

A Legal Framework to Protect Right to Environment as a Human Right: A study with reference to India

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Abstract: Human Rights are universal and fundamental in nature, but these rights are universally and legally recognized only after the United Nations organization. The UNO recognized and declared Human Rights on 10th December, 1948 through the Universal Declaration of Human rights and subsequently through the International Covenant on Civil and Political Rights, 1966 as well as International Covenant on Economic, Social and Cultural Rights, 1966. Human Rights include right to life and right health related with right to good environment. However no special importance is given to protect environmental rights in Human Rights Conventions. Indeed, Environment and human life are interconnected one to another. To lead a decent, dignified and a standard of human life, we need good environment, but due to over population, industrialization, urbanization and modernizations have made a significant impact on the environment more vulnerable. Perhaps, Human Rights focus may serve to secure higher standards of environmental quality, based on the obligation of states to take measures to control pollution affecting health and private life. Perhaps, at very first the Stockholm Declaration of 1972, then Rio- Declaration on Environment of 1992, the United Nations Frame work Convention on Climate Change etc., were made several attempts to conserve and protect the human environment at the international level. As a consequence of the Stockholm declaration, the state parties are required to adopt separate legislative measures to protect and improve the environment. Based on the International Human Rights Conventions and International Environmental policies and programmes, the Government of India incorporated these Human rights and Environmental provisions in the Indian Constitution under Article 21, 51—A and 48--A and enacted the Protection of Human Rights Act and several Environmental protection Legislations also. Besides, the Indian Judiciary also made a significant role to protect the Human and Environmental Rights.

Key words: International Conventions, Right to Environment, Human Rights, Judicial decision and Legislations.

I. INTRODUCTION

Human rights are universal and fundamental rights without which human beings can't realize the standard of human life. These rights are inalienable and inter-related one to another. Perhaps, these rights are universally and legally recognized only after the establishment of UNO. Obviously, environment and human life are interconnected one to another. Indeed, to lead a dignified human life, we need good environment, but due to over population, industrialization, urbanization and modernizations etc., have made a significant impact on the environment more vulnerable. Human Rights focus may serve to secure higher standards of environmental quality, based on the obligation of states to take measures to control pollution affecting health and private life. A safe, clean, healthy and sustainable environment is an integral part to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfill our aspirations and we may not have access to even the minimum standards of human dignity.

II. THE METHODOLOGY ADOPTED IN THE RESEARCH PAPER

The methodology adopted by the researcher in the present research paper is a doctrinal method, and the topic is related to international human and environmental rights with specific reference to India. In this doctrinal research, the researcher has confined to study the reasons for environmental pollution and to find out solution for the protection of human beings their right to environment and here Analytical method of research followed in this paper.

III. OBJECTIVES OF THE RESEARCH PAPER

The research paper covers on human and environmental issues which applies both the global and national level. The objectives of this paper are as follows;

- 1) To examine the International legal framework to protect the human Environmental rights.
- 2) To analyze the Constitutional and Legislative provisions in India to protect human environmental rights.
- 3) To know the role of governments to protect the environment in India.
- 4) To find out solutions in the direction to protect the right to environment as a human right.

IV. HYPOTHESIS OF THE RESEARCH PAPER

The researcher has undertaken the present study in order to find out the International Legal framework and to review the Constitutional and legislative provisions to protect the right to environment as a Human right in India. The researcher has framed the following hypothesis,

- 1) The existing international legal frameworks relating to protect the right to environment are inadequate.
- 2) The legal protection for environment in India is not sufficient.
- 3) Governments have not shown proper interest to protect environmental rights

V. REVIEW OF THE LITERATURE

The review of literature provides an excellent beginning point to the research paper; perhaps the area of research is focusing on the issue of the right to environment as a human right. To carry this research work, the researcher has referred relevant literature such as books, precedents and journals relied upon the materials relating to this area.

VI. MEANING OF HUMAN RIGHTS

As per Section 2 (d) of the protection of Human Rights Act, 1993, Human Rights mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”

VII. MEANING OF ENVIRONMENT:

As per Section 2 (a) of the Environmental (Protection) Act, 1986, Environment means it includes Water, air, land, human beings, other living creatures, plants, micro-organism and property”.

