

PROTECTION OF RIGHT TO ENVIRONMENT AS A BASIC HUMAN RIGHT - A JUDICIOUS CONCERN

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ABSTRACT:

Earth is perhaps the only planet where living organisms and creatures exist. It embraces in its various forms of life in soil, air, and water created billions years ago, of which man too is an integral part. Many people do not have access to clean air, drinking water and experience health problems due to the increasing pollution. Human rights and environment are inter-related, inter-connected, and mutually responsive. Everyone likes to live in a healthy environment, which is basic human right. The growing menace of environmental pollution is a formidable challenge to the human race since it affects the lives of billions of people all over the globe in the form of depletion of ozone layer, acid rains, global warming, climate change etc.,. This article seeks to analyse the efforts made at International and National level to accord the right to clean environment the status of human right. In *Municipal Council, Ratlam versus Shri Vardhichand and others AIR 1980 SC at page 1622* case, the Supreme Court of India, followed the activist approach and provided flesh to dry bone of Statutory provisions and the right to environment was given a human rights status. The judiciary has managed to increase the ambit of Article 21 of the constitution of India, through various judicial pronouncements, to include the Right to healthy and clean environment to be a fundamental right under right to life.

Keys: *Right to life, Right to healthy environment, United Nations, Environmental protection, Public Interest Litigation*

I. INTRODUCTION

Since the Universal Declaration of Human Rights was ratified by United Nations member countries in 1948, the principle of basic human rights has gained global acceptance. In recent years, proponents of environmental justice have extended that principle into the sphere of the environment, driven by a recognition that increasing scarcity of, and conflict over natural resources requires new approaches for securing a peaceful future. It is to be noted that between the world wars there was no significant development and only after Second World War, with the establishment of United Nations, International Union for Protection of Nature, International Union for Conservation of Nature were formed with the Government. As a result of Non-Governmental Organisation participation, a Wildlife Fund was created to work in association with International Union for Conservation of nature.

Till the coming of Stockholm Declarations, the environmental measures were dealt in fragmentary manner, in various Conventions such as Western Hemisphere Convention, 1940, International Plant Protection Convention, 1951, Brussels Convention relating to Intervention on High Seas in cases of Oil Pollution, Civil Liability for Oil Pollution Damage, 1969, Convention on Wetlands, 1971. The United Nations Conference of Human Environment held at Stockholm in 1972 is the first major attempt to solve the problems of environment by international agreement on an universal level. Principle of 1 of the Declaration on Human Environment also emphasis that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environmental of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.” Again, Paragraph 1 of the preamble of the same declaration states that “Man is both creative and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral social and spiritual growth.

II. ENVIRONMENT AS A HUMAN RIGHT

As a part of Right to Life, there is no direct mention of environment protection as a human right either in the Universal Declaration of Human Rights, 1948 or in the two International Covenants on Civil and Political and Rights, and Economic, Social and Cultural and Rights, 1966. But, there are indirect references in relation to environment, such as Article 25(1) of Universal Declaration of Human Rights says that everyone has the right to a standard

of living adequate for the health and well being of himself and his family including food, clothing, housing and medical care. The inference is the assurance of right to a standard of living envisages environmental protection. Whereas Article 11(1) of Covenant on Economic, Social and Cultural Rights says that right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing and to improvement of living conditions. It is pertinent to note that the Stockholm declaration clearly recognises the relationship between the environment and human rights, in which the Preamble declares both aspects of man's environment, the natural and man-made are essential to the well being and to the enjoyment of basic human right even to the right to life itself. Article 6(1) of International Covenant on Civil and Political Rights guarantee the right to life and impose binding legal obligation on accepting States. Even by assertion in the Covenant, 1966 and Preamble to the Stockholm Declaration, 1972, it can be concluded that under International Law, environment is a human right. It is also contended that *Jus Cogens*, is emerging as a superior norm i.e. a legal norm under Vienna Convention on the Law of Treaties, as peremptory norm of general international law, recognised the environmental protection is treated as human right.

