
THE CONSTITUTIONAL RIGHT TO CLEAN AIR: A CASE ANALYSIS OF SUBHASH KUMAR V. STATE OF BIHAR IN THE CONTEXT OF DELHI'S AQI CRISIS

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ABSTRACT

In the landmark case of Subhash Kumar v. State of Bihar AIR 1991 SC 42, the Supreme Court held that the right to life under Article 21 includes the right to pollution-free air and water, a recognition that has shaped the foundation of environmental rights in India. However, the reality of Delhi's bad air shows the gap between the institutional guarantees and the environment the citizens actually live in. This paper examines the significance of Subhash Kumar and connects it to the recurring air-quality crises of Delhi. The study outlines the gaps between recognition and actual implementation in the capital of the country, arguing that the constitutional guarantee of clean air is still inaccessible for large sections of the population who continue to breathe the same toxic air without a choice. We examine the particular groups which are being threatened and how we can bring change through proper administrative actions. By analysing the judgement, subsequent case laws, administrative responses, and the regional dimensions of air pollution, this paper highlights some of the shortcomings of the actual on-ground implementation, highlighting the need for systemic reforms to fulfil the constitutional promise articulated in Subhash Kumar.

Introduction

In 1991, a petition was filed before the Supreme Court of India by one Mr. Subhash Kumar, who in his Public Interest Litigation alleged that industrial waste was being discharged into a river by a steel plant and posing a hazard to the health of the public. Although the petition was ultimately dismissed on the grounds that it was not a bona fide petition, the judgement ultimately changed how Indian courts started to view petitions or issues related to the environment. The right to a pollution-free environment was recognised as a fundamental right under Article 21 of the Constitution. This declaration laid the foundation for many later environmental PILs, and subsequent benches have repeatedly drawn from this case to expand the scope of environmental rights to focus on the value of human life.

However, despite this recognition, the state of pollution in urban centres like Delhi has deteriorated significantly over the past decade. This reality of environmental protection reveals a troubling gap between constitutional ideals and their actual implementation. Delhi's Air Quality Index frequently enters hazardous levels, triggering respiratory issues and placing vulnerable groups, mainly children, the elderly, and those with pre-existing conditions, at a critical spot. This state of crisis raises profound questions related to what India, as a welfare state, is doing to protect this constitutional right of its citizens. The persistent state of deterioration indicates that the promise articulated in *Subhash Kumar v. State of Bihar* remains largely symbolic, failing to translate into meaningful safeguards for its citizens.

This research paper is divided into three parts. The first part provides a summary of the Subhash Kumar judgement, outlining the background of the case, the arguments raised by both parties, and the observations made by the Supreme Court. The second part analyses the case with the present situation and studies the various law provisions outlined in the case. The third and final part attempts to reach a conclusion by reflecting the gaps between the judicial declaration and the current efforts made for the protection of the environment, raising an urgent need to address these gaps and implement the right to a pollution-free environment through dedicated efforts.

Case summary

In 1991, a Public Interest Litigation was filed before the Supreme Court of India by Mr. Subhash Kumar under Article 32 of the Constitution. The petitioner alleged that the Tata Iron and Steel Company (TISCO) was discharging its slurry/sludge into the Bokaro river through

its coal washeries in Jamshedpur. According to his petition, the slurry discharged by the plant into the river was polluting the river, damaging agricultural land, and putting the health of the public at risk. The petitioner further relied on the regulatory framework of the Water (Prevention and Control of Pollution) Act, 1974. He particularly relied on Section 17 of this act, which governs industrial discharge and the oversight of the State Pollution Control Board. He also relied on Section 24 of the act, which states that no person shall knowingly cause or permit any poisonous, noxious, or polluting matter to enter into any stream or well which may lead to the substantial aggravation in the pollution. The petitioner alleged that the State of Bihar and the Pollution Control Board had failed to take any action against such pollution of the Bokaro river and were permitting such activities by not enforcing statutory norms.