VIII. IS RIGHT TO ENVIRONMENT IS A HUMAN RIGHT?

As it is already stated that human rights are inter related and interconnected, right to life and right to environment are interrelated, right to life and right health are inter connected and right to environment is a part of human life. Without good and decent environment, human beings can't succeed to their decent and dignified life. So that, a decent physical environment is a precondition for human dignity and worth of human life, which includes human health and human work. Hence, no doubt Right to Environment is a Human Right.

IX. IMPACT OF ENVIRONMENTAL POLLUTION ON HUMAN LIFE

Environmental pollution causes for climate change, heat waves, health issues like respiratory diseases, heart diseases, cancer, Asthma, hearing loss, dehydration, unsafe drinking water, and unsafe climatic conditions such as extreme heat. Due to change of weather conditions old age people are dying, children and pregnant women are at high risk of health problem which affect the decent and dignified life of human beings.

X. NECESSITY FOR SUSTAINABILITY OF ENVIRONMENT

As earlier said Industrialization, Globalization, Urbanization, New innovations, Development of Technology, over population and Developmental Activities etc., expand the risk to human life and human health. Therefore, we need environmental laws to sustain the environment for safeguarding of human life and protect the health of human beings. However, now right to environment is a global issue and protection of environment is worldwide concern and it is not limited to any one country.

XI. PROTECTION OF HUMAN AND ENVIRONMENTAL RIGHTS AT INTERNATIONAL LEVEL

Prior to the establishment of UNO, human rights were in the means of morals, values, ethics, etiquettes and religion. Perhaps, human rights are universally and legally recognized and protected after the establishment of UNO only. The UNO adopted the United Charter in 1945 which provides

various provision for high standards of living, health and universal respect and observance of human rights and fundamental freedoms of all without any kind of discrimination based on Sex, Race, Religion, National and Language.

Then, at very first, the UNO adopted Universal Declaration of Human Rights on 10th December, 1948, which was the milestone for the recognition and development of human rights at the international level. The UDHR provides provision for everyone has the right to life, liberty and security of person and a provision also for right to standard of living adequate for health and well-being of himself and his family, including food, clothing and medical care, but it was not made mandatory for the realization of rights.

Then, for the realization of human rights effectively, the UNO adopted the International Covenant on Civil and Political Rights (ICCPR) in 1966 which states that every human being has inherent decent and dignified life. Subsequently, the UNO adopted another International Covenant on Economic, Social and Cultural Rights, 1966, (ICESCR) has made an obligation to recognize the right of every one to an adequate standard of living for himself and his family including adequate food, clothing and housing and to continuous improvement of living conditions. When we observe the above International Bill of Human Rights, there is no separate provision for Environmental protection. However, initially, there was no separate International Environmental Treaties.

Indeed, the United Nations conference on the Human Environment was the first world conference to discuss the environment a major issue, which was prepared 26 environmental related principles and to start a dialogue between industrialized and developing countries on the link between economic growth, the pollution of air, water and oceans and the well being of people around the world. As a consequence of the Stockholm Declaration, the state parties are required to adopt separate legislative measures to protect and improve the environment at their nationals. As a result of Stockholm Declaration, United Nations Environment Programme came to force.

Then, the Rio Declaration on Environment and development was adopted in 1992 with 27 Principles. Accordingly, human beings are at the

centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. Subsequently, the United Nations Framework Convention on Climate Change was adopted in 1992 with the ultimate aim of preventing dangerous human interference with the climate system. Besides the above, the United Nations Biodiversity Convention, 1992, the Kyoto Protocol, 1997 and Paris Agreement 2015 were important international treaties to protect the environment globally.

XII. OBLIGATIONS OF STATE PARTIES TO PROTECT HUMAN ENVIRONMENTAL RIGHTS

As above said, there are several International Human and Environmental Rights related Declarations, Covenants and Conventions which imposed legal obligations upon the member states to ensure and enforce for their implementation at the national level. Concerning the environmental protection, the first part of both Stockholm Principle 21 and Rio Principle 2 establish a State's obligation to ensure that activities do not cause damage to the environment of other States or to areas beyond national jurisdiction. The second part of both Stockholm Principle 21 and Rio Principle 2 establishes a State's responsibility to ensure that activities do not cause damage to the environment of other States or to areas beyond national jurisdiction or control. This obligation is balanced by the declarations' recognition, in the first part of the respective principles, of a State's sovereign right to "exploit" its natural resources according to its "environmental and developmental" policies.