III. ENVIRONMENT VIS-A -VIS CONSTITUTION OF INDIA

The Constitution of India originally adopted, did not contain any direct and specific provision regarding the protection of natural environment. Perhaps, the framers of the Indian Constitution, at that time, considered it as a negligible issue. However, in fact, it contained only a few Directives to the State, on some of the aspects relating to public health, agriculture and animal husbandry. These Directives were and are still not judicially enforceable. Some of the Directive Principles of State Policy showed a slight inclination towards environmental protection such as Art 39(b), Art 47, Art 48 and Art 49 individually and collectively impose a duty on the State to create conditions to improve the general health level in the country and to protect and improve the natural environment. Later through 42nd Constitutional Amendment, two specific provisions such as Article 48-A and Article 51-A (g), have been added which imposes duty on State as well as the citizens of the state to protect and conserve the environment.

Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right for the people of India. It protects the life and personal liberty. It envisages and aims that no person shall be deprived of his life or personal liberty except to a procedure established by law. Here, right to life includes right to health, right to food, right to pollution free environment, etc. In simple words, Article 21 provides an inbuilt guarantee to a person for right to live with human dignity. It is pertinent to note that right to environment derived from the right to life, which implies the right to live without the deleterious invasion of pollution, environmental pollution, environmental degradation and ecological imbalances. Everyone has the right to life and a right standard of living adequate for health and well being of himself and of his family. States should recognise everybody's right to an adequate standard and to continuous improvement of living conditions. Thus, the environment as an inherent right to life shall be protected by law. The constitution makers themselves construct the fundamental rights in its broad sense especially to right to life. The Supreme Court of India has given essence to the right so that every person can enjoy life to its fullest extent. The Supreme Court of India came out of the shackles of mechanical and rule bound justice and provided impetus to the expanded horizons of the fundamental right to life and personal liberty guaranteed in Article 21. The judiciary broadened the concept of life, extended the scope of personal liberty so as to include within itself all the varieties of rights which go to making the personal liberties of man. Basic principles were compiled to understand procedure established by law. The judiciary has resolved most of the environmental cases where they considered right to good environment as fundamental for life and upheld as fundamental right. Thus we can consider article 21 as mandate for life saving environment.

IV. **ROLE OF JUDICIARY AND ENVIRONMENT**

It is to be noted that, the Judiciary in India has opened new vistas and new aspirations in the arena of environmental and ecological protection for the overall progress of the mankind, keeping in view not only the present but also the future requirements. The need of the day is to bring the greater awareness among the people besides the socio-economic development in harnessing of natural resources with due care to see that the quality of the environment does not deteriorate. In this chapter an attempt is made to analyse the provisions enunciated in the

Constitution of India with regard to the protection of environment and also the role of higher judiciary in India in protecting the environment and advancing the environmentalism which is unparalleled in the history of nation. The Supreme Court of India interpreted the right to life and personal liberty to include the right to wholesome environment and all other rights. Thus Courts have undertaken to explicate the development of ideology of environment as being part of the right to life by various judicial pronouncements.

The Judiciary in India has been demonstrating its commitment for the protection of environment from time to time and it has been trying to highlight the importance of the environmentalism through a series of illuminating judgements. It is pertinent to mention that the Supreme Court is also trying to bring an awareness of the massive problems of pollution and filling the gap between the legislation and its implementation by using its extraordinary powers. The higher Judiciary in India delivered many environment conscious judgements. By constructive interpretation of various provisions of the law, the Supreme Court in particular has supplemented and strengthened the environmental law. The cases relating to each and every aspect of environment have come up before the Supreme Court of India. The court has relaxed rigid and purely technical rules in admitting many cases involving the protection of the environment. Undoubtedly, the Supreme Court has played an activist and creative role in evolving and indigenous environmental jurisprudence. The increase in environmental awareness since 1980s has triggered a spurt in the environmental cases reaching the court. Most of the actions in the environmental cases are brought under Articles 32 and 226 of the Constitution. The environmental petitions are generally based on the plea of violation of fundamental rights.

