

Environmental Philosophy: Exploring New Ethics for the Survival of Mankind

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Abstract

So many environmental harms are caused by the consequences of too many people doing acts which taken together have collective bad consequences. The way the world is, informs the way it *ought* to be. We always shape our values in significant measure in accord with our notion of the kind of universe that we live in, and this drives our sense of duty.

KEYWORDS: Environment, Environmental Pollution, Environmental Philosophy, Polluter Pays Principle etc.

Introduction

‘The question is not, can they reason, nor can they talk? But, can they suffer?’ wrote Jeremy Bentham, insisting that animal welfare counts too.¹

This question increase sensitivity by extending rights and hedonist goods to animals. The gain is a vital breakthrough past human, and the first lesson in environmental ethics has been learned.

Environmental ethics is the part of environmental philosophy which considers extending the traditional boundaries of ethics from solely including humans to including the non-human world. It exerts influence on a large range of disciplines including environmental law, environmental sociology, eco theology, ecological economics, ecology and environmental geography.

Environmental ethics includes the moral duties of the human beings towards Mother Nature towards non human beings.

Research Methodology

The author in this article tried to establish that we know and can monitor the threats to our world that are emanating from our activities. This obligates us to develop the historical consciousness and moral judgment to ensure future generations the necessities of life. Content analysis method has been used for research methodology. The author has gone through various Statutes, Judicial Pronouncements, Journals, Books and Research Papers to establish her view point.

¹ J. Bentham, Introduction to the Principles of Morals and Legislation (1789, NewYork: Hafner,1948), 311.

ARTICLE

“Everything which exists in this world is the abode of God, use it in limit and as needed. Overuses and wastage should be avoided for any sources.”

Ishavasya Upanishadas

Environmental degradation is the main issue of concern in India nowadays. Though there are so many statutory provisions, legal awareness programmes and also NGOs trying to ameliorate the situation but much has to be done in this field.

The rapid growing population and economic development is leading to a number of environmental issues in India because of the uncontrolled growth of urbanization and industrialization, expansion and massive intensification of agriculture, and the destruction of forests.

It is estimated that the country's population will increase to about 1.26 billion by the year 2016. The projected population indicates that India will be the first most populous country in the world. India having 18% of the world's population on 2.4% of world's total area has greatly increased the pressure on its natural resources. Water shortages, soil exhaustion and erosion, deforestation, air and water pollution afflicts many areas. Hence, there is an ardent need to find solution of this problem.

Fundamental Duties and the Constitution of India

The Fundamental Duties as enshrined under Indian Constitution impose a moral obligation on all citizens to promote a spirit of patriotism and to uphold the unity of India. These duties, set out in Part IV–A of the Indian Constitution, concern individuals and the nation. However, these duties are not enforceable by the court of law.

The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the then government.

Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years.² The other Fundamental Duties obligate all citizens to respect the national symbols of India, including the Constitution, to cherish its heritage, preserve its composite culture and assist in its defense. They also obligate all Indians to promote the spirit of common brotherhood, protect the environment and public property, develop scientific temper, abjure violence, and strive towards excellence in all spheres of life. Citizens are morally obligated by the Constitution to perform these duties. However, like the Directive Principles, these are non-justifiable, without any legal sanction in case of their violation or non-compliance.³ There is reference to such duties in international

² The Right of Children to Free and Compulsory Education Act, 2009

³ Tayal, B.B. & Jacob, A. (2005), *Indian History, World Developments and Civics*, p. A-35

instruments such as the Universal Declaration Of Human Rights OF 1948 and International Covenant on Civil and Political Rights Of , along with Article 51A bring the Indian Constitution into conformity with these treaties.⁴

The Apex Court has decided the relevance of Article 51-A of the Constitution (Fundamental duties) in a number of cases. The Apex Court in a judgment of Seven Judges' Bench in the case of *Shree Ahimsa Army Manav Kalyan Jeev Daya Charitable Trust v Mirsapur Moti Kureshi Kassab Jamat, Ahmedabad and others* (2005)⁵ has made certain observations about Fundamental Rights and duties.

