



"POSITION OF HUMAN RIGHTS IN INDIA AND ITS CONSTITUTIONAL IMPACT"

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Abstract

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 ideals¹. 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 Constitution². 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 society³. The Indian State's obligations with regard to human rights are based on these two overarching but fundamental principles of the Constitution.

Key words: Fundamental Principles, Political Rights, Environment and Development.

1.1 Introduction

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 rights⁴.

¹Moses Moskowitz, Human Rights and World Order, (New York: Oceana Publications Inco., 1958),p.157.

² Handbook on Human Rights for Judicial Officers, NIHR, (Bangalore: NLSIU, 2000), p.3.

³Justice, Dr. A.S. Anand, -Protection of Human Rights- Judicial Obligation or Judicial Activism? || (1997) 7 SCC (Jour) at 24.

⁴V.N. Sukla, Constitution of India, 10th ed., by M.P. Singh, (Lucknow, Eastern Book Company, 2011), p.19.

They have been referred to collectively as the Constitution's conscience⁵.

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 rights. 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 document⁶.

1.2 HISTORICAL BACKGROUND RELATING TO ENVIRONMENTAL POLLUTION

The Indian Supreme Court has actively contributed to environmental protection during the past 20 years in a variety of ways. While the administration and the legislature typically play the key roles in the governance process, the Indian experience has shown that the court has started to play a considerable role in resolving environmental disputes, especially in the context of environmental challenges. The manner the Indian Supreme Court has been involved since the 1980s in interpreting and adopting new modifications in the environmental jurisprudence is unique in itself, even though courts in Western democracies frequently take an active part in protecting the environment.

The natural world is humanity's collective legacy. Ancient Indians recognised the value of the environment and took numerous precautions to preserve it so that they could leave a legacy for us.

1.3 INDIAN PERSPECTIVE

The policies included in Kautilya's Arthashastra, which was composed between 321 and 300 BC⁷, are the most comprehensive and insightful in India with regard to environmental policy. During Chandragupta Maurya's rule over the Magadha Empire, Kautilya served as its prime minister. The 14 books that make up the Arthashastra cover a wide range of topics, including business, law, industry, and foreign politics. Although Book Two contains the majority of the environmental-related regulations, the book also contains other shlokas (stanzas). They provide a window into the many, escalating demands on India's natural resources and the government's response in terms of policy.

⁵G.Austin, The Indian Constitution: The Corner Stone of a Nation, (Oxford: Oxford University Press, 1966), p.50.

⁶Ibid., p.93.

⁷ V.Gupta, Kautilyan Jurisprudence I (1987).

The major clauses read: "State shall maintain forests: The king must establish new ones in addition to maintaining existing produce- and elephant-forests. Forests will be planted, one for each forest product, and factories for products made from forest products will be built. There will also be settlements for the foresters who labour in the produce-forests.

After notifying the forest officials, any animals from protected or restricted areas that are seen grazing in a field must be driven out without suffering harm or being put to death. Using ropes or whips, stray livestock must be forced away. The fine for physical injury shall be enforced for harming them in any other manner. Animals that attack or whose wrongdoing is obvious must be restrained in every way possible. When dangerous, wild animals, creatures, and deer belonging to sanctuaries must be killed or bound outside of the designated woodlands.

1.4 EARLY ENVIRONMENTAL LEGISLATION

Several variables that impacted Indian forestry during the colonial eras also had an impact on legislation managing other natural resources. Since India's independence, commercial and industrial practises have drastically reduced the amount of forest cover. These policies have also accelerated erosion and the demise of India's fauna. Additionally, most other environmental laws share the bureaucratic framework of India's forest law, which prevents residents (forest dwellers) from participating in the decision-making process. Therefore, the forestry critique that follows sheds light on a far broader range of public policy and practise than just forests.

The nature and extent of governmental awareness of environmental challenges are revealed through a review of early environmental legislation. rules from the nineteenth century partially regulated animal and water pollution in addition to the forest rules that already existed. These laws, however, had a restricted scope and small geographic application.

