

ENVIRONMENT PROTECTION AND HUMAN RIGHTS: INDIAN PERSPECTIVE

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Abstract

This article focuses on the study of Human Rights and its importance in the protection and preservation of environment. The Indian constitution upholds the human rights of the citizens. The Article 51-A(g) of the Part of Indian constitution specifically states the duty of the citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife; Article 48-A requires the State to take steps for the same. Another focus lays on the various interlinked reasons for the degradation of environment and how the government is trying to cope with the crisis. By way of including various cases and their landmark judgments, the authors have tried to emphasise on the efficient role of the judiciary in the healthy interpretation of fundamental rights and duties with regard to environment.

Keywords: Human rights, environment protection, Indian constitution, Article 51-A (Fundamental Duties), Directive principle of State policy.

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INTRODUCTION

Human Rights have been conferred upon the human beings by the virtue of them being human. So they are basically birth rights. Human Rights are moral principles or norms that are regularly protected as legal rights in municipal and international law. These are inherent in all human beings without any discrimination on any basis. They are applicable everywhere and at every time in the sense of being universal. The concept of human rights is a very deep-rooted one and the doctrine of natural rights founded on natural law and the protection of those rights has now become a key stone for achieving all round peace, development and maintenance of democracy.¹

The attention now is to be drawn towards the study of human rights along with the issues in environment protection which gives the concept a whole new angle². There is no doubt that the world is moving gradually towards doom. The world has reached a stage where an industrial way of life is no longer sustainable and the time has come where we must put an end to it. Meeting the demands of the consumerist society is resulting in rapid exhaustion and making the planet unlivable.³ Environmental disturbances related effects have direct and indirect range of implications on the effective enjoyment of human rights. Enjoyment of basic rights relating to the environment in which a person lives is a pre-requisite for ensuring the enjoyment of human rights. Hence, the state has a duty to ensure the environment protection necessary to allow the full exercise of protected rights of the citizens. The right to safe, healthy and ecologically balanced environment is a human right in itself.

Honourable Former Chief Justice of India, Y. K. Sabharwal while referring to the relationship between human rights and environmental protection, described the duty of protection of environment by the state as a public means of fulfilling human rights standards. The second view highlights the fact that the legal protection of human rights is an effective means to achieving the ends of conservation and protection of environment. Lastly it is felt that there is no need for a separate environment human right as the international environmental law has developed to such extents that even the domestic environment of states has been internationalized.⁴

DEVELOPMENT OF THIS CONCEPT

¹ Pramod Mishra, Human Rights: Global issue (Delhi : Kalpaz Publication, 2000)

² B.N.Kirpal, M.C.Bhandari Memorial Lecture: Environmental Justice in India (2002) 7 SCC(Jour) at 1

³ P.N. Bhagwati, *The crucial conditions*, The Hindu Survey of the Environment, 1991, pp. 165-167, at 167

⁴ Y.K.Sabharwal, Human Rights and the Environment, Available at: supremecourtindia.nic.in/speeches.../humanrights.doc

It is an age old conception that the basic elements like earth, water, air, aether and fire make up the foundation of all the creatures of the world. Most of the ancient scriptures and philosophical writings expressed concern for the protection and adequate use of natural resources. The Hindu mythology incarnates various living creatures as the gods and goddesses and preaches non-violence against the resources gifted by god. The Upanishads, Vedas and Smritis also emphasise the preservation of the natural bounty. The religion and environmental protection have a very harmonious relation. So, nature is to be respected, worshipped and thus sheltered. The Yajnavalka Smriti speaks of the purity, prosperity and health brought by the environment if it left to remain undisturbed.

Not only Hinduism but many religions and traditions have upheld the same concept. King Ashoka, after embracing Buddhism, recognised the system of planting trees. Also, Islam and Christianity preach the importance of water and its heavenly being. The five elements were regarded as the boon provided by the creator of life.

In ancient times, there was absence of a systematized administration of justice. Hence, the religion was recognised as an uncoded law, the breach of which is considered a devil act. All the religions thus care for the environment. Kautilyas' teachings and the Manu Smriti impose the duties on human beings to protect forests and environment.

