

Indian Environmental Law and Climate Change

Dr Sunny Sureshkumar Hasani
Assistant Professor,
NTVS College of Law, Nandurbar

Introduction

1. Environment and Indian Constitution

Under the fundamental duties of the Indian Constitution, every citizen is expected to contribute to the protection of the environment. Better standards of living and pollution-free environments are embedded within the constitution. The nature of India is that of a public welfare state and healthy environment is also an element of the welfare state. The Constitution of India guarantees the fundamental rights necessary for the development of every person under Part-3.

According to the Environment (Protection) Act 1986, the environment includes humans, other living things, trees, plants, micro-organisms and property etc. along with water, air and land. This law says that development of a person is not possible without the right to environment. The history of environmental law in India is about 125 years old. The first law in this regard was passed in 1894 and contained air pollution control provisions.

Natural Environment: Article 51A (g) says that it will be the duty of every Indian to protect and promote all kinds of natural environment related things including forests, ponds, rivers, wildlife. Also, every citizen should have compassion for all living beings.

Public health: According to Article 47 of the constitution, the primary duties of the state are to improve the standard of living of the people, provide them with adequate nutrition and work for the enhancement of public health. Improvement in public health also includes environmental protection and improvement, because without it public health cannot be ensured.

Agriculture and Fauna: Article 48 talks about conservation of agriculture and the living world. This article instructs the states to take necessary steps to organize the business related to agriculture and animals in a modern and scientific manner. In particular, states should preserve species of fauna and prohibit killing of cows, calves, sheep and other animals.

Article 48A of the constitution states that states will work to protect and promote the environment and will work for the protection of forests and wildlife throughout the country.

2. International Events – Backbone for Indian Environment Legislation

Three incidents have played a major role in the development of Indian environmental law. The 1972 United Nations Humanitarian Environment Conference in Stockholm gave direction to the formulation of many laws in the field of environment. The inclusion of provisions related to Water Act, Air Act, Forest Conservation Act and Environment in the Constitution are some examples of this.

The gas tragedy that occurred in Bhopal in 1984 revealed many flaws in the Indian legal system. The people who are suffering from this tragedy are fighting the battles in the courts of America and India. Many laws were enacted as a result of the tragedy, of which the Environment (Protection) Act of 1988 is the most important.

The Rio Conference, which took place in the year 1993, also showed some statutory action in India's environmental scenario. The Biodiversity Act, 2002 was created to implement the Biodiversity Convention (Convention) adopted in the Convention.

(A)The role of Indian Judiciary in making responsibility for government to protect and promote environmentalism

The essence of Indian environmental law cannot be understood by enumerating various laws and constitutional provisions. India's judiciary has also played an important role in strengthening environmental jurisprudence in the country. Public interest petitions (PILs) have served as an effective tool in providing justice in the field of environment by falling into the hands of creative and imaginative judges.

The judiciary laid down several principles for the protection of the environment. Courts interfered in a number of environmental crises by shaking the lazy executive using new principles and concepts such as the principle of paying pollutants, the principle of caution, the principle of full liability, the concept of sustainable development and the principle of equality between generations.

It seems that the judiciary is playing the most active role in the field of environment itself. The courts asked the Super Administrator to order the cleaning of rivers, renovation of monuments, cleaning of pollution from hazardous substances, restoration of the changes in the streams of rivers in their original form, preservation of forests and redressal of vehicular pollution in cities. Has played many roles ranging from policy-maker.

In the specific context of India, the principle of caution places additional responsibility on governments. Environmental measures to be implemented must include predicting, protecting and attacking the causes of environmental damage. Under this principle, the responsibility of proof lies with the industrialist, developer (the person or company developing and constructing the plot) or the concerned organization to show that its actions are environmentally friendly¹. The principle of paying pollutants is another important rule that can play a central role in the climate change legislation being developed in India.

The principle of paying (damages) to a pollutant means that the person who undertakes risky and dangerous activities must compensate the person who has been harmed by his actions, even if proper care has been taken in that work².

Climate change is facing many challenges at the constitutional level. At present there is no separate law on climate change in India. To tackle the problem of climate change, enacting a law prohibiting development activities is not necessary at this time. The principle of equality and common but differentiated responsibility enshrined in the United Nations Climate Change Basic Treaty and embodied in international environmental law recognizes the need for a developing country like India to ensure the development rights of its billion poor citizens.

The principle of caution states that where there is a risk of serious and irreversible damage, the lack of scientific certainty should not be taken as a reason for avoiding measures to prevent environmental degradation. Many judgments in Indian courts have clearly stated that the principle of caution is a part of Indian law.

