

HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION – AN INTEGRATED APPROACH

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Introduction

Human rights and environment are inter-related; inter connected, mutually responsive and crucial issues. Both are concerned with development and promotion of human welfare. Everyone likes to live in a healthy environment, which is a basic human right¹. Environment pollution is a worldwide problem India, too. is facing the menace². While human rights are necessary to promote the personality development of human beings, material comfort & healthy environment are necessary to safeguard conditions conducive to such a personality development, without hygienic good nobody can strive towards this goal. That is why there is a natural link between environment, Development and human Rights.³

The United Nations Charter of 1945 marked the beginning of modern international human Rights law, whereas the Stockolm declaration of 1972 is generally seen as the starting point of rights based approach to environmental protection.

Principle 1 of the Declaration of the Nations conference on Human Environment also emphasizes on this fact, it states.⁴

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment 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”.

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1 Ajit lal, Right to live in healthy environment vis a vis human excretion, Human Rights in India, B.P Singh, Deep & Deep publication, New Delhi, 1995. p 370

2 Ibid

3 Yogesh k, jyogi. An Integrated Approach to Environment, Development & Human Rights Law ,science & environment , R.P Anand, Lancer Books ,New Delhi, 1987, p221

4 Ibid page 222

Again, **para 1 of the preamble** of the same Declaration states⁵

“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”.

To begin with human rights are those essential conditions of life without which man cannot be at his best. These are inherent in all individuals irrespective of their caste, creed, religion, sex, place of birth colour etc. We are all equally entitled to our human rights without discrimination. These rights are all interrelated and indivisible. Universal human rights are often expressed and guaranteed by law & international human rights law lay down obligation of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individual of groups.

The other hand, meaning of the term environment is very wide in the sense that it takes into account all those factors, which directly or indirectly have bearing upon the natural surroundings of human beings. **The encyclopedia Britannica** defines **environment**,⁶ as the entire range of external influence acting on an organism, both the physical and biological i.e. other organisms, forces of natural surrounding and individual. Change in physical, chemical and biological conditions in the environment is called pollution of the environment.⁷

In the long and tortuous evolution of the human race on the planet a stage has been reached when, through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights. Thus, the link between the concept of human rights and healthy environment is indisputable and indispensable. The present paper is a modest attempt to highlight the linkage between human right and environment. The present study emphasizes that both are mutually responsible and necessary for human welfare. The equitable development and promotion of both is desirable and feasible for welfare of humanity.

5 Supra note 4 .p221to222

6 Dr. H.O Aggarwal, international law & human Rights, 15th Ed, Central Law publications, Allahabad, 2009, P610

7 Ibid

Historical background

Human rights and environmental concerns have been matter of concern for all civilizations. As far as, human rights are concerned, the roots of the human rights and fundamental freedoms of individual can be traced out from humanitarian traditions, the unclosing struggle for human freedom and equality of individuals in all parts of the world and the historic pronouncements of philosophers, political leaders and statesman in different centuries, in general and twentieth century, in particular⁸. Basic rights and liberties of man were recognized by all the major religions of the world. Human rights really emerged as a subject of international relations, though, in the United Nations created in 1945. The covenant of League of Nations, the predecessor of the United Nations, has not even mentioned human rights. In sharp contrast the preamble of the United Nations thigs and Article 1 lists “encouraging respect for human rights and for fundamental freedoms for all” as one of the organization’s principal purpose.⁹ in 1948, United Nations Declaration of human Rights which even today provide the most authoritative statement of International Human Rights norms. Its 30 articles encompass a broad range of civil, political, economic, social and cultural rights and subsequently united nations general Assembly adopted two covenants of rights in 1966 i.e., on civil and political Rights and Economic, social and cultural Rights.

The United Nations Declaration on Human Rights provides that Economic, social, and cultural Rights includes the right to health, to the highest attainable standard of physical and mental health, including healthy living conditions and available, accessible and acceptable quality health service.¹⁰ Human Rights are broadly of two kinds – negative and positive. Negative rights are those that prohibit actions that are harmful to the physical mental or emotional aspects of a human being. Every human being has the right to live a dignified life as a human. Anything that interfere with this is prohibited by all civilizes nations. Right to life, privacy, human punishments etc. are examples of negative rights. Positive rights are usually political and economic rights, like the right to food, shelter, educations, and so on.¹¹

⁸ vidya bhushan , The evolution of Human Rights & fundamental freedom of individuals; An introductory appraisal, Human Rights in India, B P Singh (Ed) Deep &Deep Publication, New Delhi,2009 P 401