Later, under the British rule, there was no codified law at all to deal with the preservation of environment. The first initiative was taken only in 1860 by incorporating certain punitive measures in the Indian Penal Code to control environmental pollution.

Apart from the Indian penal code, 1860 the law of easements was in operation during the British rule. Section 28(d) of The Indian Easements Act, 1882 provides that it is a prescriptive right to pollute air or water but it is not an absolute right as illustration (f) of section 7 declares that no person will be allowed to pollute land of another person by means of water. In *Prabhu Narayan Singh v. Ram Niranjani* it was held that it is not an easementary right to discharge dirty water of the drain into one's house or property. The right to commit nuisance in others property is not an easement to be acquired by prescription.

As observed in today's scenario, the environmental law and human rights are seen as having a very close relation. But going back to the time when the constitution was framed, the law regarding environment was not so specific. It was only after the Stockholm conference on human environment, 1972 that this issue was recognised under the fundamental duties and Directive Principles of State Policy regarding protection of forests and wildlife were incorporated by 42nd Amendment in 1976.

CONSTITUTION AND ENVIRONMENT

- Environment Protection under Fundamental Rights and Duties

We exclusively find a duty given under Article 51-A(g) of Part-IV of Indian constitution. In case of *Abhilash Textile & Ors. v. Gujarat Municipal Corporation*⁵, it was held that though all the citizens hold the right to free trade or carry on business, the nature of their business should not override their duties towards the environment as stated under Article 51-A(g) of constitution of India.

Human rights in India have a long way ranging from first generation to third generation. The first generation human rights are legal and political in nature. Right of economic and social in nature are of second generation and the third generation human rights include developmental rights. This, the third generation human rights are the result of process of judicial innovation. The Part-III and Part-IV of the Indian Constitution deal with human rights of first and second generation. But the third generation human rights are discovered by the judiciary while interpreting the rights given in constitution right to information, right to environment, right to good governance, etc are included in the third generation human rights. Even though any right is not expressly mentioned in Part-III, it can be recognised as a fundamental right. There are a number of such rights and environment protection is one of them. For bringing them within the ambit of Part-III of the constitution, an activist judiciary has taken the lead.

We already know that rights and duties are the two sides of the same coin. Every duty implies the existence of a correlative right of another person which needs to be protected. But as far as incorporation of the fundamental duty relating to the environment is concerned, we did not have any specific fundamental right in the constitution of India. The Indian judiciary has however concretized the right in this regard by making a bold and innovative interpretation of article 21. S. Shantakumar is of the opinion that though the supreme court was reluctant for a short period to explicitly declare that the right to life under article 21 included the 'right to clean and healthy environment', the High Courts in the country declared that the right to clean and healthy environment is an integral part of the right to life and comes under the ambit of Article 21⁶ which states that "No person shall be deprived of his personal life and liberty except according to the procedure established by law". Today, the trouble of environmental pollution poses a great peril to the very existence of human beings as well as

⁵ AIR 1986 Gujarat 57

⁶ S. Shantakumar in S. Shantakumar (ed.), *Introduction to Environmental Law* (Nagpur : Wadhwa & Company 2005) pp. 95-96.

other living creatures. The Gulf war has aggravated this problem. Taking all these factors into reflection, the courts in India have shown a very healthy stance in recognising 'The Right to live in a healthy environment' as a fundamental right and hence, enforceable.⁷

1. ENVIRONMENT AND RIGHT TO EQUALITY

Article 14 provides for the equality before law or the equal protection of laws within the territory of India to everyone. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment.⁸

In the case of *Kinkri Devi v. State*⁹, Article 14 was invoked as there had been indiscriminate granting of mining leases and there was unscientific exploitation of mines by the lessees. So there were adverse consequences. These had far reaching and lasting impact on the natural wealth and the local population. In this case, the allegation was that the government arbitrarily granted the permission for mining activities without adequate consideration of environmental impact which amounted to the violation of Article 14. The Court accepted this and held that till the government evolves a long term plan based on a scientific study to regulate the exploitation of mineral resources in the state without adversely affecting the environment, the ecology and natural wealth, it will be unable to achieve the constitutional objective of safeguarding and protecting the environment. Similarly, in the wake of exercising the power of granting of mining leases in the arbitrary manner and without the regard to the safety of the forests, the lakes, the rivers, wildlife, the life, liberty and property of the people living in the vulnerable areas from its harmful effects, the court will be left with no other alternative but to intervene effectively by way of issuing writs, orders and directions including direction for closure of mines whose operations are proving to be harmful to the environment.