In *AIIMS Students' Union v AIIMS and Ors.* (2001),⁶ a three-Judge Bench of the Supreme Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51A can serve as a guide not only for resolving the issue but also for constructing or molding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is collectively speaking, the duty of the State."

It is, thus, clear that the constitutional validity of any statutory provision and executive action or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51A of the Constitution play a significant role.

Similarly, the Supreme Court has used the Fundamental Duties to uphold the Constitutional validity of statutes which seeks to promote the objects laid out in the Fundamental Duties.⁷ These Duties have also been held to be obligatory for all citizens, subject to the State enforcing the same by means of a valid law.⁸ The Supreme Court has also issued directions to the State in this regard, with a view towards making the provisions effective and enabling a citizens to properly perform their duties.

In the Constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The

⁴ Basu, D.D. (2003), p. 465

⁵ JT 2005 (12) SC 580

⁶ JT 2001(7) SC 12: (2002) 1 SCC 428

⁷ Basu, D.D. (2003), p. 466

⁸ Basu, D.D. (1993), p.131

Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

Environmental Legislations in India

The constitutional provisions are backed by a number of laws – Acts, rules, and notifications. The Environment Protection Act of 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling And Management of Hazardous Waste Rules in 1989.

Following is a list of the environmental legislations that have come into effect:

- (1) The Environment (Protection) Act of 1986 authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.
- (2) The Environment (Protection) Rules of 1986 lays down procedures for setting standards of emission or discharge of environmental pollutants. The objective of Hazardous Waste (Management and Handling) Rules is to control the generation, collection, treatment, import, storage, and handling of hazardous waste.
- (3) The Manufacture, Storage, and Import of Hazardous Rules of 1989 defines the terms used in this context, and sets up an authority to inspect, once a year, the industrial activity connected with hazardous chemicals and isolated storage facilities.
- (4) The Manufacture, Use, Import, Export, and Storage of hazardous Micro-organisms/ Genetically Engineered Organisms or Cells Rules of 1989 were introduced with a view to protect the environment, nature, and health, in connection with the application of gene technology and micro-organisms.
- (5) The Public Liability Insurance Act and Rules of 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.
- (6) The National Environmental Tribunal Act of 1995 has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.
- (7) The National Environment Appellate Authority Act of 1997 has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

- (8) The Biomedical waste (Management and Handling) Rules of 1998 is a legal binding on the health care institutions to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.
- (9) The Environment (Siting for Industrial Projects) Rules of 1999 lay down detailed provisions relating to areas to be avoided for siting of industries, precautionary measures to be taken for site selecting as also the aspects of environmental protection which should have been incorporated during the implementation of the industrial development projects.
- (10) The Municipal Solid Wastes (Management and Handling) Rules of 2000 apply to every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.
- (11) The Ozone Depleting Substances (Regulation and Control) Rules of 2000 have been laid down for the regulation of production and consumption of ozone depleting substances.
- (12) The Batteries (Management and Handling) Rules of 2001 rules shall apply to every manufacturer, importer, re-conditioner, assembler, dealer, auctioneer, consumer, and bulk consumer involved in the manufacture, processing, sale, purchase, and use of batteries or components so as to regulate and ensure the environmentally safe disposal of used batteries.
- (13) The Noise Pollution (Regulation and Control) (Amendment) Rules of 2002 lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion
- (14) The Biological Diversity Act of 2002 is an act to provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it
- (15) The Indian Forest Act (Amendment) of 1984, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce'.
- (16) The Wildlife Protection Act of 1972, Rules 1973 and Amendment Act of 1991 provide for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them.
- (17) The Forest (Conservation) Act of 1980 and Rules of 1981, provides for the protection of and the conservation of the forests.

