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THE HUMAN RIGHTS PERSPECTIVE OF ENVIRONMENT AND CONSERVATION

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Abstract

The primary concern of the world today is conservation of the environment. When we look into the concept of environmental protection, the principle of intergenerational equity comes to the forefront. All human beings depend on the environment to survive. A safe, healthy environment is a pre-requisite to a wide range of human rights. Without a healthy environment, we are not able to fulfill our obligations. In recent times, the development of human rights in sync with environment has highly increased. Development should be focused not only for the present generation but also for the future generation. Rapid industrial growth and use of technology has seriously affected the natural growth of a country in terms of natural resources, livelihood of poor and also destroyed the habitat of animals and plants. The protection of our environment is itself a human right which cannot be overlooked. Further it additionally assesses how far the component of human rights is useful to give solutions for the casualty of environmental degradation and to give better protection to the global environment.

Keywords: *Development, Environment, Human Rights, Sustainable Development*

Introduction

The primordial concept of sustainable development as a human right has been inscribed as a fundamental principle under the United Nations Charter. It is an integral part of the international human rights law. Both the disciplines of human rights and environment have deep historical social roots. Although human rights law is more rooted in the collective consciousness, the accelerated process of environmental degradation is generating a new 'environmental consciousness'. Second, both are purposeful legal systems in which universal consent is an objective; they are of variable content and are open to reality and to social

changes. The contents of both disciplines need to be adapted to dynamic social processes; their normative corpus must meet the needs of each social era, with the objective of fulfilling its protective ends.

Third, as regards internationalization, the international community has made the commitment to adhere to the realization of human rights and respect for the environment.

From the Second World War¹ onwards the relationship State-individual has been of pertinence to the international community, the consequences of environmental degradation transcend political boundaries and are of critical importance in the preservation of world peace and security. The protection of the environment is internationalized, while the relationship between the State and the planet becomes a concern of the international community. Fifth and finally, as concerns universalization, both areas of law tend to universalize their object of protection. Human rights are presented as universal and the protection of the environment appears as everyone's responsibility.

Justice P.N. Bhagwati² stated that environmental protection is the culminating point in the evolution of the first generation of human rights and transcends both the first and second generation of human rights. Right to a healthy and sustainable development calls for a global community concern which should be addressed rigorously.

In ancient Vedic discourse, the concept of 'purusha' and 'prakriti'³ found prevalence in the vedic text. The four Vedas had mentioned the importance of a healthy environment in various references of commentaries. Infact any injury to an animal was considered a punishable offence. The relationship between the environment and human rights was first recognised in the United Nations Conference on Human Environment at Stockholm, Sweden in 1972, where it was observed that the human being is both the moulder and creator of the environment. The World charter for nature had acknowledged that mankind is a part of nature and life depends on the uninterrupted functioning of natural system, ensuring supply of nutrients and energy to the living.

¹ Michael J. Kane, "Promoting Political Rights to protect the Environment", *The Yale Journal of International Law*, Volume 18, Number 1, pp. 389-390 1990.

² P.N. Bhagwati, *Fundamental rights in their economic, social and cultural context* excerpts from paper presented at Judicial Colloquim, Bangalore Feb 1988

³ P.N. Sen, *General principles of Hindu Jurisprudence*, Allahabad Law Agency

One of the most important consequences is to provide victims of environmental degradation the possibility of *access to justice*, which is considered to be one of the basic human rights. Given the present situation of absolute helplessness suffered by victims of environmental degradation, linking human rights and the environment brings such victims closer to the mechanisms of protection that are provided for by human rights' law.

It has been repeatedly reminded in the landmark conference on environment held at Rio de Janeiro that human beings are at the centre of concern for the environment. UN Human Rights Commission in its Resolution 2005/60 enumerated rights of the human being as part of the environment. The Covenant on Economic, Social and Cultural Rights⁴ (ICESCR) 1966, recognises the need for improvement of environment as a basic human right under the domain of right to health. The world community especially the United Nations has made untiring effort for establishing the link between environment and human rights and in that process, John Knox and David R. Boyd was appointed as a Special Rapporteur on Human Rights and the Environment (2015-2018) and from 2018 onwards respectively.

The shark tanks of multinationals have highly neglected the environmental safeguards in establishing their factories and technologies as a result, of which the countries especially third world countries are forced to emit high amount of pollution. The destruction of grievous environmental violation can be witnessed in the tragic Bhopal⁵ gas leak disaster in December, 1984.

In 1984 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities⁶ review report prepared by special Rapporteur Fatma Zohra Ksentini had stressed the development incentives on Environment and Human Rights.

The dumping of trade wastes by developed countries into the developing countries has seriously affected the lives of the civilians. In USA, 60 million kgs of fertilizers are dumped into various water disposal system. The importance of human rights for conservation of the environment has been duly regarded as part of the international law.