One of the earliest laws addressing water pollution, the Shore Nuisance (Bombay and Kolaba) Act of 1853, gave the land revenue collector in Bombay the authority to order the clearance of any nuisance in the harbour below high tide. By fining the Oriental Gas firm and granting compensation rights to anyone whose water was "fouled" by the firm's discharges, an attempt was made to control the pollution that the company was producing in 1857⁸.

An individual who voluntarily "fouls the water of any public spring or reservoir" was subject to a fine under the Indian Penal Code, which was enacted in 1860. The Code also outlawed public nuisances and punished reckless behaviour involving dangerous chemicals that threatened life or injured people. Riparian owners were shielded from "unreasonable" pollution by upstream users by the Indian Easements Act of 1882. The Indian Fisheries Act, which was passed in 1897, made it illegal to poison water or use explosives to kill fish.

⁸Sections 15-17. Oriental Gas Company Act of 1857.

Prior to independence, laws were also passed that prohibited contaminating forest water²⁰⁷ and regulated the flow of oil into port waters⁹.

Water contamination was included in two early legislation passed after independence. All factories were required by Section 12 of the Factories Act of 1948 to make "effective arrangements¹⁰" for waste disposal, and state governments were given the authority to create regulations to carry out this requirement. Second, river boards with authority to prevent water pollution were established under the River Boards Act of 1956 for the regulation and development of interstate rivers and river valleys. Water pollution prevention was only ancillary to the main goal of each of these regulations when they were passed.

The Bengal Smoke Nuisance Act of 1905 and the Bombay Smoke Nuisance Act of 1912 were the first laws to attempt to reduce air pollution.

Early regulation in the subject of wildlife protection was restricted to particular locations and species. The first wildlife law was passed in Madras in 1873 to save wild elephants. The law established a general ban on the killing of wild elephants and punished those who broke the embargo. Six years later, in 1879, the Central Government made its first attempt with the adoption of the Elephants' Preservation Act. The Wild Birds Protection Act, passed by the Centre in 1887, forbade the ownership or sale of freshly killed or seized wild birds during designated nesting seasons.

The Central Government passed a more comprehensive Wild Birds and Animals Protection Act in 1912. This rule, which covered the majority of British India, established closed hunting seasons and mandated hunting licence for specific animals. All of the laws, which were significant contributors to the demise of Indian wildlife, were in fact primarily concerned with the restriction of hunting and did not address the commerce in wildlife or its products. As a result, wildlife destruction persisted and numerous species became extinct.

1.5 INDIA'S NEW AWAKENING TO ENVIRONMENTAL POLICIES AND PROGRAMMES

A turning point in India's history of environmental management occurred in the year 1972. Prior to 1972, various federal ministries handled issues related to the environment, including as sewage disposal, sanitation, and public health, and each pursued these goals in the absence of an effective coordination mechanism at the federal or intergovernmental level. A Committee on the Human Environment headed by Pitambar Pant, a member of the Planning Commission, was established to prepare India's report when the twenty-fourth UN General Assembly decided to hold a conference on the human environment in 1972 and requested reports on the state of the environment from each member country. Three reports—"Some Aspects of Environmental Degradation and its Control in India," "Some Aspects of Human Settlement Problems in India," and "Some Aspects of Rational Management of Natural Resources"—had been written by May 1971. These papers were used to analyse the effects of the population growth on the environment as well as the current situation of

⁹Section 21, Indian Ports Act of 1908.

¹⁰Section 26. Indian Forest Act of 1927.

environmental issues. Early 1972 saw the realisation (as noted in the Fourth Five Year Plan earlier) that India's planning process would continue to have a significant gap unless a national body was established to improve the coherence and coordination of environmental policies and programmes and to incorporate environmental concerns into plans for economic development. A National Committee on Environmental Planning and Coordination (NCEPC) was subsequently founded on April 12th, 1972.