- (18) The Easement Act of 1882 allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that all surface water belongs to the state and is a state property.
- (19) The Indian Fisheries Act of 1897 establishes two sets of penal offences whereby the government can sue any person who uses dynamite or other explosive substance in any way (whether coastal or inland) with intent to catch or destroy any fish or poisonous fish in order to kill.
- (20) The River Boards Act of 1956 enables the states to enroll the central government in setting up an Advisory River Board to resolve issues in inter-state cooperation.
- (21) The Merchant Shipping Act of 1970 aims to deal with waste arising from ships along the coastal areas within a specified radius.
- (22) The Water (Prevention and Control of Pollution) Act of 1974 establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent. Polluting industries must seek permission to discharge waste into effluent bodies. The CPCB (Central Pollution Control Board) was constituted under this Act.
- (23) The Water (Prevention and Control of Pollution) Cess Act of 1977 provides for the levy and collection of cess or fees on water consuming industries and local authorities.
- (24) The Water (Prevention and Control of Pollution) Cess Rules of 1978 contains the standard definitions and indicate the kind of and location of meters that every consumer of water is required to affix.
- (25) The Coastal Regulation Zone Notification of 1991 puts regulations on various activities, including construction, are regulated. It gives some protection to the backwaters and estuaries.
- (26) The Factories Act of 1948 and Amendment in 1987 was the first to express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes.
- (27) The Air (Prevention and Control of Pollution) Act of 1981 provides for the control and abatement of air pollution. It entrusts the power of enforcing this Act to the Central Pollution Control Board.
- (28) The Air (Prevention and Control of Pollution) Rules of 1982 defines the procedures of the meetings of the Boards and the powers entrusted to them.
- (29) The Atomic Energy Act of 1982 deals with the radioactive waste.

(30) The Air (Prevention and Control of Pollution) Amendment Act of 1987 empowers the central and state pollution control boards to meet with grave emergencies of air pollution.

(31) The Motor Vehicles Act of 1988 states that all hazardous waste is to be properly packaged, labeled, and transported.

Many environmental harms are produced by the consequences of too many people doing the same acts which taken together have collectively created bad consequences, e.g. overuse of an underground aquifer or acid rain 'killing' a lake. Examples of such harms have the general feature that they are produced by individual acts, which taken by themselves may be innocent and morally permissible, but which have disastrous consequences when too many people perform them.

It is imperative and important to perform respective duties at all levels - global, regional, national, local, and community. It is not enough to have international agreements and instruments on environmental issues; but implementation and enforcement of these policies and agreements to a large extent determine their impact and effectiveness. To bring about change at all levels it is important to understand the global scenario and India's position in the global arena.

Judicial Activism

The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement. In the *Bhopal Gas case*⁹, the Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industries by interpreting the scope of the power under Article 32 to issue directions or orders which ever may be appropriate in appropriate proceedings. According to the Court, this power could be utilized for forging new remedies and fashioning new strategies.

These directions were given by courts for disciplining the developmental processes, keeping in view the demands of ecological security and integrity. In one of the earlier cases, *Rural Litigation Kendra*¹⁰, that posed an environment development dilemma, Supreme Court gave directions that were necessary to avert an ecological imbalance, such as constitution of expert committees to study and to suggest solutions, establishment of a monitoring committee to oversee afforestation programmes and stoppage of mining operations that had an adverse impact on the ecology.

The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. In *CERC Case*¹¹, Labourers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards, which were detected after retirement. Whenever

⁹ Union Carbide Corporation v Union of India AIR 1990 SC 273; AIR 1992 SC 248

¹⁰ Rural Litigation and Entitlement Kendra, Dehradun v Union of India AIR 1985 SC 652

¹¹ Consumer Education and Research Centre v Union of India (1995) 3 SCC 42

industries are closed or relocated, labourers losing their jobs and people who are thereby dislocated were directed to be properly rehabilitated. The traditional rights of tribal people and fisherman are not neglected when court issue directions for protection of flora and fauna near sanctuaries or for management of coastal zones.

In *L.K.Koolwal v State of Rajasthan*¹², the Rajasthan High Court observed that a citizen's duty to protect the environment under Article. 51-A (g) of the Constitution bestows upon the citizens the right to clean environment. The judiciary may go to the extent of asking the government to constitute national and state regulatory boards or environmental courts. In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

In *Indian Council for Environ-legal Action v Union of India*¹³, Supreme Court felt that such conditions in different parts of the country being better known to them, the high courts would be the appropriate forum to be moved for more effective implementation and monitoring of the anti-pollution law.

