HUMAN RIGHTS IN THE TWILIGHT ZONE IN THE AFTERMATH OF INDUSTRIAL DISASTERS

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ABSTRACT

It’s a great challenge to retain human rights during industrial disasters. Analyzing the judgments over Bhopal gas tragedy case, one can easily feel the utmost need to develop the human rights jurisprudence in India. The verdict and the long chain of events which is a part of result of the cumulative and possibly failures of the governmental investigative and prosecutorial agencies as were the judicial system. Indeed it is the time to reconsider the right penal philosophy to be adopted in case of failure to implement the statues in their true spirit.

Key Words : Industrial disasters, Human rights, Supreme court, Doctrine of trust, Twilight zone, People’s statement

INTRODUCTION

The destiny of Human Rights is in the hands of all our citizens in all our communities. Thus what should be the basis of all laws is Salus populi suprema lex. Safety of the People is the supreme law. Public welfare is of paramount importance and the highest law.

Travesty of justice itself

The judgment of the Bhopal court (India) on 7th July 2010, was to give closure to the long drawn suffering to the survivors and families of the world’s worst disaster ever, only resulted in an insult to the memory of thousands who died and several thousand others who survived with serious disabilities. The court slapped a petty term of two years imprisonment and a fine of a paltry sum of Rs.1 lakh on those officials of the UCIL, (an Indian subsidiary of the Union Carbide Corporation, USA) found guilty and to the horror of the victims walked out on bail minutes after the sentencing.

The verdict was in reality farther from closure as those convicted are bound to go on a tortuous course of appeals. A charge of culpable homicide originally filed against them has inexplicably dropped by the supreme Court in 1998, thus placing the world’s worst disaster on par with some road accident. This is indeed too high a price for India to pay. The verdict and the long chain of events which it is a part are the result of the cumulative and possibly failures of the governmental investigative and prosecutorial agencies as were the judicial system. These events showed us that Multinational Corporations, in particular US corporations are beyond the pale of the Indian law and will continue to be kept that way to showcase India as a safe destination for foreign investment and that they can freely operate in India with no accountability of fear of prosecution or punitive action.

This stance taken by our judiciary can only be viewed as one more tragic event in a prolonged ongoing struggle for justice. Unfortunately the inadequacy of law protecting the people of the land from extremely dangerous conditions of life and work in the new millennium, has opened our eyes, to the new exigencies to which humans are being exposed to, in the quest of earning their livelihood. Are colossal multinational or national corporations and hazardous industries the new ‘monstrosity’ that humanity is facing today?

Redefining disaster

The very definition of the term “Industrial disasters” requires to undergo a transformation in this era of its potential to touch each of our lives, though one may believe himself to be far from, and immune to the effects of an industrial
community. In my opinion a point well worth pondering upon! To define the term “disaster” itself is an enormously complex task today. We cannot only consider the narrow dictionary meaning namely, “sudden accident, calamity, catastrophe or natural event that causes great damage or loss of life, or sudden misfortune.” Disaster hits us in manifold ways now, without us even realizing its impact till it is too late. Industrial disasters, oil spills, motor accidents, fires, chemical or biological accidents, natural calamities, war, epidemics, are the very obvious ones, but can we really overlook the invisible but great havoc wreaked on us by silent killers and scourges like radioactive, nuclear, or atomic radiations, mercury, lead or thermal pollution, continuous vibrations, aircraft noise, and most of all psychological stress, the bane of all industrial workers today? Several previously unheard forms of disasters like ‘architectural disasters’ spell doomsday for humanity, in the near future. Is it not pertinent that we therefore redefine the term “industrial disaster” to include the slow potent annihilation of humanity through continuous ravaging of the environment and human health? Bhopal has become a metaphor for disaster, both industrial and human. Though several euphemisms have been attributed to industrial disasters, they have almost become synonymous to massacres or simply killings in the absence of a strong law to prevent them in the first place and a reliable healthcare infrastructure not in place in a modern industrialized society. The example of the world’s most horrific disaster, and its global analysis by laymen and experts all agree to the undeniable fact of the giant corporations’ negligence, managerial malfeasance, and subsequent evasion of liabilities. India still does not have stringent laws to punish or even prevent such large corporations responsible for industrial disaster which are rightfully criminal offences. This bodes a very dark statement of things to come in the future, in the light of steps to protect the very human rights of an industrial nation that are not given their due attention. Can blatant violation of even the minimum safety and other standards be termed as gross disasters and blatant violation of ‘Human rights?’ Unchecked, industries flout regulations at will. What is really the punishment? In a recently released report, the international rights group founded in 1961 viz., Amnesty International has charged the Indian government with bestowing sweeping civil and criminal immunity” on the Union Carbide Corporation (UCC) and UCIL, in 1989, and eliminating their legal liability “in return for modest and arbitrarily determined financial payment to victims, and not as fines, penalties or punitive damages.6

**METHODOLOGY**

Most of the work of this research paper is based upon the judgments given by the courts of India over Bhopal gas tragedy case. However various text books, journals, news papers and websites have also been referred. Some primary research work viz. discussion with advocates and experts, questioner and feedbacks of concerning, have also been done to find out the optimum results.