The Supreme Court later on widened the horizons of environmental protection. It is a new innovation of Indian Judiciary was of judicial activism. The Supreme Court has, moreover, made it amply clear that PIL is maintainable for ensuring pollution free water and air which is involved in right to live under Article 21 of the Constitution. The Judiciary has always endeavoured to strike a balance between conservation of environment on one hand and the economic development on the other hand. The adverse effect of industrialisation on human life has caught the attention of Indian Judiciary and it is perhaps with this view, in mind it has shown deep concern for pollution of environment and asked the authorities concerned to take

necessary steps to safeguard the society against the ill-effects of industrialisation. The expansive and creative judicial interpretation of the word 'life' in Article 21 has led to the salutary development of an environmental jurisprudence in India. Right to life is a fundamental right under Article 21, and since the right to life connotes 'quality of life' a person has a right to the enjoyment of pollution free water and air to enjoy life fully. According to many Environmentalists and Jurists, 'The latest and the most encouraging of all developments in India is the 'right to a clean and wholesome environment' and the 'right to clean air and water'. These rights have been included in the right to life under Article 21 of the Constitution. The boundaries of the fundamental right to life and personal liberty guaranteed in Article 21 were expanded elevating it, to a position of a brooding omnipresence and converting it into a sanctuary of human values for more environmental protection.

In *Ratlam Municipal Council v. Vardhi Chand* A.I.R. 1980 S.C. 1622 starts the deliberation of human right in the polluted environment where the health of the residents of particular locality of the Ratlam City was held hostage because of its bankruptcy. Justice Krishna Iyer ruled out the ugly and shameless plea and held that the human right had to be respected regardless of budgetary provision. The Supreme Court has expanded the principle of 'locus standi' in environmental cases and observed that environment related issues must be considered in a different perspective. This development in Judiciary brought a new era and is considered as a silent 'legal revolution' and it has cast away all the shackles of technical rules of procedure and encouraged the litigation from public spirited persons. The court not only complemented petitioners who filed environment protection oriented litigation but also awarded money to the petitioners. This development has paved the way for Social Interest Litigation, Class Action litigation and Common Cause Litigation etc., The Court made it clear and stated that the dynamics of the judicial process had a new enforcement dimension.

The Supreme Court gave an expansive meaning to right to environment in *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh* AIR 1985 SC 652 famously known as Doon Valley Case, the representatives of the Kendra, Dehradun wrote a letter to the Supreme Court alleging illegal limestone mining in the Mussorie-Dehradun region which was devastating the fragile ecosystems in the area. The court directed the registry to treat the letter as a writ petition under Article 32 of the Constitution with notice to the

Government of U.P. and Collector of Dehradun. Though, the litigation grew complex over years. Finally, the Supreme Court held that the exercise of jurisdiction under Article 32 presupposes the violation of the fundamental right. Therefore, it was necessary to reasonably to hold that enjoyment of right to life under ordered the closure of certain lime stone quarries on the ground that, there were serious deficiencies regarding safety and hazards in them. The court stated “The right of the people to live in healthy environment with minimum disturbance of ecology balance and without avoidable hazard to them and to their cattle, house and agriculture land and undue affection of air, water and environment.”

In *M.C.Mehta v. Union of India* AIR 1997 SC 734 famously known as Taj Mahal Case the Court based on the ‘principle of sustainable development and the Court applied the precautionary people’. In this case, a public interest litigation was filed alleging that due to environment pollution there is degradation of the Taj Mahal, a monument of international reputation. According to the opinion of the expert committees, the use of coke/coal by the industries situated within the Taj Trapezium Zone (TTZ) were emitting pollution and causing damage to the Taj Mahal, as also people living in that area.

In *Consumer Education and Research Centre v. Union of India* A.I.R. 1996 S.C. 1446, the Supreme Court has delivered a historic judgement and held that the right to health and medical care is a fundamental right under Article 21 of the Constitution, as it is essential for making the life of the workmen meaningful and purposeful with dignity of persons. In *M.C.Mehta and others v. Shriram Food and Fertilizers Industries and Union of India* A.I.R. 1987.S.C.965. famously known as *Sriram Industries case or Oelium Gas leak case* there was a major leakage of Oleum gas from one of the industrial units of Sriram affecting a large number of workers and residents of the locality and it was alleged that an Advocate practising at Tis Hazari Court died due to the leakage of toxic gases. In view of these incidents, the Inspector and Assistant Commissioner of Factories orders prohibiting Sriram from operating their plants. The court pointed out that ‘it was not possible to totally eliminate hazard or risk inherent in every use of Science and Technology, otherwise, it would mean the end of all progress and development’. The court should adopt an equal approach in case of private industry as well as the governmental agency when they are careless in performing their constitutional environmental duty. The court on first hand laid down that it has power to order

payment of compensation for a proved infringement of fundamental right under Article 21, in matters of environmental pollution, though it has to be exercised in exceptional circumstances. It is to be noted that this judgement opened a new frontier in the Indian jurisprudence by introducing a new no fault liability standard for industries engaged in hazard activities. The Supreme Court further laid down some propositions on some issues which afterwards became the landmarks for all the environmental cases coming to the Supreme Court under the umbrella of public interest litigation.

