

Human Right and Environment Pollution in

India & judiciary Contribution

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ABSTRACT

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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 basic human right. Environment pollution is a worldwide problem and India, too, is facing the menace. While human rights are necessary to promote the personality development of human beings material comfort and healthy environment are necessary safeguard conditions conducive to such a personality development. Without hygienic good nobody can strive towards his goal. That is why there is a natural link between Environment, Development and Human Rights. Principal of 1 of the declaration of Nation Conference on Human Environment also emphasis on this fact, it states, " Man has the fundamental right to freedom equality and adequate condition 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.

"Again, para 1 of the preamble of the same declaration states;"Man is both creative and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral social spiritual growth.

To begin with Human Rights are those essential condition of life without which man cannot be at his best. These are inherent in all individuals irrespective of their cast, creed, religion, sex etc. On the other hand, meaning of the term environment is very wide in the sense that it takes into account all those factors which directly have bearing upon the natural surroundings of human beings. Thus, the link between the concept of human right 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 emphasis that both are mutually responsive and necessary for human welfare. The equitable development and promotion of both is desirable and feasible for welfare of humanity.

Keywords :- Environment Pollution, Human right, Development adequate conditions fundamental right

I. 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 basic human right. Environment pollution is a worldwide problem and India, too, is facing the menace. While human rights are necessary to promote the personality development of human beings, material comfort and healthy environment are necessary safeguard conditions conducive to such a personality development. Without hygienic good nobody can strive towards his goal. That is why there is a natural link between Environment, Development and Human Rights. Principal of 1 of the declaration of Nation Conference on Human Environment also emphasis on this fact, it states, " Man has the fundamental right to freedom equality and adequate condition 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. "Again, para 1 of the preamble of the same declaration states;"Man is both creative and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral social spiritual growth. To begin with Human Rights are those essential condition of life without which man cannot be at his best. Both aspects of man's environment, the nature 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 right 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 emphasis that both are mutually responsive and necessary for human welfare. The equitable development and promotion of both is desirable and feasible for welfare of humanity.

II. HISTORICAL BACKGROUND:

Human rights 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 individuals can be traced out from humanitarian traditions, the unclosing in all parts of the world and the historic pronouncements of philosophers, political leaders and liberties of man were recognized centuries, in general and twentieth century, in particular. 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 relation, though, in the United Nation created in 1945. In 1948, United Nations General Assembly adopted without dissent the "United Nation DecelARATION of statements of Human Right' which even today provides the most authoritative statement of International Human Right norms. Its 30 articles encompass a board range of civil, political, economic, social and cultural right and subsequently United Nations General Assembly adopted two covenants of right in 1966 i.e. on Civil and Political Right and Economic, and Cultural Right.

The United Nations Declaration on Human Right provides that economic, Social and Cultural Rights includes the Right to Health, including healthy living conditions and available, accessible and acceptable quality health

services. Human Right are broadly of two kinds – negative and positive. Negative right 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. Right to life, privacy, human punishments etc. are examples of negative rights. Positive rights are usually political and economic right, like the right to food, education and so on. Similarly the protection of the Environment has been integral to the cultural and religious ethos of most of the human communities. Stockholm Declaration adopted by the International Conference on Human Environment in June, 1972 to which India was a party is called the 'Magna Carta' of Environment. After this Conference, there have been a number of important international conference & declarations on the specific problems of environment. Like second United Nations conference on Human Settlements 1996, Nairobi declaration, Vienna convention for the protection of Ozone Layer 1985, Basel Convention on the control of Transboundary Movements of Hazards Wastes and Other disposal 1989, United Nations Conference on Environment and development (UNCED) known as Earth summit 1992, RIO declaration on Environment and development, climate change Convention 1992, convention on Biological Diversity 1992.

III. ENVIRO – HUMAN RIGHT

The normative abundance of international environment law appears to be quite considerable still the desideratum of human right approach to ecological sustainability and planetary viability among municipal legislatures are well discernable and documents.

In contrast to it ethnocentric approach i.e., 'all human being have the fundamental right to an environmental adequate for their health and well being' has either suffered a serious setback or not brought to fruition environmental legal ordering, While, entering into the third generation of human right, It is nothing but imperative to grapple the complementarily of economic growth and environment sustainability in human right discourse. Therefore, it is important to understand the extent to which environmental warfare is linked to overall tactics of high technology counter insurgency warfare carried on against people to the land itself. Just as counter insurgency warfare tends towards genocide with respect to people, so it tends towards ecocide with respect to environment. In such a deseperating atmosphere it is high time to come out of ordering' of ecological sustainability can be seriously undertaken. In the context of theoretical and conceptual postulates of human right approaches to environment protection the present study scans the imperatives and viabilities of human right jurisprudence in Indian perspective.

IV. REVIEW LITERATURE

Y.K SABHARWAL'S work If we look at society from a historical perspective, we realize that protection and preservation of the environment has been integral to the cultural and religious ethos of most 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 emanated the spirit of God. Hinduism declared in its dictum that "(t) the Earth is our mother and we are all her children." The ancient Greeks worshipped Gaea 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 generation.

U.R GHAI'S work 'International Politics' examines the basis of the politics the need for the protection of human environment can be legitimately described as the international objective of primary importance. The protection of environment has today gained recognition by the common concern of all the civilized states.

Environment due to of natural resources, industrialization, urbanization, use of pesticides and because of the existence of problems like poverty, poor housing, bad public health which characterize life in almost all the developing countries. This has also given rise to the need to ban certain chemicals and technologies of daily use which have been the main culprits guilty of deteriorating the environment.

