



CONSTITUTIONAL EDIFICE AND ENVIRONMENTAL ISSUES IN INDIA

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Abstract

Environmental balance has been negatively impacted by the growth of industry, the green revolution, the explosion of transportation, the increasing urbanisation, and the careless management of natural resources. No area on earth will be safe because of the increasing air and water pollution. Numerous rivers have gotten murky as a result of widespread industrial and human settlement effluents. Marine life is now being killed by the large-scale industrial waste and oil releases into the seas. It has become apparent that sea contamination has surpassed acceptable levels. The amount of agricultural and industrial materials used by man is enormous, and these commodities' waste is discharged into the seas and oceans. Two-thirds of the surface of the world is made up of oceans and seas, and their pollution is extremely destructive to both plants and animals.

Key Words: *Harmful Contaminants, Human Environment, Harmful Contaminants.*

There are several different manufacturing operations that pollute the air. This category may include metallurgical, chemical, and waste recovery facilities. These processes produce a variety of contaminants. These processes generate a variety of gases and pollutants that render the air unhealthy for human consumption¹. Agriculture is yet another activity that contributes to air pollution. The atmospheric air is contaminated by the spraying of herbicides and insecticides, the usage of chemical fertilisers and manures, and the burning of field trash. Spray painting, furniture and appliance polishing, dyeing, printing, and dry cleaning all employ different kinds of solvents. These solvents create organic vapours like hydrocarbons and other pollutants that mix with the air. Programmes utilising nuclear energy also contaminate the air. Fluorides and radioactive fallout are extremely harmful contaminants.

Industrial garbage discharge into waterways causes destruction. The annual amount of mercury that reaches the ocean as a result of garbage being dumped into rivers is thought to be over 5,000 tonnes. Fish with higher mercury concentrations may contaminate humans and domestic animals who consume them. It has been determined dangerous to eat fish from numerous lakes and seas in American nations. Eating such contaminated seafood has caused neurological issues in several people. Another pollutant of the seas and oceans is lead.

It enters the seas primarily through regular weathering processes and industrial discharges. Another hazardous contaminant is radioactive material that is released during nuclear tests. On the other hand,

¹ Dr. S. K. Saini & Dr. Surender Singh, Environmental Law, Ed 2006

loud, continuous noise poses yet another health risk. In the city of Bombay, the noise pollution level has reached 74 decibels. In ten years, this will cause damage to 15% of hearing capacity. The frequent blending of sewage lines and water supply networks in large cities pollutes drinking water. Animal, bird, and tree destruction has a negative impact on the environment of humans.

The amount of carbon dioxide and dust particles in the atmosphere is steadily increasing as a result of air pollution. The temperature of the earth rises as carbon dioxide levels rise, but it falls when dust levels rise. Any rise signals a departure from the mean. Approximately 3% to 4% of the sun's light can be absorbed by dust particles, which lowers the earth's temperature by 0.4°C.

Air pollution is intensifying due to the expanding automotive civilization. The biosphere is being tainted by man. No one can protect him from this threat until he raises his awareness. The international community has a solemn duty to safeguard the environment against pollution since it poses a serious risk to both the present and the future. Fortunately, there has been a global awakening in this area in recent years. Concern over this matter, which is crucial to human life, has been addressed at numerous international conventions.

The United Nations Conference on the Human Environment in Stockholm in 1972 laid the groundwork for contemporary international environmental legislation. The Stockholm Declaration on the Human Environment (Stockholm Declaration), albeit not legally binding, was unanimously accepted during this conference.

The UNCED was held in Rio de Janeiro in 1992. Although the environment was a problem, as the conference's name implies, UNCED chose to concentrate on development-related topics, primarily those that were North-South related. In fact, the Rio Declaration on Environment and Development (Rio Declaration) barely mentions human rights three times. According to Diane Shelton, there is no clear connection between environmental and human rights. The Rio Declaration's Principle 10 is best understood as a participatory right. In addition to requiring the states to give "effective access to judicial and administrative proceedings," it asserts that environmental challenges are "at best handled with participation of all concerned citizens."