It is pertinent to mention that the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens. In *APPCB v. M.V.Naidu* 2001 (2) SCC 62, the court ruled 'Drinking water is of primary importance in any country. In fact, India is a party to the resolution of the UNO passed during the United Nations Water Conference in 1977 as: All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs'. The court observed that 'water is the basic need for the survival of human beings and is part of the right of life and human rights as enshrined in Article 21 of the Constitution of India.'

In *Charan Lal Sahu v. Union of India* 1990(1)SCC 613, the Apex Court held in context of our national dimensions of human rights, right to liberty, pollution free air and water is guaranteed by the Constitution of India under Articles 21, 48-A, and 51-A (g).

CONCLUSION:

Human Rights are the right enjoyed by the human being by virtue of them being human beings on the other hand, there is need to protect the environment because these rights cannot be enjoyed by the human beings to the fullest without conservation and protection of environment. The Courts in India have played a distinguishing role in gradually enlarging the scope of a qualitative living by engaging themselves in, and resolving various issues of environmental protection. Consequently, activities posing a major threat to the environment were curtailed so as to protect the individual's inherent right to a wholesome environment as guaranteed under various instruments for the protection of legal and human rights.

Environmental protection and human rights were viewed as separate areas by governmental institutions and non-governmental organizations alike at both national and international levels. It is to be noted that the right to environment is a comprehensive right like any other basic right at both National and International levels. The Supreme Court has interpreted the various Constitutional and legal provisions relating to environment in an appropriate directions by promoting ecological balance and sustainable development. The environmental issues in different regions of the world are now being accepted as having major human rights implications by the global society with growing globalization. The Judiciary reasserted the right to pollution free environment as an integral part of the right to life under Article 21 asserting that human rights are to be respected. The Supreme Court has during the course of various decisions emphasized that, the protection of environment is a Constitutional goal. The growing menace of environmental pollution is a formidable challenge to the human race, since it affects the lives of billions of people all over the globe.

REFERENCES:

1. Ashish Kotari, Anupriya Patel. *Environment and Human Rights : An Introductory essay and Essential Readings*. National Human Rights Commission. New Delhi. 2006.
2. Dinah Shelton, *Human Rights, Health, and Environmental Protection' A background paper for WHO : Linkages Law and Practice*.2002. http://www.who.int/hhr/Series_1%20%20Sheltonpaper_rev1.pdf, Accessed 13, July, 2018.
3. Karim Ahmad,A “*Environmental Protection, Public Health, and Human Rights : An Integrated Assessment*” National Council for Science and Environment. 2003
4. Kerri Woods. *Human Rights and Environmental Sustainability*. Edward Elgar Publishing Limited, UK; 2010
5. Kothari, A. *Environment: A Matter of Survival*. in Singh, M.P. and Roy, H. eds. ‘Indian Political System: Structure, Policies, Development’ Jnanada Prakashan, New Delhi.1995
6. Krishna, S. “*Environmental Politics - People’s Lives and Development Choices*” Sage Publications, New Delhi. 1996.

7. Naikar Lohit, D. *The Law Relating to Human Rights : Global, Regional And National*, Puliani And Puliani, New Delhi, 2004
8. Ojha .K.B. “*Human Right and Environment Pollution in India: Judicial Contribution*” *International Journal of Humanities and Social Science Invention*, 2013; 2 : 11
9. United Nations Environment Programme, World Conservation Monitoring Centre See <http://www.unep-wcmc.org> updated June 21,2018. Accessed July 9, 2018.
10. United Nations Human Rights-Office of the High Commissioner, see. <https://www.ohchr.org/EN/Issues/Environment/HREnvironment/Pages/HRandEnvironmentIndex.aspx>. updated July 29, 2018. Accessed August 1,2018.