XIII. DIFFICULTIES OF STATE MEMBERS TO PROTECT HUMAN ENVIRONMENTAL RIGHTS

Even though they are several International Treaties to enforce protection of environmental commitments, member states of the UNO have their own difficulties at their nationals such as internal political disturbances, lack of financial resources, over population, poverty, illiteracy and unemployment, over exploitation of natural resources to meet financial difficulties, negligence and lack of commitment to protect environment, failure to implement International treaties on environment and finally, lack of awareness in

environment and its issues and impact on human life.

XIV. CONSTITUTIONAL STATUS TO RIGHT TO ENVIRONMENT IN INDIA

Originally, the Indian Constitution had no provision for environmental protection, but due to the impact of Stockholm declaration, the Government of India by bringing 42nd Amendment to the Indian Constitution inserted two provisions under 48 A and 51 (g) in 1976 in the realm of Directive Principles of State Policy. Accordingly, Article 48-A provides provision for protection and improvement of environment and safeguarding of forests and wild life. The states shall endeavor to protect and improve environment and to safeguard the forests and wild life of the country. Similarly, Article 51 (A) (g) emphasis upon individuals as a fundamental duty to protect and improve the natural environment which includes forests, lakes, rivers and wild life and to have compassion for living creatures. Apart from the above, Article 21 guarantees to “Protection of Life and Personal Liberty” and no person shall be deprived of his life or personal liberty except according to procedure established by law.

XV. LEGISLATIVE PROVISIONS TO PROTECT RIGHT TO ENVIRONMENT IN INDIA

After the promulgation of Indian Constitution, the Government of India has enacted several legislations to protect the environment and they are as follows;

(A).The Wildlife (Protection) Act, 1972, this Act regulates the hunting of wild animals, protect specified plants, sanctuaries, national parks and closed areas. It provides for protection to listed species of flora and fauna and establishes a network of ecologically important protected areas. Besides, the Act empowers the Central and State Governments to declare any area as a wildlife sanctuary national park and closed area.

(B).The Water (Prevention and Control of Pollution) Act, 1974, it is the first attempt to deal with environmental issues. The Act prohibits the discharge of pollutants into water bodies beyond a given standard and lays down penalties for non-compliance. The Act provides provision for the establishment of Central and State Pollution Control

Boards to look after preventing and controlling pollution.

(C).The Forest (Conservation) Act, 1980, this Act is aimed to protect and conserve forests and it restricts the powers of the state in respect of de-reservation of forests and use of forestland for non-forest purposes.

(D).The Air (Prevention and Control of Pollution) Act, 1981, this Act is enacted to control air pollution and combat air pollution by prohibiting the use of polluting fuels and substances. Accordingly, while establishing or operating any industrial plant in the pollution control areas which requires consent from state boards.

(E).The Environmental (Protection) Act, 1986, this Act is designed to provide a framework for the co-ordination of Central and State authorities which were established under the Water and Air (Prevention and Control) Acts, 1974 and 1981. Under this Act, the Central government is empowered to take necessary measures to protect and improve the quality of environment by setting standard for emissions and discharges.

(F). The Factories Act, 1948, this Act provides provision for preventing industries involving in hazardous processes or unless special care is taken, raw materials used therein or the intermediate or finished products, by products, wastes and effluents.

(G).The Biological diversity Act, 2002, it aims at the conservation of biological resources, managing its sustainable use and enabling fair and equitable sharing benefits arising out of the use and knowledge of biological resources with the local communities.

XVI. JUDICIAL INTERPRETATION ON THE RIGHT TO ENVIRONMENT AS A FUNDAMENTAL HUMAN RIGHT

The Constitutional Courts such as the Supreme Court and State High Courts have empowered to exercise judicial review power over Legislative and Executive decisions in India. Besides, Article 32 of the Indian Constitution confers the Right to Constitutional Remedies for the enforcement of the fundamental rights of an aggrieved citizen. Clause (2) of Article 32 empowers the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of fundamental rights. Similarly High Court is also empowered to

issue writs under Article 226 of the Constitution. The Apex Court in several cases interpreted the right to environment as a Fundamental Human right and gave several decisions to protect the right to human environment and they are as follows;

❖ In *Charan Lal Sahu Case*, (AIR 1990 SC 1480), the Supreme Court stated that the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.