1.1 CONSTITUTIONAL EDIFICE AND ENVIRONMENT

There were no particular provisions pertaining to the preservation of the environment or the environment in the 1950 Indian Constitution. The severe environmental issues the nation is currently experiencing were probably not anticipated by the Constitution's framers. However, in this regard, there have been two significant advancements over the previous 50 years. The first change occurred in the middle of the 1970s with the adoption of the Constitution (Forty-second Amendment) Act. Part IV, Directive Principles of State Policy, and List III, The Concurrent List, of the Seventh Schedule of the Constitution both contain specific provisions relating to various environmental aspects, particularly for the protection of the nation's forests and wildlife. As a result, the Constitution now clearly mentions the following clauses about environmental preservation and natural protection: Directive Elements of State Policy, Part IV (Article 48A): Protection, improvement, and preservation of forests and wildlife: The state must work to preserve the nation's forests and wildlife as well as its environment. Article 51-A, Part IV-A: Fundamental Duties Every Indian citizen has a responsibility to (g) preserve and enhance the natural environment, which includes forests, lakes, rivers, and wildlife, as well as to show compassion for all living things.

ARTICLE 21 AND RIGHT TO POLLUTION FREE ENVIRONMENT

The second significant change has been the jurisprudence that has resulted from some notable recent judicial rulings, particularly those that pertain to Article 21 of the Constitution, which deals with "the right to life." One can only cite Article 21, which states that no person shall be deprived of his or her life or liberty, as the most significant provision of the Indian Constitution and the nation's founding document. This is the article that comes before all the others. To put it another way, every provision of the Indian Constitution was written with the idea that no one in India, not even a citizen, should be denied their right to life and liberty. It is not included as a mere platitude since throughout time, this article, which was the most dynamic of all articles, grew in complexity, and with the support of Article 21, people's lives and liberties are preserved. The Indian Constitution's famous Article 21 holds a special place as a fundamental right for the country's citizens. It safeguards both life and individual freedom. It envisions and strives for no one to be robbed of their life or personal freedom other than through a legal process. Here, the right to life includes the rights to food, health, and an environment free of pollution, among other things. In other words, Article 21 gives a person a built-in guarantee of their right to live in dignity.

It was a petition of public interest, and the court gave the Ministry of Environment and Forests specific instructions. Decisions like this one show a growing tendency for the Supreme Court to devise creative solutions to achieve a goal, even though these new solutions appear to infringe on the authority of the government. The Supreme Court ruled in *Subhash Kumar v. State of Bihar*² that, in order to fully enjoy life, one must have access to clean water and air, which is guaranteed by Article 21 of the Constitution. A person may use Article 32 of the Constitution to address water or air pollution that may be harmful to life if anything threatens or degrades such quality of life in violation of the law. The Supreme Court introduced a novel concept of management liability—"absolute and non-delegable"—for disasters resulting from the storage or use of hazardous materials from their enterprises in *M. C. Mehta v. Union of India & Ors*. Both the "Precautionary Principle" and the "Polluter Pays Principle" have been incorporated into national legislation. Following the ruling in the oil gas leak case and on the basis of the polluter pays principle, the polluting industries were ordered to make up for the harm they caused to the villagers in the affected areas, particularly to the soil and the underground water, in *Indian Council of Enviro-Legal Action v. Union of India* (the Bichhri pollution case). In *M. C. Mehta vs. Kamal Nath*³, the SC articulated the doctrine of "Public Trust," holding that because resources like air, sea, and waters are so important to the people as a whole, the State Government had seriously violated the public trust by leasing ecologically vulnerable land to the Motel management.

Public Interest Litigation (PIL) has several different programmes. Some of these include the cases against the construction of the Tehri Dam (*Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh*⁴), and Narmada Dams (*Narmada Bachao Andolan vs. Union of India*⁵); against deforestation (*T. N. Godavarman Thirumulpad vs. Union of India*⁶, a case that has since then spawned dozens orders pertaining to forests in India); against mining in the Aravallis (Tarun Bharat Sangh, Alwar v. Union of India⁷ against mining in the Dehra Dun hills (*Rural Litigation and Entitlement Kendra, Dehradun vs.*

