held and it put the world on a path of sustainable development which aim at meeting the needs of the present without compromising the ability of future generations to meet their own needs.⁷ Principle 2 of the Declaration puts the duty on the States that while exploiting their own resources pursuant to their own environmental and developmental policies, it is their duty to ensure that their activities do not cause damage to the other state. Principle 11 of the Declaration requires the States to enact effective environmental legislation. Principle 13 says that the states shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage.

Also, The “polluter pay principle” has been incorporated in principle 16 according to which national authorities should endeavours to promote the internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Therefore, the cremation ceremony at riverbank is against the above-mentioned principles of the Declaration as the principles of this Declaration tend to provide effective environmental legislation which helps in developing a good ecosystem.

Statutory Right in oppression caused by cremation ceremony

It has been also contended that water is one of the most basic elements and without it, no flora and fauna can exist. Article 21⁸ of the Indian Constitution gives the fundamental right of “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court was one of the first courts to develop the concept of the right to a healthy environment as a part of the “right to life” under Article 21 in the case of *Bandhua Mukti Morcha v. Union of India*⁹. Also, in the case of *M.C. Mehta v. Union of India*¹⁰ which is popularly known as the Oleum gas leakage case, supplemented by the supreme court once

⁷ Rio Declaration on Environment and Development, in Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, Annex I

⁸ Article 21, Indian Constitution

⁹ *Bandhua Mukti Morcha v. Union of India* (1997) 10 SCC 549

¹⁰ *M.C. Mehta v. Union of India* AIR 1987 SC 1086

again impliedly came to recognize the right to live in pollution free environment as a part of the fundamental right to life under Article 21 of Constitution.

Further, the 42nd (Amendment) Act, 1976 inserted Article 48A, a direct provision for the protection of the environment, and hence, it is a constitutional mandate to protect and improve the environment. *Article 48A of the Constitution says that “the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”*¹¹.

On the other hand, Article 51A(g) casts a fundamental duty on the citizens to “protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures”¹². “Fundamental duties have been particularly invoked in litigation concerning the environment” *Sachchidanand Pandey v. State of West Bengal*.¹³

Articles 48A and 51A(g) of the constitution are the Magna Carta for protecting the environment and ecology of the country *Abhimanyu Rathore v. State of Himachal Pradesh and ors*¹⁴. And it is the duty of every citizen to protect the environment and pass on the same in the same condition to the next generation.

In addition to the constitutional right, in Chapter V, Section 24¹⁵ of The Water Prevention and Control of Pollution Act, 1974, it is clearly stated that no person shall knowingly cause or permit any poisonous, noxious, or polluting matter determined in accordance with such standards as laid down by the State Boards to enter (whether directly or indirectly) into any [stream or well or sewer or on land]. “Stream” as given under section 2(j)(1) includes ‘river’.¹⁶

Statistically and Scientific scrutiny

According to the reports of (PRB and World Factbook, 2011)¹⁷, there are approximately 7.6 billion people in the world. The death rate is 8 per 1000. Nearly 55.3 million people die each year, 151,600 die each day, 6,316 each hour, 105 each minute, and 2 people each second in the

¹¹ Art.48(A), Indian Constitution

¹² Article 51(g), Indian Constitution

¹³ *Sachchidanand Pandey v. State of West Bengal*, A.I.R 1987 SC 1109

¹⁴ *Abhimanyu Rathore v. State of Himachal Pradesh and ors.*, 2013(1) SCC 393.

¹⁵ Sec 24, Chapter V, The Water Prevention and Control of Pollution Act, 1974

¹⁶ Sec 2(j)(1), The Water Prevention and Control of Pollution Act, 1974

¹⁷ Last visited on 05/08/2022; <https://www.epw.in/engage/article/can-you-afford-die-estimates-expenditure-rituals-and-impact-ecology>

world. Thus, the disposal of corpses practically takes place all the time across the globe Project review board and CIA world Factbook, 2011. There are many ways to do this- Usually, corpses are buried, put on a pyre, incinerated, and at times preserved. Several studies have shown that the two most common practices of corpse disposal are burial and cremation which are not environment friendly. As, in cremation, there are gaseous emissions such as carbon dioxide, carbon monoxide, nitrogen oxide, and mercury vapors that pollute the environment and are regarded as environmental pollutants.

On the report of UN data¹⁸, nearly 400-500 kg of wood is required to cremate a body with fifty million trees consumed by funeral pyres across the country every year. These produce 500,000 tonnes of ash and eight million tonnes of carbon dioxide. Whereas, Singh Darpan (2015) observes that on an average, nearly 500 kg of wood is required to burn an adult human body. According to estimates, in India, funeral pyres consume around 50–60 million trees annually, producing 500,000 tonnes of ash and 8 million tonnes of carbon dioxide. These pyres release an alarming 2,129 kg of carbon monoxide into the air every day.

Conclusion

In the country, there are many people who could not afford the cost of a funeral as the traditional system is two to three times costlier than modern crematoriums, and is not possible for people with low earnings to perform the same. So, in this circumstance, people immerse the dead body partially cremated or not cremated into the rivers thereby causing water pollution which is harmful to both river water and water species. Although the Government has passed certain legislation to control and prevent such water pollution but nothing seems to appear effective in present.

Winding up on the note ancient Indian law on environment protection is found in Kautilya's Arthashastra which tells that it was the dharma of each individual in society to protect nature as the people worshipped the objects of nature. The trees, water, land, and animals gained an important position in ancient times. The cultural and religious heritage of India shows a deep concern for the protection and preservation of the environment.

¹⁸ Last visited on 06/08/2022; <https://www.hindustantimes.com/delhi/ngt-targets-wood-use-for-funeral-fires-in-cremation-grounds/story-XLAHeiDZSLVGzw2m734qyN.html>