⁴ Bhaskara Rao (ed), *Human Rights Education*, New Delhi, Discovery Pub House, 595 p, 1998

⁵ Upendra Baxi, *Mass Disaster and Multinational Liability (the Bhopal case 2-3 December, 1984)*

⁶ Mrs. Fatma Zohra Ksentini, *Human rights and the environment* available at

http://hrlibrary.umn.edu/demo/HRandEnvironment_Ksentini.pdf (last modified on 17 January, 2023)

Former Chief Justice V.R. Krishna Iyer has pointed out that the transnational⁷ corporations with their unlimited exploitative appetites, infranational industrialist with imitative tactics and the power of money at various levels woo political power and white collar, smog the vision of the governments and lubricate the wheels of the bureaucracy and propagandize pollution as a necessary evil of the nation.

Despite the efforts of the international community in establishing numerous conventions on environment, the concern for human rights survival in constant destruction of the environment has made us to rethink the strategies of environment protection.

The industrialised countries are facing fresh water and natural resources crisis. Principle of Rio Declaration enumerates the human beings entitlement to a healthy and productive life in harmony with nature. But that has not been fully realised to this day. The fragile exploitation of the forest resources for economic resources has affected the animals right to livelihood as well as quality of life of individual citizens.

There is lack of applicability of the provisions of the various legislation on environmental protection. Our fundamental right to a sustainable environment is in serious jeopardy. The jurisprudence of Public Interest Litigation has been envisage as a powerful tool in the hands of citizens to combat against environmental pollution. In the landmark judgment of *M.C. Mehta Vs. Union of India AIR 1986 SC 1086*, Justice P.N. Bhagwati⁸ observed that we have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by references to the law as it prevails. We no longer need the clutches of a foreign legal order.

In the Saproon⁹ Valley Case, court observed that strict proof of damage is not necessary where there has been considerable destruction to the environment.

Likewise in the case of Union Carbide Corporation, wherein the court had evolved the principle of absolute liability, looked into the urgent necessity of immediate relief of the people whose family members had suffered death at the tragic disaster of 1984.

⁷ V.R. Krishna Iyer, *Environmental pollution and the Law Page no.1* Vedpal House, Indore 1984

⁸ Supra note 1

⁹ *General public of Saproon Valley vs. State of Himachal Pradesh*, 24th April, 1991

The people of Japan had suffered the infamous Minamata¹⁰ disease, due to heavy consumption of sea food filled with mercury agents. Such incidents remind us of the duty to protect not only the environment but also safeguard the health, safety of each individual citizens. The Dodhwal¹¹ case had enumerated that Article 51A(g) imposes a fundamental duty on the citizens to protect the environment at all cost, which is in reality a fundamental right of the citizens.

A welcome measure has been taken by United Nations General Assembly on 28 July 2022¹² declaring that everyone on the planet has a right to a healthy environment. For full development as human beings, exercise and enjoyment of Human Rights by all the people is necessary.

Human Rights and fundamental freedoms help us to develop our intrinsic qualities, intelligence, talents and conscience to meet our material and spiritual needs. It is needless to state that without the recognition of the right to education, realization of the right to development of every human being and nation is not possible.

Article 26 of the Universal Declaration of the Human Rights (1948) inter alia states that 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, social or religious groups and shall further the activities of the United Nations for the maintenance of peace'. Historically, education is an instrument of development and an important factor for social change. In this view, Human Rights education is an integral part of the right to education. It is also recognized as a Human Right in itself.

¹⁰ Minamata Disease The History and measures available at <https://www.env.go.jp/en/chemi/hs/minamata2002/ch3.html> (last modified on 13th January 2023)

¹¹ *L.K. Dodhwal v State of Rajasthan AIR 1988 Raj 24*

¹² The Geneva Environment Network available at <https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment> (last modified on 13th March, 2023)

Conclusion

Environmental sustainability should be the prime concern of importance, where the fundamental right to a clean and healthy environment can be realised. From the nuclear disaster of Three mile island¹³ to the current oil leak tragedy in Baghjan¹⁴, Assam the destruction of the environment has been on a rapid pace, which needs to be resolved at the earliest. The destruction on the resources of the environment cannot be done away with pecuniary compensation, rather these must be robed within the gambit of human rights because it is affecting the fundamental human rights of the people as well.



¹³ Three mile island cancer legacy available at <https://www.science.org> (last modified on 14th March, 2023)

¹⁴ Report on the Baghjan blowout available at <https://frontline.thehindu.com/environment/disaster-baghjan-oil-well-blowout-tinsukia-assam-2021-report/article34987694.ece/amp> (last modified on 10 December, 2022)