The court in the case of *Enviro-legal Action v. Union of India*¹⁰ has held that the principle of intergenerational quality would be violated if there was substantial adverse ecological effect caused by industry. The court has even taken into consideration the rights of the unborn generations stating that environmental statutes have been enacted to ensure good quality of

⁷ Paramjit Singh Jaswal and Nishita Jaswal, "Making Right To Live in Healthy Environment as Fundamental Right: An Assessment of Judicial attitude and People's Concern", B.P.Singh Sehgal (ed.), *Law, Judiciary And Justice in India* (New Delhi : Deep and Deep Publication 1993) pp. 396-408 at 397

⁸ *Bhagwati J.- Maneka Gandhi v. Union of India*

⁹ AIR 1987 HP 4

¹⁰ AIR 1996(5) 281.

life for upcoming generations since they would be bearing the impact of ecological degradation. Here the concept of sustainable development comes in which improves the human well-being that allows us to meet the needs of the present without compromising the ability of future generation to meet their own needs. In *Karnataka Industrial Areas Development Board v. C. Kenchappa*¹¹, the land were acquired for development, however, by the High Court issued directions to the authority concerned to leave one km area from the village limits as a free zone or green area to maintain ecological equilibrium. It was held by the Supreme Court that if directions in question are rigorously implemented, the authority concerned could not acquire any land for development. In the view of matter, the said directions were liable to be set aside.

2. ENVIRONMENT AND RIGHT TO PRACTICE ANY PROFESSION OR TO CARRY ON ANY OCCUPATION OR BUSINESS AND PROTECTION OF ENVIRONMENT

Article 19(1)(g) of the Indian Constitution guarantees to all the citizens of India, the right to practice any profession or to carry on any occupation or trade or business. Most of environment pollution is caused by trade and business activities and different types of industries which are contributing pollutants in environment. When question came to these industries, they contended that they were not committing any violation, but only exercising their right under Article 19(1)(g) of the constitution. So, it was brought into serious attention of these industries that the right under Article 19(1)(g) of the constitution is not absolute in nature and is subject to certain reasonable restrictions. Accordingly, any act of theirs, which is offensive to flora and fauna or human beings, would not be permitted to be carried on in the name of fundamental rights.¹²

In the case of *M.C.Mehta v. Kamal Nath*¹³ the Honourable Supreme Court held that a hotel discharging untreated effluent into the river Beas, thereby disturbing the aquatic life and causing water pollution could not be permitted to work and any disturbance of the basic environment elements, viz. air, water and soil which were necessary for life would be hazardous. The court further pointed out that in exercising its jurisdiction under Article 32, the court could award damages as well as levy exemplary damages on the erring industry/hotel which will prove to be a deterrent for others from causing pollution.

¹¹ A.I.R. 2006 S.C. 2038

¹² S.C.Shastri, Environmental Law (Lucknow : Eastern Book Company, 2002) at 45

¹³ (2000) 6 SCC 213

In the known case of Ganga Water Pollution Case¹⁴, the Supreme Court considered the problem of pollution of Ganga water by the effluent discharge from the tanneries. The SC directed the owners of the tanneries to establish the primary treatment plants so as to prevent the pollution of Ganga water which is being used by a large number of people of the country. The polluted water affected the health and life of the people. The court observed that the financial capacity of the tanneries should be taken into consideration while requiring them to establish the treatment plants¹⁵.