⁹Article 1, united nation charter

¹⁰ Hasbury’s law p 21

¹¹ Ibid

Similarly the protection and preservation of the environment has been integral to the cultural and religious ethos of most of the human communities. Nature has been venerated by ancient Hindus, Greeks, Native Americans and other religions around the world. They worshipped all forms of nature believing that it emanate the spirit of god. Hinduism declared in its dictum that the earth is our mother and we are all her children. The ancient Greeks worshipped god or the earth goddess. Islamic law regards man as having inherited all the resources of life and nature and having certain religious duties to god in using them. In the Judeo –Christian tradition, god gave the earth to his people and their offspring as an everlasting possession, to be cared for and passed on to each generation¹². Stockholm Declaration adopted by the International Conference o Human Environment in June 1972 to which India was a party is called the ‘Magna Carta’ of environment.¹³ After this conference, there have been a number of important International Conferences & Declarations on the specific problems of Environment , Like second United Nations Conference on Human Settlements 1966, Nairobi Declaration, Vienna Convention for the protection of ozone Layer 1985, Basel convention on the control of Transboundry Movements of Hazardous Wastes and other Disposal 1989, united Nations Conference on Environment and Development and development ,climate change convention 1992, convention on Biological Diversity 1992.¹⁴

In India, due place has been given to environment protection in the constitution. The important provision of Indian constitution dealing with environment protection is given in part IV at Article 48A, part IV(a) at the Article 51A(g) and 21 of the part III of the constitution. Article 48 A of the constitution which was added by the 42nd amendment reads

The state shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife on the country,\.

Jurisprudentially speaking, this provision imposes only an imperfect non justicible positive duty on the state. Therefore, the citizens for whose benefit and welfare, the protection and

12 Y.K Sabharwal, ‘Human Rights & Environment’ retrieves from < <http://www.supremecourtofindia.nic.in>

13 Mubassir Latif Ameer, “Healthy Environment – An Human right”, Human rights In India, Deep & Deep publication, new Delhi 2009, P523

14 For details see Dr .H.o Aggarwal, International law & Human Rights ,18th ED, central law agency ,Allahabad, 2011, p614 -625

improvement of environment is constitutionally envisaged have no locus standi in the constitutional environmental scheme. This is unfortunate and need an urgent reform.¹⁵

Another important provision added by the constitution's 42nd Amendment is Article 51A(g). This Article provides;

It is interesting to note that even though the citizens of India have not been conferred any justiciable Fundamental Right to a Hygienic environment; they are under a duty to protect and improve the Natural Environment.¹⁶

In Article 21 given in part III of the constitution, it has been provided that;

No person shall be deprived of his life or personal liberty except according to procedure established by law.

With the new content given to the right to life in Article 21 of the constitution after Maneka Gandhi's case, it is not impossible and inappropriate to read the right to a Hygienic environment into that right, for it will be impossible to live with human dignity without a clean and healthy environment.¹⁷

The United Nations Declaration of Human Environment, 1972 and subsequent Declarations like the World Charter for Nature 1982, Rio Declaration on Environment 1992 and Johannesburg Declaration 2002 on Sustainable Development provide the ideas and programme for the world order for man's attitude to nature and economic development. Environment protection and sustainable development are goals of modern economic philosophy.¹⁸ India has incorporated most of international environmental law contained in the United Nations Declaration on Human Environment 1972, in Environment Protection Act 1986 and Environment Protection Rules, 1986. Other important environmental regulations in India include Environment Clearance Notification 1993, the Coast Regulation Zone Notification 1991

15 B. Eraabi, Environmental protection; Constitutional Imperatives – Indian experience, Law, Science & Environment, R.P. Anand, Rahmatullah Khan, S.B. Bhatt (ED) Lancer Books, New Delhi, p 198

16 Supra Note 06

17 Ibid, p 190

18 Prof. S. Bharti, International Environmental Law. ABH Publishing Corporation, New Delhi, 2012 p 26

the violation (the violation of these regulations has been criticised as the damage to coastal areas in recent Tsunami disaster in India on 27 th December ,2001, would have been much less) , the Hazardous Waste Rules 1989,Air pollution Act 1981 and Rules in 1982, Water prevention and control of pollution Act 1974 with amendments, Forest Conservation Act 1980 and Rules 1981 , and wildlife protection 1977 and Rules of 1973.¹⁹

