

HUMAN RIGHT TO ENVIRONMENT: AN ANALYSIS

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ABSTRACT

Rights are vested interests. Human rights are the vested interests of human beings. There are many rights within its ambit. Some are recognised and enacted as a law, while others are not. As the time passes, need for emphasizing certain unrecognised rights arises. Also, people are more aware about certain rights and less about other rights. Human right to environment is the vested interest that humans possess, in relation to their environment. Environment is not a less significant factor for a peaceful and healthy life of humans. Environment consists of vital phenomena which decide the living conditions. When there is a threat to that environment, ultimately human right is affected. There arises the need to protect such rights. Many frameworks are made from time to time to provide that protection to the human right to environment. This right is receiving more awareness and recognition as the need spikes up. The objective of the study is to analyse various aspects including relation between human rights and environment, legal enactments and judicial recognition. The research also throws light upon United Nations Environment Programme (UNEP) and Special rapporteur. Recent issue with regard to environment, like climate change, is also included. Significance of environmental rights is underestimated sometimes. 'Environmental rights are not a want; it is definitely a need'. This study emphasises the inevitable nature and importance of environmental rights.

INTRODUCTION

Human beings depend upon the environment in which they live. Environment takes into consideration all the factors, which influence the human surroundings, either directly or indirectly. Human beings possess certain inalienable and indivisible basic rights which humans need by virtue of their human nature. Human rights are dynamic concept. It keeps evolving. Now the relation between human rights and environment is evolving. In this modern era, where scientific development and technological advancements are hiking up, the need for a healthy environment pops up. This is especially attributable to effects of advancements upon the environment. So nowadays the concern amidst others it is increasing for the need to give emphasis to the human right to environment, just like how other rights have indisputable standards.

Pollution in the environment includes the contaminants being present in the nature thereby affecting the environment. Above all the dynamic capacity of human beings to change the environment is something that has changed the nature of environment greatly. Briefly we can say that modern developments have transformed the essential constituents for human life, present in the environment, to a different form. In order to fulfil human's aspirations, we need to have a healthy environment. A safe environment with clean surroundings is inevitable to enjoy our life as well as to enjoy other human rights.

NEED AND SIGNIFICANCE OF HUMAN RIGHT TO ENVIRONMENT

Laws relating to the environment specifies the ways to maintain the human dignity. Human being cannot preserve his dignity neither in absence of healthy environment nor in a polluted surrounding. So, environment is considered to be significant to maintain the physical as well as mental health and thereby improve its quality as well. A human being in a polluted environment cannot think of sound overall health and happiness. The significance of adequate environment with safe surrounding is considered so important for the purpose of maintaining dignity of human being. Also, this has been aptly considered to be a human right.

Dr. Nagendra Singh has said that Human right to environment which is safe and healthy, is a right which is needed for his very peaceful existence. So, according to him this right satisfies all the criteria to become a fundamental right for a human being to lead peaceful life.

There are certain failures which creates the need for human right to environment. They are,

- ✓ Failure by Funding agencies to fund for socio economic issues. They merely fund environmental problems. But this is interlinked with socio economic problems.
- ✓ Failure to limit the national strategies that lead to unsustainable growth
- ✓ Failure in properly enforcing and implementing strategies like National Environment Action Plan.

So, these failures create an imminent call to ensure human right to environment is adequately secured for people.

Human rights derive from the human dignity which is inherent. From this it is crystal clear that environment has strong bonding with human right.ⁱ

HUMAN RIGHTS AND ENVIRONMENT

International law related:

- The *Stockholm Declaration*, which was adopted in 1972 on the human environment in United Nations Conference, mentioned under Principal 1 that

Every man has the fundamental right to freedom, equality and adequate conditions of life. Along with these he needs an environment of a quality that permits a life with dignity and wellbeing.

- International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural rights have considered about safe and clean environment as a right. But that has not been mentioned as a specific legal norm.
- Article 2 of European Convention on Human rights, Article 4 of American Convention, Article 4 of the African Charter on Human and People's rights are all related to 'right to life'.