**RESULTS AND DISCUSSION**

The present scenario in the event of industrial disasters depicts a very sorry picture, as the powerful industries are able to get away with practically murder and that too very lightly. This clearly is a gross breach of the principle, “Conmodum Exjuria Sua Nemo Habere Debit,” or “Convenience cannot accrue to a party from his own wrong, or it simply means that no one can be permitted to take advantage of his own wrong. ‘Pollution too should not be the price of prosperity.’7-8

Amnesty shows how companies and governments are evading their human rights responsibilities, and underlines the need for “Universal Human Rights for businesses.” The report alleges governments for failing to protect the human rights of workers and victims. As the influence and reach of companies grow, there is a developing consensus that they must be brought within the framework of international human rights.

It has been rightly pointed out
We are not against business, we are against business without morality.9

Travesty of Human Rights in Industrial Disasters: “Human Rights are not expendable.” The spirit of the Magna Carta in 1689, subsequently the Bill
of Rights in France, the Declaration of Rights of Man and Citizen, (1789), is clearly apparent as “natural, unalienable and sacred rights of Man. They are indispensable condition of a free society.”

Underlying every principle of Human Rights and their development through the ages is nothing but a doctrine of trust at the nucleus, at the very core of relations between men with each other.

Let us picture a Different Future: In the new world order, multinational Corporations, do trade as per their own will. International trade and commerce is encouraged by the State in a free economy, but after they have had their way with a community, they wash their hands off and move on, crushing several basic human rights in the process.

But can the prolonged suffering and the effects of industrial disasters, for years long after qualify truly as pollution abatement or cessation?

Article 1 of the Universal Declaration of Human Rights, 1948, itself asserts human sensitivity and dignity. Art. 23(1) of the declaration states: “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment.”

Further Art.25 (2) of the Declaration states

“Everyone has the right to a standard of living for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control”

Article 2(b) of the International Convention on Political, Social and Cultural Rights protects the right of workers to enjoy just and favorable conditions of work ensuring safe and healthy working conditions.

The key objective of the Basel Convention, which was also signed by India on the 15th March 1990, and ratified on June 24, 1992:

To minimize the generation of hazardous wastes in terms of quantity and hazardousness.
To dispose of them as close to source of generation as possible.
To reduce the transboundary movement of hazardous waste.

Non compliance with these material objectives in the aftermath of industrial disasters evident in contaminated environment, water, and air is other casualty of the basic human right to even clean and wholesome water, the basic elixir of life itself.

Other casualties of Human Rights due to long term anthropogenic effects of industrial disaster are the: Reproductive Health Rights of Women Rights of Children to a Healthy Birth, free from genetic deformities and healthy Childhood Right of the individual to a life free from the chronic health effects and carcinogenic, oncogenic, epidemiology resulting from ingested toxic substances to which exposed.

The duties on an enterprise carrying on hazardous activity, include numerous absolute and non-delegable duties and imperatives in the form of:

To first and foremost anticipate and identify disasters of all types.
To maintain highest standards of safety; and measures to prevent disasters.
To avoid risk of injury to employees and neighborhood alike.
To maintain safety gear, fire extinguishing devices and work equipment.
To maintain safe and protective working standards and sanitation to its employees.
To protect the health and life of workmen.
To prevent exposure of workers to carcinogenic agents like chemicals or asbestos.
To prevent pollution at the workplace.
To shift hazardous industries and adjustment of workers.
To not carry out any noxious trade in the proximity of a populated locality.
To remove the foul and toxic debris, immediately as and when it is spilled or splattered.

The Constitution of India, Article 47 of the Directive Principles of State Policy imposes upon the State the duty to improve public health very clearly.

In the 5th International Workshop on National Institutions for the Promotion and Protection of Human Rights held at Rabat, on 15th April 2000, Mrs. Mary Robinson, UN High Commissioner for Human Rights stated:

The challenge is to translate theory of human rights into reality and in a very large measure that can only happen at the national level, hence the importance of national institutions and of their
integrity and effectiveness. I urge you to continue and expand your role as human rights advocates for the most vulnerable and disadvantaged groups in every society, inspite of every opposition you will inevitably encounter. Subsequently on 18th April, 2000, at Geneva addressing the International Coordinating Committee of National Institutions of Human Rights, she said:

“National Human Rights Institutions have full range of human rights in the remit… An area which we have not touched on, and which I would like to mention here for further consideration is the right to health…”

Victims of Industrial Disaster definitely fall within the class of vulnerable and disadvantaged groups in a society, whose right to health, among other rights; is struck at its very roots in the aftermath of industrial disasters.