A National Committee on Environmental Planning and Coordination (NCEPC) was established in the Department of Science and Technology in February 1972 as a result of the reports' emphasis on the necessity of establishing greater coordination and integration in environmental policies and programmes.

In all topics pertaining to environmental protection and improvement, the NCEPC served as the top advisory body. The Committee was founded with fourteen individuals from various fields who were interested in environmental management. The majority of the non-official participants were experts. The committee's role was to plan and coordinate; however, it was up to the individual ministries and government organisations to carry out the actual implementation.

The NCEPC's membership considerably altered throughout time (committee members were appointed for terms of two years). The number of non-officials declined even though the membership of NCEPC rose from 14 in 1972 to 24 in 1977 to 35 in 1979. The committee grew cumbersome and the decision-making process became more difficult. The hiring of more secretaries resulted in a greater bureaucratization. The political influence that the first committee had gradually diminished. As a result, other departments' collaboration also declined, which was made worse by the fact that several departments had begun to see the committee as an intrusive outsider.

The authorities of India realised in the late 1980s that many of the nation's environmental issues were the result of poverty and underdevelopment rather than development efforts, and that these issues could no longer be ignored. It is for this reason that the Seventh Plan said that "the nation's planning for economic growth and social well-being in each sector must always take note of the need to protect environmental resources, and where possible, must work to secure improvement in environmental quality."

1.6 INTERNATIONALPERSPECTIVE

The natural world is humanity's collective legacy. Mankind must make ongoing efforts to protect this legacy. The man fails to do so, as evidenced by pollution. An involuntary action must take over when a voluntary one fails. This procedure is what creates environmental law. As long as homo sapiens has existed on the globe, environmental contamination has existed. The environment for humans has seen significant changes as a result of research, technology, and expanding industry. The equilibrium between human life and the environment was weakened as a result of their upsetting the ecolaws. There were also many additional issues that had an impact on the ecosystem. However, it is acknowledged that pollution is the most important issue.

The primary cause of the ecology's destruction is industrial pollution. If the future is to be safeguarded, one must look for better and more obvious possibilities; otherwise, the generation's future is in jeopardy.

1.7 CONCLUSION

A crisis of global proportions is, and has been, affecting the human environment through pollution of the atmosphere and of maritime, coastal, and inland waters; degradation of rural lands; destruction of the ecological balance of natural areas; the impact of biocides upon animal and plant life; and unchecked depletion and ravaging of the world's natural resources, partly due to the explosive growth of human populations and partly in a Report on the Problems of the Human Environment, dated 26 May 1969 (Document E/4667), prepared in relation to the summoning of the Stockholm Conference on the Human Environment in June 1972 pursuant to a Resolution of the United Nations General Assembly of 3 December 1968, the secretary general of the United Nations examined in detail the problems involved in this environmental crisis, as well as the various causes and factors which brought it about. The United Nations General Assembly approved the Report in a later Resolution dated December 15, 1969, gave the Secretary General full charge of planning and preparing the Conference, and created a 27-member Preparatory Committee to support him.

The Secretary-General's Report also included a description of the many UN related or specialised agencies' operations that had an impact on the human environment. These included, for example, various standard setting instruments (Recommendations and Codes) of the International Labour Organisation (ILO) for protection of workers against pollution of the working atmospheric environment, or against radio-active contamination; the work of the Food and Agriculture Organisation of the United Nations (FAO) in the domain of water development, management, and conservation, of conservation and development of plant resources, and of the scientific aspects of marine pollution; the studies on the scientific problems of the environment under the auspices of the United Nations Scientific, Educational and Cultural Organisation (UNESCO), including the Conference of 1968 convened by it on the Scientific Basis for Rational Use and Conservation of the Resources of the Biosphere; the work of the World Health Organisation (WHO) in the definition of environmental standards, the identification of environmental hazards, and the study of induced changes in the environment; and investigations by the International Civil Aviation Organisation (ICAO) of the problems of aircraft noises in the vicinity of airports, and of sonic boom due to supersonic aircraft.

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