ENVIRONMENT PROTECTION UNDER DPSP

It is clearly stated under the Article 48-A of the constitution that the state should take steps to protect and improve the environment and to safeguard the forests and wildlife of the country. It has also been directed by the Supreme Court that the government boards under the various statutes should take strict steps for prevention of environment pollution¹⁶. The protection of environment under human right includes the protection of wildlife as well. Wildlife makes up the major and most important part of the environment. The state governments are supposed to do everything possible to save the endangered species from extinction without any excuse as held in *T.N. Godavaran Thirumulpad v. Union of India*¹⁷. Though the DPSP is not enforceable like fundamental rights, the idea of welfare state can be achieved only if the states endeavour to implement it with a high sense of moral duty.

There have been many instances when the Apex court has granted Directive Principles of State Policy the status of Fundamental Rights. As in *Unnikrishnan v. State of AP*¹⁸, the Directive Principles of State Policy were elevated to the status of a fundamental right to free and compulsory education. They are supposed to be supplementary and complementary to each other and Part-III should be interpreted alongside the preamble and Directive Principles of State Policy.

ROLE OF PUBLIC INTEREST LITIGATION IN ENVIRONMENT PROTECTION

Public Interest Litigation is an exception to the general rule that only the person whose fundamental right is visited or infringed or threatened can file a petition under Article 32 of the constitution. The SC in its recent judgments shows a broader approach and the traditional