❖ In *Damodhar Rao v. S. O. Municipal Corporation Hyderabad*, (AIR 1987 AP 171). the Court resorted to the Constitutional mandates under Articles 48 A and 51 A (g) to support this reasoning and stated that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution.

❖ In *Ratlam Municipal Council v. Vardhichand*, (AIR 1980 SC 1622).the Supreme Court in the instant land mark judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary constraints.

❖ In *Narmada Bachao Andolan v. Union of India and Or.*, (AIR 2000 SC 3751) the Supreme Court of India upheld that “Water is the basic need for the survival of human beings and it is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life.

❖ In *Subhash Kumar v State of Bihar*, (AIR 1991 SC 420) the Apex Court recognized Water and Air are an inalienable part of life under Article 21 of the Constitution of India.

❖ In *Vellore Citizens’* (AIR 1996 SC 2715) case judges have formulated the concept of Sustainable development for the first time in India in Environmental Jurisprudence explaining the importance of the environment and health aspects of life.

❖ *M.C Mehta v Union of India*, (AIR 1997 SC492) commonly known as the Oleum Gas Leak case in this case the Court laid down that an enterprise engaged in a hazardous activity which possess a serious threat to people living nearby and to the people who are working there will be held absolutely for their actions.

Based on the above judgments, the Apex Court formed different principles to protect the environment such as Polluter Pay Principle, Precautionary Principle; Absolute liability and Public Trust Doctrine etc.,

XVII. ROLE OF GOVERNMENTS TO PROTECT THE ENVIRONMENT

Indeed, India is considered as a welfare state, it is the obligation of governments to seek the welfare of all, but both the Central and State Governments have been showing interest only for developmental activities, but neglecting to protect the environment and lack of special measures to protect environment by them. In many cases governments have been failed to protect forest lands and improve forest lands and to protect public properties. Here governments played inadequate and insufficient role to protect environment.

XVIII. FINDINGS AND SUGGESTIONS

Based on the above discussion, the Researcher has found that there are a number of International treaties on Human Rights and Environmental protection at the International level, but member states have not been strictly implementing and enforcing the treaty provisions and neglecting the environmental protection.

The Researcher similarly found that in India also, right to life is guaranteed as a fundamental right under Article 21, but right to environment comes under the Directive Principle of State Policy under Article 48 A and 51 (1) (g) of the Constitution.

The Researcher has found that the Indian Judiciary has played a significant role to interpret and protect right to environment as a fundamental human right to lead a dignified life and protect human health also. Indeed, India is a federal state, where states are combating and competing to implement developmental activities and forgetting about sustainable development agenda policies. While acquiring land for public purpose and developmental activities, there is no priority to plantation.

The Researcher further stated that the Pollution Control Boards also inactive to discharge their duties due to political pressure. Therefore, the Researcher has forwarded the following suggestions;

- Priority should be given to protect environment while conducting and implementing any developmental activities either by Central or State Governments.
 - There must be a separate financial allocation for realization of plantation while acquiring land for developmental activities by governments.
 - Effective and appropriate measures shall be taken to dispose waste and to reduce waste.
 - Suitable steps shall be taken to prevent soil erosion.
 - To create awareness among public about importance of environmental protection and its issues and impact on society.
 - Suitable steps shall be taken to monitor, regulate and control industrial hazardous process to reduce health and environmental risks from hazardous sites
 - There must be a strict implementation of environmental policies and programmes by Governments.
 - Overall effective steps shall be taken to reduce harmful pollutants in air, water, soil, food, and materials in homes and workplaces.
- [7] The Universal Declaration of Human Rights, 1948. (UDHR)
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 - [14] The Air (Prevention and Control of Pollution) Act, 1981,
 - [15] The Environmental (Protection) Act, 1986.
 - [16] The Water (Prevention and Control of Pollution) Amendment Act, 1988.
 - [17] The Rio Declaration, 1992.
 - [18] The Protection of Human Rights Act, 1993.
 - [19] The Biological diversity Act, 2002,

XIX. CONCLUSION

Based on the above discussion, the Researcher has concluded that the steps taken at international and national level are inadequate and insufficient to promote and protect right to environment as a human rights. Therefore, to protect ourselves and our future generations of human beings strict actions are required by both International and national level. Governments have to take special interest to protect the environment for the survival and safety of future generation of people.

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