The State of Bihar and TISCO denied such allegations, arguing that the petitioner had an ulterior motive for approaching the court. The respondents claimed that the petitioner was interested in the sludge as it had commercial value and had also been involved previously in disputes over its collection and sale. His petition filed under the guise of public interest and as a writ petition under Article 32 to enforce Article 21, was in reality an attempt to pursue personal economic interests. They further submitted evidence showing their compliance with the Pollution Board's norms and highlighted that the Pollution Board conducted regular inspections of the steel plant. The respondents claimed that the allegations were exaggerated and were without any bona fide intentions.

The Supreme Court held that Article 32 cannot be used to file a writ petition where the motive is animosity, grudge or personal interest. Misusing the PIL jurisdiction will amount to abuse of the process of the court and would prevent speedy remedy of other genuine petitions filed before the Supreme Court. Since the petitioner failed to provide any evidence supporting that his claim was filed for public interest and not private, the Supreme Court dismissed his petition on the grounds of it being without a bona fide intent. The court even imposed costs on the petitioner.

However, even though the PIL was dismissed, the Supreme Court made a significant constitutional declaration. It held that the right to life under Article 21 includes the right to enjoy pollution-free water and air.¹ Despite being obiter dicta, this statement has been regarded as an authoritative declaration of environmental rights as a fundamental right. This statement

¹ Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598 (India).

has been relied upon by a number of other benches in many subsequent cases, expanding India's environmental jurisprudence.

Analysis

India's environmental constitutionalism has the recognition of environmental protection as part of the right to life under Article 21 at its foundation. Even though the petition in the case *Subhash Kumar v. State of Bihar* was dismissed for lack of bona fide intent, the Supreme Court declared that the right to life includes the right to pollution-free air and water. The principle that environmental quality is not merely a policy concern but instead a fundamental right of every citizen was established through this case, making the judgement significant. In the later cases following this judgement, clean air was further classified as being central to human dignity.

Before *Subhash Kumar*, this path to better environmental jurisprudence in India was seen in the Oleum Gas Leak matter. In this case, the court acknowledged that there exists an absolute environmental responsibility of industries whose operations threaten life and health.² Further, in M.C. Mehta cases related to vehicular emissions, it was held that toxic urban air was a clear violation of Article 21 and directed immediate structural reforms, including the mandatory introduction of cleaner fuels in Delhi.³ Similarly, the court's reasoning was strengthened in the Vellore Citizens case, in which the "precautionary principle" and the "polluter-pays" rule were introduced into Indian law, relating them to being essential components of sustainable development.⁴ These cases show that providing a safe and clean environment to the citizens is essential for preserving human dignity and the value of human life. These judgments also reflect how *Subhash Kumar* wasn't an isolated judgement and that the courts have made broader efforts to embed environmental rights within the constitutional framework.

However, recognising a right is not the same as realising it. Gaps in implementation have been noted all over the country. Even though courts have been consistently expanding Article 21, structural environmental problems cannot be solved through judicial intervention alone. The Pollution Control Boards set up by the central and state governments as a regulatory body often stay under-staffed, lack resources, and are often subject to political or industrial pressure,

² M.C. Mehta v. Union of India (Oleum Gas Leak), (1987) 1 S.C.C. 395 (India).

³ M.C. Mehta v. Union of India, (1998) 6 S.C.C. 63 (India).

⁴ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 S.C.C. 647 (India).

leading to their inefficiency in effective implementation of pollution standards.⁵ The doctrinal strength of Article 21 has failed to translate into practical environmental protection because strict directions issued by the courts have not led to effective administrative follow-through.⁶

The State has tried to address the air pollution issue in Delhi through several steps and policy changes, though their long-term impact has been limited. The transportation and fuel-related measures like the early introduction of CNG, tightening of fuel-emission norms with stricter penalties, and expanding the Metro have not just contributed to reducing emissions but have also modernised the system.⁷ The initial gains of these developments were gradually outweighed by the increasing urbanisation, rising vehicle numbers, and weak enforcement strategies.⁸ Hence, these well-intentioned and structured measures have also failed to secure the fundamental and constitutional right to clear air recognised in Subhash Kumar.