² (1991) 1 SCC 598

³ (1997) 1 SCC 388

⁴ 1992 SUP (1) SCC 44

⁵ AIR 1999 SC 3345

⁶ 2000 SC 1636

⁷ 1992 SC 514, 516

State of Uttar Pradesh⁸, a judgment with important consequences for acquisition or use of adivasi lands elsewhere too); on implementation of the Wild Life (Protection) Act 1972 (WWF v. Union of India, WP No 337/95); on implementation of Coastal Regulation Zone measures (**Indian Council for Enviro-Legal Action vs. Union of India**⁹, on protection of the coastal area against destructive practices (**Prof. Sergio Carvalho v. the State of Goa and Others**¹⁰, on the right of citizens to inspect official records (this was before the Right to Information Act came into force) (**Goa Foundation and Ors. vs. North Goa Planning and Development Authority and Ors**¹¹, against forest logging and other environmental aspects of Andaman and Nicobar Islands. Important precedents and guidelines for the future development of policy, law, and practise have been established by the verdicts in previous cases. No forest, National Park, or Sanctuary may be dereserved without the consent of the Supreme Court, and no non-forest activity is permitted in any National Park or Sanctuary, even if prior approval under the Forest (Conservation) Act¹², 1980, has been obtained. Additionally, new authorities, committees, and agencies have been established, such as the Central Empowered Committee (CEC) and the Compensatory Affair Commission.

In **Francis Coralie v. Union Territory of Delhi**¹³, Justice Bhagwati stated: "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 one's head and facilities for reading, writing, and expressing one's self in various forms, freely moving about, mixing, and coexisting with fellow human beings."

The Supreme Court stated in the case of **Shantistar Builders v. Narayan Khimalal Totame**¹⁴ that "basic needs of man have traditionally been accepted to be three - food, clothing, and shelter." Every civilised society guarantees the right to life. The right to adequate food, clothing, and surroundings would all fall under its purview.

1.2 THE CONCEPT OF HUMAN RIGHTS – EVOLUTION

THE HUMAN RIGHTS OF FIRST GENERATION

First-generation human rights include each person's civic and political rights. The International Covenant on Civil and Political Rights of 1966 as well as many Constitutions grant the various civil and political rights. These rights, though, are not brand-new. They have been acknowledged for a very long time. Over time, these rights, which date back to the era of the Greek city states, have found expression in a variety of national charters. The Magna Carta of 1215, the American Declaration of Independence of 1776, and the French Declaration of the Rights of Man and the Citizen of 1789 are examples of how they have been made concrete. The International Covenant on Civil and Political Rights, signed in 1966, the European Convention on Human Rights and Fundamental Freedom, signed in 1950, and the

⁸ 1985 SC 652

⁹ 1995(3) 579

¹⁰ 1989 (1) GLT 276

¹¹ 1995(1) GLT 181

¹² WP No 337/95

¹³ AIR 1981 SC 746

¹⁴ AIR 1990 SC 630

American and African instruments, signed in 1969 and 1981, respectively, all reflect long-standing human values. As such, they are reflected in almost every State's Constitution.

THE HUMAN RIGHTS OF SECOND GENERATION

The International Covenant on Economic, Social, and Cultural Rights, signed in 1966, includes these rights. The Russian Revolution of 1917 and the Paris Peace Conference of 1919 are regarded as the primary sources for the creation of these rights. Regarding the recognition of economic rights, the Russian Revolution is crucial. The International Labour Organisation was founded more as a result of the Paris Peace Conference. In stating that "peace can only be established if it is based upon social justice" and that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations who desire to improve the conditions in their own countries," the International Labour Organisation has placed emphasis on the concept of social justice¹⁵.

American President Franklin D. Roosevelt deserves the majority of the credit for articulating economic and social rights. For the first time, he articulated his desire for a tool that would address economic and social rights. The four fundamental freedoms—freedom of speech and expression, freedom for everyone to worship God in their own way, freedom from want, and freedom from fear—that President Roosevelt looked forward to as the cornerstone of a better world were mentioned in his address to Congress on January 6, 1941¹⁶. The foundation upon which the ideas of economic and social rights were developed was "freedom from want." The idea of "freedom from want" was made apparent in President Roosevelt's 1944 message to Congress. He reflected that "true individual freedom cannot exist without economic security and independence" and that "people who are hungry and out of work are the stuff of which dictatorships are made," arguing that economic realities have come to be seen as obvious. He argued for radical economic and social reforms because he believed that the world's economic issues today have grown to worrisome proportions. True individual freedom, in his words, "cannot exist without economic security and independence"¹⁷. When the United Nations started to address the problem of human rights, these declarations had fully taken effect¹⁸.