¹⁴ AIR 1988 SC 1037

¹⁵ Ibid., p. 1045

¹⁶ *M.C.Mehta v. Union of India* AIR 1988 SC 1057

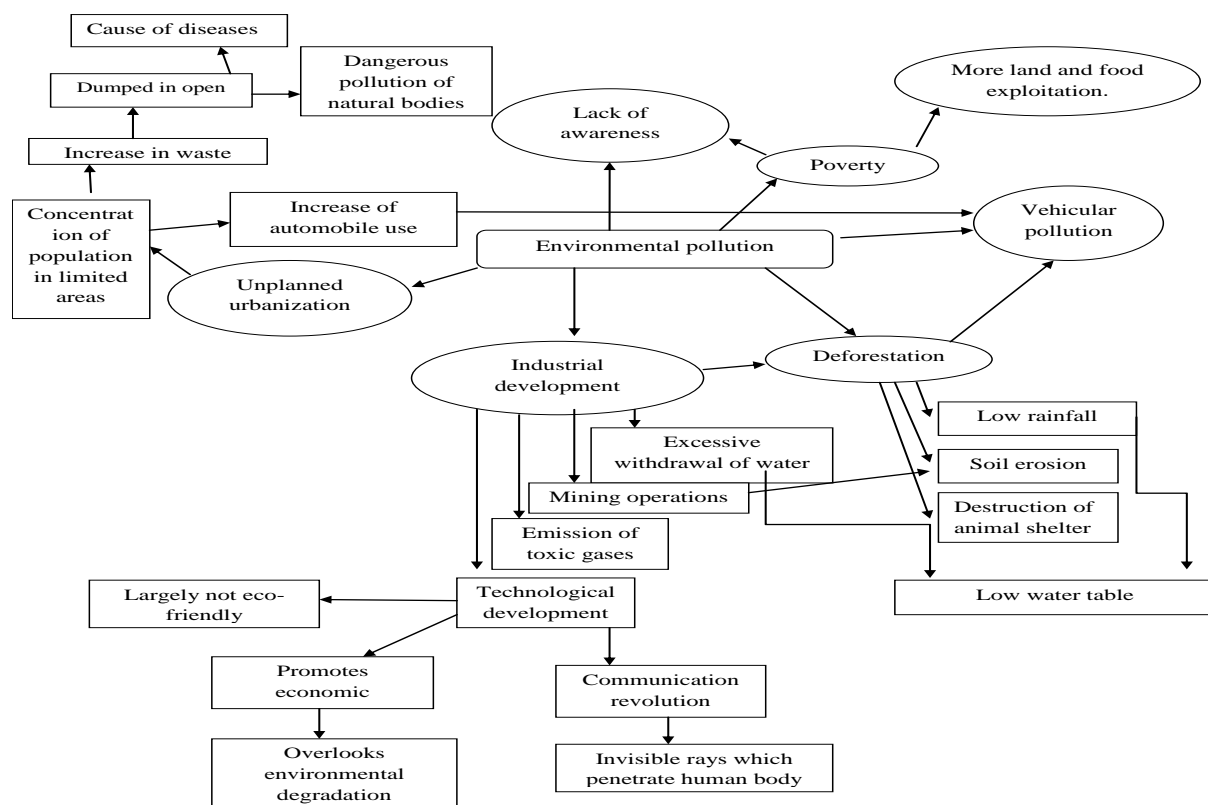
¹⁷ (1988) 1 SCC 471

¹⁸ (1933) 1 SCC 645

rule of 'locus standi' under which only the affected person has the right to move the court has now been relaxed. Now, PIL at the instance of 'Public Spirited Citizens' for enforcement of constitutional and legal rights of any socially or economically disadvantaged person is allowed. It should be noted that the member of the public in such case must be acting bona fide for securing the human rights of someone and not for private gain¹⁹.

The main agenda should be regarding the upholding of human rights which also includes the well-being of environment.

REASONS FOR DEGRADATION OF ENVIRONMENT AND EFFORTS OF THE STATE



We can never hold a single aspect in the society to be the sole cause of environment degradation. A single cause automatically affects various other basic rights of people and further compels them to commit more damage in order to make their ends meet. Bringing about an improvement in only one particular aspect is not enough as it will always be the part of a gigantic web which engulfs the society. Poverty acts as an enemy to the environment. The poor are constrained to exploit natural resources extensively to meet their 'needs'.

¹⁹ S.P.Gupta v. Union of India AIR 1982 SC 149, A.R.C. Cement Ltd. v. State of U.P. 1999 Suppl. 1 SCC 426 and M.C.Mehta v. Union of India 1993 Suppl. 1 SCC 434

Hence, as said by the former Prime Minister, Mrs. Indira Gandhi, “Poverty and need are indeed the greatest polluters.”

Now-a-days due to high urbanisation and over-stuffed population in a limited area, the problem of sanitation has become very acute. This is creating hazard to the life of the citizens. In present scenario, the civil amenities are in an urgent need to be upgraded and the government should take up appropriate measures to deal with urban problems causing environmental as well as health crisis. The honourable Supreme Court has recognised that there is a need to take appropriate steps to make the masses know about the environment they live in. It also expressed its views regarding the study of environment being made a compulsory subject in educational institutes for a general growth of awareness amongst the youth. Poverty is also one of the main concerns. The cinemas and exhibitions were directed to display slides containing environmental information in regional languages. Also the regular broadcast of awareness messages on All India Radio and also on televisions was directed by the court²⁰.

The Indian government is taking many steps under various legislations which concern many aspects affecting the environment either directly or indirectly. The National Forest Policy was adopted by the parliament in 1988 shortly before the passage of the amendment to Forest (Conservation) Act to check the undue exploitation of the forests. The Hazardous Wastes (Management and Handling) Rules, amended in January 2000 prescribes a permit system administered by the control boards of pollution for handling and disposal of such hazardous wastes are also checked by the road agency. The National Green Tribunal was established under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environment protection, conservation of forests and other natural resources including enforcement of rights, relief and compensation for damage and upholding the spirit of a healthy environment.

CONCLUSION

In the concluding part, we can say that the human rights and the environmental rights are inseparable and always go hand-in-hand as every damage inflicted on the nature will directly or indirectly affect the well-being of the humans. The Supreme Court has widened the ambit of Article 21 by giving certain landmark judgments and thus, declared the right to life in a healthy environment as a fundamental right.

²⁰ M. C. Mehta v. Union of India AIR 1992 SC 382

The concern for protection of human rights would be incomplete as long as we do not make adequate efforts to provide people with a clean and healthy environment. Our government has taken the initiative in which they are facing enigma and it has achieved the objective to an extent but not the soul. The concern that human beings can lead a dignified life only in a clean and healthy environment has been seen in different stages of human evolution. The preservation of natural resources i.e., plants, trees and other living creatures is a necessity for sustainability to ensure the movement of the natural cycle or else mankind itself would be on the verge of elimination. It should be our moral duty to ensure that future generations have enough natural resources for their utility otherwise it may be possible that they might only read or hear about such resources which were in existence on the earth.

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