The pathos of the victims of the Bhopal tragedy is evident from the following quote.

“We are not expendable. We are not the flowers offered at the altar of profit and power. We are the dancing flames committed to conquering darkness, and to challenging those who threaten the planet and the magic and mystery of life.”

**Doctrine of Parens Patriae**

The exercise of the right of parens patriae is a sovereign act. It encompasses the protection of the General Health, comfort and welfare of State inhabitants. In Charan Lal Sahu v. Union of India taking note of this doctrine it was observed that the government can be enabled to represent the victims effectively if the situation so warrants, by enacting statutory provisions it so required. Law must be evolved as per “Ex debito justitiae” or “in accordance with the requirement of justice.”

In case of failure of the State to act in its capacity as custodian of the welfare of the rights and protect the people, in the event of industrial disaster victims would get stuck in a ‘Twilight Zone’ with clouds of injustice looming overhead for years to come.

**Right to Life as the basic Human Right**

At this juncture it is very pertinent that, we come to the most important human right of all namely ‘Life’ itself.

The word “Life” has been prominently used in the Universal Declaration of Human Rights, 1948. As a matter of fact the jurisprudence of personhood or the philosophy of the right to live as envisaged by Article 21 enlarges its sweep to encompass human personality in its full blossom. The term “Life” includes reputation and privacy, shelter, environment, and health, so that it is possible to keep body and soul together, which is also reflected in Article 21 of the Constitution of India.

Art. 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health, which is wealth to a workman to earn his livelihood, to sustain the dignity of person and to live life with dignity and equality. The basic human right to health is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health. Lack of health denudes a worker of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards, is a violation of this human right.

“Life “is thus not restricted to mere animal existence, but imports human dignity into its peripheries.” Article 21 thus also embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed. Violent extinguishment of life alone is not regarded as violative of Art. 21, but the slow poisoning by the polluted atmosphere, (as is the case in industrial disasters) should also be regarded as violation of this basic fundamental human right. It therefore becomes the legitimate duty of the State and the Courts as enforcing organs of Constitutional objectives to forbid all actions which upset the environmental balance, and cause harm to its inhabitants in any form.

This very important Human Right, namely life itself, also further includes all facets of human civilization and embraces within its fold, some of the finer aspects of human civilization which make life worth living, right to health included. Art. 21 comprehend several unenumerated rights falling within the amplitude of personal liberty. The attempt of the State, through legislation, and judicial interpretation should be to duly expand the ambit and reach the very core of this right rather than give a narrow meaning and restrict the scope of this article.
Right to clean water as a basic human right

The very important human right is under attack from industrial disasters. Like clean air clean water should be a basic human right all over the world. Water has been revered as a source of life, in all religions. The indiscriminate contamination of this most important gift of nature is virtually a sacrilege of the most sacrosanct human right.

Right to a speedy trial

The painful lengthy legal process, adds to the list of basic human rights violation. A fair and speedy trial is now *sine qua non* of Article 21. “it is implicit in the broad sweep and content of Art.21.”

Are We Going to Allow the Bad Dream to Continue? Simple solutions:

Now begins the continuous struggle for justice, and demand for the basic human rights, begins and this is the testament to the power of the human spirit which refuses to be crushed.

As the Public Law remedy to compensation stands firmly established should the pursuit of ‘economic adventurism,’ allow the entrepreneurs to presume that we as a society can do anything we like to people, just so long as we compensate people for their losses? Such a proposition would be very dangerous policy for the universe as a whole.

Mahbub-ul-Haq, an eminent Asian Economist has stated: “With human governance, people are the ultimate end of governance... We must try to reflect people’s values and aspirations, only then can we achieve an innovative breakthrough”...“Every governing institution, every policy action should be judged by one crucial test; how does it meet the genuine aspirations of the people”.

On these lines in my opinion firstly it is very pertinent to increase the industrial workers consciousness of Human Rights issues and awareness of their very fundamental human rights themselves, so that they realize their genuine aspirations.

Human rights, can only sought to be protected if the affected workers are appraised of them, right from the beginning. Simple rights like being informed of the potential occupational hazards before being put onto the job are very often overlooked by big industries seeking cheap labour and quick outputs.

Another step to be taken is the creating in the general population an appreciation for basic human rights for enlightened action by citizens.

To achieve this there must be a very firm grassroots ‘political process’ developed within the people themselves. The importance of political power for the local community is not to be underestimated. Without the involvement of the people in decision related, or decision-making processes related to pollution, and activities affecting their environment, a climate for maintaining a viable human environment will never be created.