THE HUMAN RIGHTS OF THIRD GENERATION

These are group rights. Louis B. Sohn asserts that people are also a part of a variety of communities, including their families, their religious communities, their social or professional communities, their racial communities (groups), their political communities, and the state. Therefore, it is not unexpected that international law respects both the unalienable rights of individuals as well as those collective rights that are collectively exercised by people who are gathered into bigger communities, such as people and nations¹⁹. Examples of third generation human rights include the right to self-determination, the right to development, the right to peace, and the right to solidarity. The realisation of these rights requires the combined efforts of all social actors, including the individual, the state, public and private bodies, and

¹⁵ Fenwick, Charles G., *International Law*, 3rd ed., Indian Reprint, 1971, n.67, p.152.

¹⁶ See (1941), 35 A.J.I.L., p.662, cited in Dr. U .Chandra, *Human Rights*, (Allahabad: Allahabad Law Agency Publications, 1999), p.21.

¹⁷ Eleventh Annual Message to Congress, Jan, 11, 1944, 2881, cited by Dr. U .Chandra, *Human Rights*, (Allahabad: Allahabad Law Agency Publications, 1999), p. 21.

¹⁸ Dr. U .Chandra, *Human Rights*, (Allahabad: Allahabad Law Agency Publications, 1999), p.21

¹⁹ Thomas Buergenthal and Dinah Shelton, *Protecting Human Rights in the Americas*, Cases and Materials, 1995, p.11, cited in Dr.U. Chandra, *Ibid.*, 21.

the international community. The human rights of the third generation bring the human dimension to areas where it has all too often been absent after being left to the state or states²⁰. These rights underline that human needs are best met within a collectivity and that they belong to people as a whole.

1.3 CONCLUSION

The current international concern with human rights and fundamental freedoms can be attributed to a variety of factors. Some of these have a strong historical foundation and are entwined with man's quest to fully realise all of his human ideals. The fulfillment of all people's human rights is a requirement for the peace, safety, and advancement of any community or state. There are three degrees to which nations are obligated to uphold human rights in the contemporary "community of states." First and foremost, the Constitution, which is the supreme law of the land, contains requirements relating to human rights. The nature and extent of the Indian State's obligations with regard to human rights are laid out in Parts III and IV of the Indian Constitution. The republican and democratic Indian Constitution was drafted or approved by the "people," who are therefore the country's supreme authority. No one is above the law, not even the state's highest executive authority. When he said that the Constitution is the fundamental law of the land and that it created the judiciary and gives it the authority to invalidate legislative and/or executive actions that are determined to be unconstitutional, Dr. Justice Anand succinctly made this point apparent. The Indian Constitution was drafted by "we the people," and it is protected by the courts. Judges are consequently accountable to both their conscience and the people who hold the ultimate power over them. Therefore, it is essential that they use their immense power for the sake of society²¹. The Indian State's obligations with regard to human rights are based on these two overarching but fundamental principles of the Constitution.

According to whether they can be upheld in court, Part III and Part IV of the Indian Constitution split human rights into two categories. Otherwise, the fundamental nature of the rights in both Parts is the same. They are complementary to one another since they collectively make up the human rights system, which includes both the social and economic as well as the civil and political rights.

They have been referred to collectively as the Constitution's conscience.

India gained its independence in 1947, and its Constitution was adopted in 1950. This document contains provisions that ensure the people's access to fundamental human rights. It ratified the United Nations Charter before becoming independent, and in 1948, after becoming independent, it ratified the Universal Declaration of Human Rights.

Although India gained independence from colonial authority in 1947, the freedom struggle that had been ongoing for the three decades before to 1947 had sown the seeds of what would later be regarded as fundamental rights²². Fundamental rights were unknown in India prior to the time that it was ruled by colonial powers, but during and after the country's struggle for independence, both the constitution's authors and the general public came to understand the importance of including a provision for fundamental rights in the document.

²⁰ Ibid.

²¹ Justice, Dr.A.S.Anand, -Protection of Human Rights- Judicial Obligation or Judicial Activism?|| (1997) 7 SCC (Jour) at 24.

²² Rajindar Sachar, -Human Rights: Towards A Global Consensus||, in Human Rights in the Changing World, (ed.) by Justice E.S.Venkataramaiah, (New Delhi: International Law Association 1988), p.92.

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