This implementation gap is very evident in Delhi's winter air quality. Studies show that the city experiences "very poor" and "severe" air every year, despite the judicial and administrative intervention.⁹ Pollution control measures, including the restrictions under the Graded Response Action Plan (GRAP), are either implemented too late or lifted too early, making them less effective. The majority of pollution in Delhi drifts from its neighbouring states through their regional winter emissions arising from the mass stubble burning. In situations like these where the harm caused isn't unilateral, isolated efforts by just the administrative bodies in Delhi are insufficient.¹⁰ Further, the health of the general public is suffering the most. Medical records and studies show the increased cases of respiratory symptoms, reduced lung function in nearly half of Delhi's pollution, increased asthma attacks, and cases of cardiac distress.¹¹ This is a very vulnerable time for the children, the elderly, and people with pre-existing illnesses as well. Clearly, poor air quality is not just an environmental concern anymore; it is a public health emergency that affects not just daily life but also the long-term well-being of people. The value of human life is being threatened because of the constantly deteriorating condition of the

⁵ Role of Judiciary in Environmental Protection, Conf. Paper 125 (2021).

⁶ Environmental Protection and the Role of Pollution Control Boards, Indian Institute of Public Administration (2006).

⁷ Ravindra Khare et al., Air Pollution in Delhi: Its Magnitude and Effects on Health, 38 Indian J. Cmty. Med. 4 (2013).

⁸ Srinivas Sridhar, India's Urban Environment: Air/Water Pollution and Pollution Abatement, 48 Econ. & Pol. Wkly. 20 (2013).

⁹ Centre for Energy, Environment and Water, Delhi Winter Pollution Case Study (2021).

¹⁰ Id.

¹¹ Khare et al., *supra* note 8.

external environment.

These factors represent that even though a constitutional right was articulated by Subhash Kumar, implementation still remains flawed due to the inadequacy of the institutional and administrative frameworks. Delhi's high AQI showing "hazardous" air quality just underscores the need for matching the judicial recognition by taking measures like effective governance, coordination between the regions, and stronger enforcement mechanisms. It is high time that the right recognised in Subhash Kumar is also realised. Otherwise, millions will continue to breathe air that falls below constitutional and statutory standards.

Lastly, it has been almost three decades since the recognition of this right to clean air as a right under Article 21; still, hardly any concrete results. The reality in Delhi forces a harder question: *how long will this right remain a privilege instead of a guarantee?* Air purifiers and private protections are available only to a small, insulated section of society, while the majority goes around every day breathing the same toxic air without any choice. Among other rights, this one too depends on a person's economic capacity. The air as we call it is free, but is it free from toxic hazardous particles? Is the free air suitable for breathing? We, the people of Delhi, are not only bearing the burden of our city's emissions. We are also the victims of the pollution drifting from neighbouring states. The main issue is that why is this right still being treated as optional by the State? How long are millions expected to endure dangerous air every winter? When will we finally start treating this issue as what it actually is; a failure of governance rather than an unavoidable fact of urban living?

Conclusion

The recognition of clean air and clean water as part of the right to life by the court in the case Subhash Kumar v. State of Bihar continues to shape how courts address environmental protection even today. But it is clear from Delhi's continuing air-quality crises that declaring a right is not the same as securing it in reality. Even after all the efforts the authorities have taken over the years, the condition hasn't improved and still gets worse every year, especially in winters.

The health and lifestyle of people across the city continue to suffer because of the toxic air, which highlights that the promise of a safe environment is still far from being achieved. This gap can only be closed if proactive measures like stronger enforcement, better coordination

between agencies, and long-term planning are taken. The principle recognised in Subhash Kumar can only be translated into meaningful protection for the people of Delhi if the planning is followed by purposeful action as well.