¹ Vellore Citizens Welfare Forum v Union of India, FIR , 1996 SC 2715

² Indian Council for Enviro- Legal Action v. Union of India, AIR 1996 SC 1446

It is a fact that Article 21 of the Indian Constitution giving the right to life has been used to give statutory basis to these principles. It is clear from this that no cleverness of any law or administrative (executive) measure can beat him.

The progress made in recent times in the climate change science at the global level has increased the challenges at the national level. In recent years, such literature and many such authoritative statements have come out in which climate change has been analyzed from the perspective of human rights. This is a welcome change in which the focus has shifted away from states to individuals.

From this point of view, climate change cannot be made a platform for trade between the state governments and climate change is no longer the subject of science and politics, but is essentially a human process that demonstrates humanization and impact.

(B) Some statutory, regulatory and policy fundamental principles

There are some statutory, regulatory and policy fundamental principles that can be used to mitigate climate change. The Energy Conservation Act, 2001 and the National Import Duty Policy, 2006 mandating the compulsory purchase of a certain percentage of renewable (renewable) energy, are important tools of mitigation efforts to promote the economical use of energy.

The National Climate Change Action Plan is an important policy document that gives direction to mitigation and adaptation efforts in India.

Apart from these, many concepts of Indian environmental jurisprudence can be used to address climate change related concerns. The precautionary principle / approach is the cornerstone on which the UNFCCC and Kyoto Agreement rests.

This affects the right to life, right to food, right to water, right to health, right to proper housing and right to self-determination. Interestingly, the report also found that certain mitigation measures such as agriculture, fuel production can also adversely impact human rights, especially the right to food. The report also considers the impact of climate change on the rights of specific groups such as women, children and local people. But the report said that these rights cannot be said to be violative of human rights in the pure legal form.

The hesitation shown to be a case of abuses has some difficult practical issues like work-cause relationship. Also, the fact that climate change impacts

future projections is impossible. It is impossible to separate work-cause relationships that link historical greenhouse gas emissions of a particular country to a particular climate change effect.

Similarly, the case of human rights violation is proved only when the damage is done or happens. But in the case of climate change, the forecast of future effects is called adverse effect.

Despite all this, the report said that the resolution of their effects on human rights remains a major cause of concern and an obligation under international law. This inherent fundamental relationship between human rights and climate change is particularly relevant for a country like India. The adverse effects of climate change are already being monitored on various fundamental rights given in the constitution.

It has become a constitutional obligation for Indian state power to address the effects of climate change in the context of human rights. Climate change could mark the beginning of the fourth phase in Indian environmental jurisprudence. In the present situation, however, there is no need to enact any such law which limits the emission of greenhouse gases, which will hamper the economic progress of the country.

(C)Conclusion

Climate change is facing many challenges at the constitutional level. At present there is no separate law on climate change in India. Development to tackle the problem of climate change the creation of a law prohibiting activities is not necessary at this time. The principle of equality and common but differentiated responsibility enshrined in the United Nations Climate Change Basic Treaty and embodied in international environmental law recognizes the need for a developing country like India to ensure the development rights of its billion poor citizens. The progress made in recent times in the climate change, climate at the global level has increased the challenges at the national level. In recent years, such literature and many such authoritative statements have come out in which climate change has been analyzed from the perspective of human rights. This is a welcome change in which the focus has shifted away from states to individuals. From this point of view, climate change cannot be made a platform

for trade between the state governments and climate change is no longer the subject of science and politics.

However, many such concepts exist in environment and human rights jurisprudence in which action by the government is considered necessary. This could become the basis of the climate change legislation being developed in India with no need to compromise development efforts, but at the same time paid attention to broader issues of equality between generations and within generations.

References

1. Kailash Thakur, Environmental Protection Law and Policy in India, Deep & Deep Publication, 1999: p.305
2. Environmental Law in India. P. Leela Krishnan, Butterworths, India. 1999: p. 39
3. D. Vasudeva Rao, :Vijaya Kumar .SDevelopment with Human Touch Atlantic Publishers & Dist, 2000, pg.270
4. Aruna Venkat: Environmental Law and Policy, PHI Learning Pvt. Ltd., 2011, Pg.6
5. R. Lazarus, The Making of Environmental Law (Cambridge Press 2004); P. Gates, History of Public Land Law Development
6. Nelson, Gaylord (November 2002). Beyond Earth Day: Fulfilling the Promise. Wisconsin Press. ISBN 0-299-18040-9
7. Surendra Malik, Sudeep Malik. Supreme Court On Environment Law (2015 Ed.). India: EBC. ISBN 9789351451914
8. Bimal N. Patel, ed. (2015). MCQ on Environmental Law. ISBN 9789351452454
9. Martin, Paul & Amanda Kennedy, eds. (2015). Implementing Environmental Law. Edward Elgar Publishing