Relationship between human Rights and Environment

Human beings are integral part of community on earth. We desperately need to recognize that we are the guests and not the masters of the nature. We are bound by the limits of nature herself. Our mission is to help create a sustainable future by cultivating harmonious relationship between human and environment. Nature has provided the sustenance for human kind. By abusing or destroying environment for economic gain, we are not going o make our Bharat Sujalsm sufalam.Today , nature is being neglected, abuses and exploited without realizing the common man's need for his survival .Environmental law and Human rights law have essential points in common that enable the creation of a field of cooperation between the two

Firstly ,both disciplines have deep social roots, even though human rights Law is more rooted within the collective consciousness, the accelerated process of environmental Degradation is generation a new environmental consciousness.²⁰

Secondly, both disciplines have become internationalized. The international community has assumed the commitment to observe the realization on human rights and respect for the environment. From the Second World War onwards, the relationship between state and individuals is of pertinence to the international community. On the other hand, the phenomena brought on by environmental degradation transcends political boundaries and is of critical importance to the environment is internationalized, while the state planer earth relationship has become a concern of the internal community,²¹

19 Supra note 19, P 26 -27

20 S.K Kapoor, Environmental Laws & Human rights, Human rights in India , B.P Singh sehgal (ED) ,Deep & Deep publications , New Delhi , P 419

21 Supra note 20

Thirdly, both areas of law tend to universal their object of the protection. Human Rights are presented as universal and the protection of the environmental appears as everyone's responsibility. The environmental law is such a complex, inter – disciplinary law province, in which administrative law, Land Law, International Law, and Criminal Law are equally involved. Such inter – disciplinary attitude of environmental Laws create several consequences directly effecting Human Rights.²²

Although both human rights and environmental protection are relatively well developed areas of public policy, recognition of linkage between the two have been slow.²³ Human rights and environment go hand in hand. Violation of these is two sides of the same problem. If human beings are abused, tortured or jailed because they have exercised their to free speech, the environment loses its defenders. Environmental degradation is all, too, often resulting in serious human rights violations. Poverty and failure to realize basic human rights are placing the environment under severe stress. Development can serve as key vehicle for promoting realization of human rights and protecting the environment²⁴. The environment worldwide is in crisis²⁵. Even citizen has the right to live in an environment worthy of human existence.²⁶ For the survival of the man, he must have a healthy and well being and the fate of future generations depends on his actions to avert environmental crisis.

Right to live in a healthy environment – a human right

Polluted environment affects directly the health- mental as well as physical, of human beings, and therefore, it is human being whose survival has become difficult due to change in physical, chemical and biological conditions of the environment. Discharge of effluents into the atmosphere, oil spills dumping of refuse, acid rain and noise are some of instances of pollution that has considerably affected the quality of human life. They have a direct impact on a number of economic, social, cultural, civil and political rights.²⁷ Right to live in a healthy environment is a fundamental human Right. the apex court has dealt with the issue in a number of cases.

22 Ibid

23 Supra note 14

24 Ibid

25 Supra note 15 p 418

26 ibid

27 Supra note 6, p 625 -626

In *M.C Mehta v union of India*²⁸ and *Ratlam Municipality V vardhi chand* ,²⁹ the apex court held that the right to life under Article 21 means a life of dignity to be lived in a proper environment free from the dangerous to diseases and infection. In *subhah kumar V state of Bihar*,³⁰ it was observed that right to life is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impair that quality of life in derogation of laws, a citizen has to right to have recourse to Article 32 of the constitution. In *chhetriya pardhusan Mukti Sangarsh samiti V State of Uttar Pradesh* ,³¹the supreme court held that Article 21 of the constitution provides every citizen with the fundamental right to enjoyment of quality of life and living . in case of any violation or derogation of law endangering or impairing this right ,recourse to Article 32 could be taken . it is abundantly clear that the supreme court has again and again emphasized in number of case that the right to life can be enjoyed in proper and healthy and unpolluted environment.

Conclusion

Dangerous level of pollution in water ,air, earth, and living things major and undesirable disturbance to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources and gross deficiencies harmful to the physical, mental and social health of men in manmade environment particularly in the living , the working environment have affect the human rights

It is submitted that human life id directly connected with the environment. The right to a healthy environment is now found in a number of regional human rights instruments around the world. However, there is absence of a specific right to a safe and ecologically balanced environment. Nearly all global and regional human rights bodies have recognized and accepted that there is a aloes link between environment protection and human rights. right to healthy environment is also a human right. There is need to create awareness about the promotion and protection of human right and healthy environment. This can be done through education. Strategies should be made for creating mass awareness.state can also play an important role in this direction.

28 AIR 1987, Sc 965¹

29 AIR 1980.Sc 1962

30 (1991) 1 Sc 598

31 AIR 1990 Sc 2060