No state should act in manner or permit the use of its territory in a way which can be injurious to other states. This rule is taken to mean in contemporary times as the rule which compels every nation not to act in way as can cause environment pollution.

In fact it was in the 1960 that humankind began becoming conscious of the need to adopt a convention on Human Environment On 3rd December, 1968 the UN General assembly passed a resolution favouring an international conference on human environment.

K.K GHAI'S works 'International politics describes the Stockholm Conference On Human Environment (1972) the UN convention on Human Environment has held at Stockholm from 5 June 16,1972 And it adopted a declaration on Human Environment. Seven areas were delimited for securing action directed to protect Human Environment.

The Declaration on the Human Environment, the UN conference on the Human environment 1972, the human environment affects the economic development of the world and the natural growth of population continuously presents problems on the preservation of the environment. The second part of the Declaration contains 26 principles. These principles reflect the fundamental international responsibility of states regarding environmental preservation and pollution control.

T.M. COOLEY identified that all persons may truly speak, write and publish their sentiments on any subject, being, responsible for the abuse of that right and law shall be enacted to restrain or abridge the liberty of speech or of the press. In prosecution for the publication of paper, investigating the official conduct of officers or men in public may be given in evidence and in all indictments for libel, the jury shall be the judges of the law and the facts.

V.PARBRAHMA SASTRI revealed that In Constitutional jurisprudence, The Right to life & Personal liberty is the most valuable among fundamental Rights, denuded of this there cannot be a fully-fledged human personality at all. In this sense, it looks the shortest Article 21 has countered the largest freedom. As pointed by the Supreme Court in Unnikrishnan V. state of Andhra Pradesh has been ever expanding into its sweep rights such as the right to go abroad, the right to medical assistance, etc. Containment & right against custodial violence has expanded the connotation of personality liberty and its significance.

M.V NAYDU studied that the Supreme Court has made very valuable suggestions for improvement of adjudicatory machinery under the various environment laws. The main burden of these suggestions is that in all

environment courts, tribunals and appellate authorities, there should be judge of rank of High Court or a Supreme Court judge, Sitting or retired, and a scientist or a group of scientists of high rank and experience so as to help a proper and fair adjudication of disputes relating to environment and pollution. Further, a provision ought to be made for an appeal to the Supreme Court. The present day system of adjudication is not satisfactory. The scientific and technological Issues arising in environment matters are extremely complex and there there is need for technical persons well versed in environmental laws to handle these issues. Though, there are so many studies on focus rights of India but to the best of our knowledge more study on expansion of right to life and role of judiciary has not been conducted so far by any scholar. There, the present study will be a humble attempt to fill this gap in the existence knowledge in the field.

V. OBJECTIVES

To Identify the reasons for Right to protection of Environment

To review the role of the Human rights in protection of Environment

VI. METHODOLOGY

Historical analytical Approach will be adopted for conducting this study. The source of the study will be basically secondary resource of information. These resource will include original files, various laws, journals articles source of the result.

VII. CONCLUSION

Placed in nutshell the human right culture has percolated down to Indian human right regime within short period of time. With an active working partnership with an enlightened NGO community, and public spirited movements, sweeping judicial innovations were put forth. The emerging enviro-human right scenario has almost set at naught the paternalistic, authoritarian and repressive legal regimes. In the wake of country's extinctive ecosystem and endangered bio-diversity the well thought and conscientized judicial intervention left a mark of wisdom in overall planning, policy and legal discourse. It is indeed surprising but remain say able that despite environment malign policies, repressive legal regime, bureaucratic slackness, official secrecy, and non-tolerant political culture, enviro-human right movement received renewable impetus. A careful jurisprudential analysis of specific content and scope of these rights reveals, a conceptual quagmire and a sort of enigma. This is more noticeable when attempt to locate appropriate dimension on the matrix of varying degree of articulated right. One connotation tantamount to 'right to human health free from environmental pollution, unhygienic conditions and poor sanitation.' Even in the absence of sustainability injury the court are willing to enforce these right under writ jurisdiction. Secondly, these right relate to principally to 'pollution free environment; than health per se. Thirdly, the scope of the right can be extended to an 'entitlement of ecological balance, sustainable development, and right to live in perfect harmony with nature. The probable specification of these rights are not exhausting in content and doors of inter preparation are still open. However, the preponderance of balance tilts

towards absolutist and relativist approaches. The procedural attraction, low cost device, speedy hearing, low evidentiary compliance, comprehensive remedy and non-appeal ability are some of the reasons for its frequent use. That is why in spite of substantive ambiguity, human right approach in realization of environmental justice can be tailored to suit the need of complex ecological problem. Last but not the least it remains to be safely concluded that a strong indigenous tradition of environmentalism ingrained in historical roots should also be explicated in subtle principle and popularized in the mainstream of political, legal and judicial thought along with the modern developments in enviro-human jurisprudence.

It is submitted that human life is directly concerned with the environment. The right to a healthy environment is now found in a number of regional Human Rights instrument around the world. However, there is a absence of 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 close link between environmental 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 rights and healthy environment. Although, the right to a healthy and clean environment as envisaged under the existing constitutional environmental scheme is adequate in many respect, its adequate and efficiency depends upon the conditional judicial co-operation . It is not appropriate to leave such an important and vital right to judicial vagaries. Therefore, it is imperative that this right finds an express mention in part III of the construction.

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