- Article 6 Para 1 of the Covenant on Civil and Political rights, is also related to Right to life. Right to life is not given a detailed explanation. But right to life cannot stand alone with certain other necessary rights. They include, right to shelter, clothing, food, education, etc... Along with this right to decent and safe environment is also considered to be important to right to life. This is nowadays considered to be a basic right, that every human should possess to effectively utilise right to life.
- So, it clearly implies that human right to environment is a part of right of life, though not exclusively provided with provision.

There are certain multilateral environmental agreements as well as related conventions for ensuring decent environment. The concern for environment increased around 1960s and 1970s, thereby led to formation of some regional and international conventions. Some examples are 1971 Ramsar convention on wetlands, 1994 convention to combat desertification.ⁱⁱ There are also other examples like 1972 Convention on world heritage, 1992 Convention on Biological diversity. They merely did not remain to be blatant conventions. Certain protocols, annexes, etc... have been added to it. This was especially, to give it a shape and this helped to evolve environmental law during its nascent stages. These prove to be guiding phenomenon though not a highly persuasive factor at global level.

Clearly now there is no major internationally commonly accepted phenomena in this regard. Since this is a developing field, there is high scope and major expectation that soon this would be recognized in such a manner so as to remain persuasive factor in international law, independent of any other related rights.

United Nations Environment Programme:

United Nations Environment Programme is a programme to solve environmental issues at global level. Their aim is to promote the development and implementation mechanism of environmental law at the international law.

Through this they try to support environmental defenders, capacity building for relevant stakeholders, improving legal frameworks and thereby bringing about universal recognition for this right.ⁱⁱⁱ

UNEP and OHCHR have signed a cooperative agreement for promoting environmental rights. This agreement is a result of increasing issues in Human rights Council and their work in environmental aspects. They prioritize their efforts for ensuring that adequate emphasis is given for this environmental human rights. Strengthened cooperation aims at better protection of Human Rights to Environment. ^{iv}This partnership thereby attracts acceptance by government and other leaders. So, this will make it easy the global recognition in this regard.

Fruitful real-life example of their combined efforts could be seen through the efforts taken during COVID-19 pandemic time. This ended up in Human rights, environment and Covid – 19. They tied up their efforts to combat the effects of Covid 19 on environment. These are some of the many instances undertaken by the duo in facing the environmental challenges put forth by the different situations from time to time.

Special Rapporteur on Human Rights and Environment:

Rapporteurs try to give emphasis on practical solutions to problems related to implementation of these obligations. They identify, view and promote good practices related to human right commitments. They try to overcome the hurdles for recognition of human rights to environment. They conduct country visits and properly respond to invitation to states. They develop relevant dialogues with related stakeholders so as to enhance public awareness about human rights obligations. They analyse and study human right obligations relating to safe, healthy and clean environment. They are active enough and keep participating in conferences, meetings, etc... related to the mandate. They also participate in UN environment assembly.

Effects of bad environment to human beings:

Polluted or inadequate environment is not conducive for physical as well as mental health of human beings. These physical, environmental or biological changes in condition affects the human survival. This makes their survival difficult. Discharge of effluents in the environment in the form of dumping waste, oil spills, acidic rain, etc... are some examples of ways in which human health is affected. The Ultimate effect is nothing but it has a direct impact on a number of rights such as civil, economic, social and political rights. So, an inadequate environment adversely affects the quality of life of humans, plants and other living species. Hazardous things

tend to change the environment and the result would be that it affects the opportunity of men to use or enjoy in the way he desires.

JUDICIAL RECOGNITION OF HUMAN RIGHT TO ENVIRONMENT

The right to safe and healthy environment has been recognised in many cases both in India as well as in foreign judgements. There is no better way of understanding a legal aspect, than analysing various precedents and the ratio decidendi set forth. Understanding various cases is helpful in understanding the present position of law and the need to make amendments for a better legal system in the future.

Foreign cases

Given below are some important decisions which stand as decisive factors with regard to this human right to environment.

Nepal Supreme court in Leadens, Inc v. Godawari Marble Industries

In this case it was held that clean and healthy environment is a part of right to life. Nepal supreme court was very strong in its stand.