The liberal use of PIL against assaults on the environment does not mean that the courts, even if it is tainted with bias, ill will or intent to black mailing will entertain every allegation. This amounts to vexatious and frivolous litigation. When the primary purpose for filing a PIL is not public interest, courts will not interfere. In *Subhash Kumar v State of Bihar*¹⁴, the Supreme Court upheld that affected persons or even a group of social workers or journalists, but not at the instance of a person or persons who had a bias or personal grudge or enmity could initiate PIL for environmental rights.

The apex court in landmark judgement of *S.P.Gupta v Union of India*¹⁵, elucidated in the following words: "but we must hasten to make it clear that the individual who moves to court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold."

The right to humane and healthy environment is seen indirectly approved in the *MC Mehta* group of cases, decided subsequently by the Supreme Court.

The first *MC Mehta Case*¹⁶ enlarged the scope of the right to live and said that the state had power to restrict hazardous industrial activities for the purpose of protecting the right

¹² AIR 1988 Raj. 2

¹³ AIR 1996 SC 1441

¹⁴ (1990) 1 SCC 598

¹⁵ AIR 1982 SC 149

¹⁶ AIR 1985 SC 652

of the people to live in a healthy environment. Although the second MC Mehta Case¹⁷ modified some of the conditions, the third MC Mehta Case¹⁸ posed an important question concerning the amount of compensation payable to the victims affected by the leakage of oleum gas from the factory. The Court held that it could entertain a petition under Article 32 of the Constitution and lay down the principles on which the quantum of compensation could be computed and paid.

This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activities. The fourth MC Mehta Case¹⁹ was regarding the tanning industries located on the banks of Ganga was alleged to be polluting the river. The Court issued directions to set up effluent treatment plants within six months from the date of the order. It was specified that failure to do so would entail closure of business.

The four MC Mehta cases came before the Supreme Court under Article 32 of the constitution on the initiative of the public-spirited lawyer. He filed the petitions on the behalf of the people who were affected or likely to be affected by some action or inaction. The petitioner had no direct interest in the subject and had suffered no personal injury but still standing for the cause to protect the natural environment for the sake of fulfilling the duty towards the environment.

The Supreme Court has further expanded Right to life in recent years. In Consumer Education and Research Centre v Union of India,²⁰ the Court said, 'Social security, just and humane conditions of work and leisure to workmen are as a part of his meaningful right to life.' The court held that this fundamental right to health and medical aid should continue even after retirement. Significantly, the Court said that in appropriate cases, appropriate directions could be issued to the state or private employer with a view to protecting the environment, preventing pollution in the workplace safeguarding the health of the workmen or preserving free and unpolluted water for safety and health of the people. Directions were issued to the asbestos industry, and the union and state authorities are meant to fill up the yawning gaps in the interpretation of the law.

The concept of compensation for environmental degradation has evolved at a snail's pace over a period. It started with the strict liability principle followed by the absolute liability principle and then compensation under Article 32 and finally the polluter pays principle.

The polluter pays principle means two things:
1. The polluter should pay for the administration of the pollution control system;
2. The polluter should pay for the consequences of the pollution

¹⁷ AIR 1987 SC 965

¹⁸ AIR 1987 SC 1086

¹⁹ AIR 1988 SC 1037

²⁰ Supra note 11

This concept was further elaborated in the Vellore Tanneries Pollution Case²¹, as follows: The Polluter Pays Principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of Sustainable Development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost to the individual sufferers as well as the cost for reversing the damaged ecology.

Conclusion

In practice the ultimate challenge of environmental ethics is the conservation of life on Earth.²²

The society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of development of the society. The need of the hour is to strike a balance between the two i.e., development on one side and pollution free environment on the other. A process by which development can be sustained for generations by improving the quality of human life while at the same time living in harmony with nature and maintaining the carrying capacity of life supporting eco-system. It focuses at integration of developmental and environmental imperatives. Thus, sustainable development is the only answer and administrative actions ought to proceed in accordance therewith and not dehorn the same.

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