Demystification of the “high level” paper tigers in respect of policies and projects is necessary for more transparency to the goals of the State, for the participation of the common man to safeguard his very life. Today humanity is sitting on a ticking time bomb requiring urgent timely neutralization.

The Rio Declaration of 1992 contains no explicit human right to a decent environment. Indeed, by placing human being at the centre of concerns, the Declaration appears to have laid down an approach, and Principle 10 of the Rio Declaration, however does give substantial support in mandatory language for participatory environmental rights of an individualistic and fairly comprehensive nature.

With this basic understanding in mind, priorities should be established so that the voices of the weak are heard in participation in decision making processes.

The emphasis on participation rights is maintained by the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, through the Aarhus Convention, which is the first binding international treaty to recognize ‘the right of every person of present and future generations to live in an environment adequate to his or her health and well being.’

The inclusion of provisions relating to participatory rights in environmental decision-making processes within these global as well as regional instruments reflects significant international support among States for procedural as opposed to substantive rights.

This would increase individual workers consciousness of human rights, and no longer be the victims of ecological duress.
This public participation will be a very important factor in goading the State to put into place an integrated long term health care system, a reliable healthcare infrastructure that will protect the basic human right of health for all times in future.13

Role of international law
At present International Law plays a very negligible role almost non-existence in essence, in a Bhopal scenario. The world has now ample experience of industrial calamities and environmental hazards. A Charter was thus shaped, intending to set standards for protecting the people from such catastrophes, arising out of all aspects of industrial production. The Charter of Rights against Industrial Hazards and Human Rights, drafted at London, though not yet an official document, is a people's statement and is being referred to as the Magna Carta of Corporate Harms and Human Rights.
The charter forms a basis of an international convention, for presentation to the United Nations for formal recognition by governments. Unlike most human rights documents, its contents are not determined by diplomatic compromise. Rather its substance, and hence its authority, derives directly from the collective experience of those who have been forced to live with the consequences of industrial hazards.24
The charter very emphatically states that, “All persons affected by hazards have a right to effective and innovative polities to reduce, abate or compensate for hazardous activities.” To achieve the realization of this right, the steps taken by the States and businesses shall include (among others) pollution abatement or cessation.
The Rule of Strict Liability, in Rylands v. Fletcher,25 was evolved in 1868. But it is not necessary for us to consider this antiquated decision in a modern industrial society with highly developed scientific knowledge and technology, where hazardous or inherently dangerous industries are necessary to carry a part of developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place, cannot afford any guidance as of today. We need not feel inhibited by this rule, which was evolved in the context of a totally different kind of economy. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static.26
Though we have travelled a long road from the rule of Strict Liability to that of an Absolute one. The law relating to the prevention of the disasters on the basis of the Precautionary Principle is yet far from satisfactory. It is the preventive measures and the strict action that would be taken if not that is far from satisfactory and yet leaves a bitter feeling in our minds, when we are confronted with the gross apathy of the industries and even more of the State in penalizing the culprits for preventing the hazards in the first place. “Duty of Care” incorporating its key essentials of foreseeability and proximity, along with avoidance of negligence, though well accepted in principle, really are a far cry from reality in several industries.
Few random statutes like the Public Liability Insurance Act, 1991, affording relief to victims, are far from adequate to quell the rising tide of the ravages caused by industrial disasters.
Substantive International and National laws remain weak in the area of prevention of Industrial Hazards. Industrial Hazards as we have seen, affect people at large, and thus effective Disaster Management Plans, to protect the rights of even innocent strangers and their incorporation into the statutes, making them mandatory for industries can be the right approach to be taken.
Unless immediate steps are taken by the State to prevent such massive devastation by industry the very credibility of justice which must not only be done but seen to be done will be shaken at its very foundation. Administration of justice must be the firmest pillar of any government. After all justice is an arm of the law, that manifests itself in action.27,28
We must take time to gather from the past experiences, and invest them in the future. Suffering is said to be in the divine scheme of things, but it is meant to teach us human beings a lesson.

CONCLUSION
The apathy of the Indian courts towards the plight of the victims and their families, not only reflect the protective stance and support towards the U.S., who is pushing hard for the proposed Nuclear Liability Bill.24 What happened with Bhopal will undoubtedly be repeated in case of
an “accident” or “disaster’ in case of an even more potent nuclear power threat.

As stated by U.N.Secy. General Kofi Annan: “We will not enjoy security without development, we will not enjoy development without security, and we will not enjoy either without respect for human rights.”

This is the right time to further develop the human rights jurisprudence in India. What is lacking is merely the implementation of the rich plethora of environmental legislation. Also, we should reconsider the right penal philosophy to be adopted in case of failure to implement the statutes in their true spirit, if merely the deterrent, is not effective enough?

There is only one thing that is more painful than learning from experience, that is not learning from experience.

REFERENCES

27. Benjamin Disareli, House of Commons, 11 February, (1851).