Tanzania supreme court in Joseph D. Kessey etn al v. City Council of Dar es Salaam

A person was accused of trying to pollute environment. So, by order of court Dar es Salaam was prevented from polluting the surrounding. Thereby an attempt to affect people's life was prevented. Article 14 of their Constitution played a vital role to prevent him from polluting the surrounding.

Bangladesh Court in Dr. Mohiuddin Farooque v. Bangladesh

Article 31 and 32 of the Constitution protects the right to life ensured to their citizens. Justice BB Roy of the Bangladesh Court held that right to life encompasses a set of other rights in it. So, right to life includes right to safe and adequate environment. So, protection and preservation of environment, ecological balance, sanitation are all considered to be necessary for a man to freely enjoy his right to life.

Indian Cases

Indian courts in number of cases held that adequate surrounding with hale and healthy environment is included within the wider ambit of right to life.

Shantisar builder's vs Narayan Khimalal Totame^v

In this case, it was held that right to decent environment is already included in the concept of right to life. It has wider ambit covering, right to food, right to clothing and right to shelter. All these are basic necessities. These are required for every human being to run their life. Achieving human dignity in the absence of healthy and safe environment is not possible.

State of Orissa vs. Government of India^{vi}

In this case, right to water was considered to be a part of right to life. The Supreme Court held that right to water is inherently included in right to life.

Subhash Kumar vs State of Bihar^{vii}

Right of enjoying pollution free clean water and air is included in right to life.

From the above discussed case laws, grasping the concept of environmental rights seems to be easier and it gives clear understanding about its position in law.

RECENT ISSUES IN HUMAN RIGHT TO ENVIRONMENT

Climate Change

Climate change is a threat to humans. That does not allow human beings to happily enjoy their right to have safe surroundings. Human rights Council had taken certain efforts in trying to combat this problem. They are creating awareness about the link between climate change and human rights and how the former affects the latter.

Special Rapporteur have also contributed significantly in this regard. Human Rights Council undertook certain resolutions and discussions relating to climate change.

Centre for International Environmental law and Francisca's International have put their combined efforts for assessing the effectiveness of UN Special Rapporteur mandates in supporting the work of Indigenous People Organisations in these issues. The Geneva Interfaith forum on climate change also issued a statement in support of the mandate. This reaffirmed the responsibility of each faith organisation and spiritual beliefs in doing their duty towards ensuring humans the rights which they are entitled to by mere virtue of being human.

The possibility of creating a new special procedure for addressing the issue of climate change in relation to human rights is explored by the Human Rights Council in its 48th session with necessary majority of votes in their favour.^{viii}

CONCLUSION

There is a close relationship between human rights and environment. The latter is inevitable part of a human being's life. Human rights cannot be secured in an endangered environment. Environment plays a vital role in providing a conducive environment to humans to fully utilise their human rights.

To ensure human right to environment, at national level policies have to be made to implement it effectively along with certain truly effective programmes in their regard.

For ensuring the same at international level, cooperation of international institutions is required. Through this way, environmental problems which affect human rights can be solved and awareness about this can be created at world level to tackle the issue.

The world community has a mandatory duty. This duty is all about safeguarding the existence of mankind. This will in turn ensure safe, decent and healthy environment which provides all necessities which are basic for development of human community as a whole.

The term environmental right has to be defined clearly by appropriate international institutions. This right has to evolve from its nascent stage to well-developed state. For this the support and cooperation of International Institutions is mandatory. Juristic writings, judgements of different cases, all these have ensured that environmental right is a human right. There is a need to recognize safe environmental right to be a human right by United Nations.

ENDNOTES

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- ⁱ Kailash Trivedi, *Human Right to environment*, Vol.2 Indian Law Institute L.J 290 (1987)
ⁱⁱ Report of UN High Commission, 198 (2002)
ⁱⁱⁱ Satyam Malhotra, *responding to needs of Environmental Defenders and Civilians*, Vol 4. Indian Law Journal 235 (2020)
^{iv} Human Rights of Environment, United Nations Environment Programme, 9 Dec 2020
^v AIR 1990 SC 630
^{vi} (2009) 5 SCC 492
^{vii} AIR 1991 SC 421
^{viii} Pramila Bhatia, *Environment and its relation to Human Rights*, Vol. 3 Law Society LJ, 136 (2016).

