

Human right and Environment Pollution in India & Judiciary Contribution

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ABSTRACT: *"Human right and Environment Pollution in India & Judiciary Contribution"* 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 to 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. Principle of 1 of the declaration of the Nation Conference on Human Environment also emphasis on this fact, it states. "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environmental 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 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 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 or indirectly have bearing upon the natural surroundings of human beings. The Encyclopedia Britannica defines Environment, as the entire range of external influences acting on organism, both the physical and biological i.e. other organisms, forces of nature surrounding an individual." Change the physical, chemical and biological condition in the environment is called pollution of the environment.

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 required the power of transform his environment in countless ways and on an unprecedented scale. 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.

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 to 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. Principle of 1 of the declaration of the Nation Conference on Human Environment also emphasis on this fact, it states. "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environmental 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 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,

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II. 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 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 statesman in different 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 Nations created in 1945. The covenant of league of Nations, the predecessor of the United Nations, had not even mentioned Human Right. In sharp contrast the Preamble of the United Nations Charter includes a determination “ to reaffirm faith in fundamental Human Right and Article 1 list “ encouraging respect for human right and for fundamental freedoms for all ” as one of the Organization’s principal purposes. In 1948, United Nations General Assembly adopted without dissent the “United Nations Declaration 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. 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 the Earth is our mother and we are all her children.” The ancient Greeks worshipped Gaea or the Earth Goddess. Islamic law regard 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. 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 conferences & declarations on the specific problems of environment. Like second United Nations conference on Human Settlements (HABITAT –II) 1996, Nairobi declaration, Vienna convention for the protection of Ozone Layer 1985, Basel Convention on the control of Transboundry 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 documented. The prolixity of national enactments on environment mostly gravitate around technocentric approaches where in the inherent tendency of looking at environment from

technological and developmental paradigm dominates over the scene. 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 environmental sustainability in human right discourse. This becomes germane on the matrix of complexity of poverty, population, depleting resources, food, insecurity, energy, crisis, urban gloom, industrial catastrophe and other related problems. Because of marine pollution eutrophication of lakes, denudation of forests, soil acidification, acid raining global climate change, ozone hole, extinction of tropical rain forests in the next millennium the rapid depletion of natural resources will culminate into some planetary catastrophe or irreversible character. 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 desperating atmosphere it is high time to come out of traditional doctrinaire limits to the domain of pragmatic discourse so that global and national careful 'public ordering' of ecological sustainability can be seriously undertaken. This goes without saying that a resilient legal regime always endeavors for development with social and human face. Under this legitimate presumption the ontological status of environmental law both international and national level summons for a close scrutiny from human right perspective. In the context of theoretical and conceptual postulates of human right approaches to environmental protection the present paper scans the imperatives and viabilities of nascent enviro-human right jurisprudence in Indian perspective. This remains say able at this juncture that enlightened opinion making of NGO community along with judicial articulation led to the proliferation of human right jurisprudence to appraise the promise and pitfalls of human right approach ad submits for the exploration of traditional environmentalism and indigenous human right ingrained in the historical roots of the country.

IV. HUMAN RIGHT TO ENVIRONMENT: JUDICIAL

This national extension to right to life was recognized even without specific reference to actual and specific violations of fundamental right. A critical survey to catena of cases exhibits two broad tendencies. The first approach seems heavily concerned with perilous consequences of environmental pollution and immediate threat to sustenance and survival. Whereas the second approach strives to enhance the quality of environment health and sanitation safety and security from hazardous process, ecological balance, preservation of eco-system and bio-diversity. Sustainable development and inter-generational equity. This often resulted in the closure of environmentally malign industries such as time stone and stone quarrying in Doon and Saproon valleys, tanneries at Kanpur, Vellore and Calcutta, hazardous industries in Delhi Rajasthan and elsewhere, banning of aqua culture, prawn farming and other. Most often than not the Supreme court and High Courts have recognized these rights without an attendant fundamental right by issuing set of directives under their writ jurisdictions under article 32 and 226 of the constitution respectively. In *Dehradun Quarrying case* where the illegal limestone mining in the Mussorie-Dehradun region was devastating the fragile ecosystems, the supreme court in an activist tone and tenor held:

We are not oblivious of the fact that natural resources has got to be for the purposes of social development but one can not forget at the same time the tapping of resources have to be done with requisite attention and care so that ecologically and environment may not be affected in any serious way... it has always to be remembered that these are permanent assets of mankind are not intended to be exhausted on the generation.

The Supreme Court passed at least five comprehensive interim orders recognizing right to ecological balance as fundamental right. But none of these orders, articulate the actual fundamental right infringed in spite of the copious reference to articles 21 and 32 of the constitution. Since the exercise of jurisdiction under article 32 presupposes the violation of the fundamental right, it becomes necessary to reasonable. Drive the fundamental right that the supreme court had in view when it used orders. This reasoning finds a peripheral mention in justice K.N. Singh's concluding observation justifying the closures of polluting tanneries in *Ganga Pollution (Tanneries)* case:

We are conscious that closure of tanneries may bring unemployed, loss of revenue, but life, health and ecology have greater importance to the people .

Dealing with the environment ramification of haphazard urban planning the Andhra Pradesh High Court construed the right to ecological balance as under:

It would be reasonable to hold that the enjoyment and fulfillment guaranteed by art 21 of the constitution embraces the protection and preservation of nature's gifts without (which) life can not be enjoyed. There can be no reason *why practice of violent extinguishment of life alone should be regarded a violence of article of 21 of*

the constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should be regarded as amounting to violation of art 21 of the constitution.

'It, therefore, becomes the legitimate duty of courts as the enforcing organs of constitutional objectives to forbid all actions of the state and citizen from upsetting the environmental balance.'

Similar approach was adopted in *Kinkri Deri V. State of Himachal Pradesh*, wherein the lime stoning activity was banned on the ground of being violative of Article 21 alongside Articles 48-A and 51A (g). It ruled that 'to ensure the attainment of the constitutional goal of the protection and improvement of the natural wealth and environment... from the hazardous consequences of the arbitrary exercise of power and granting mine lease... without due regard to life, liberty and property *the court will be left with no alternative but to intervene effectively by issuing appropriate writs order and direction.* Extinguishment of life due to slow poisoning under the arbitrary exercise of power attracted condemnation of Supreme Court in *Subhash Kumar V. State of Bihar*. The court justified the applicability of writ jurisdiction on the ground of derogation of right to enjoyment of pollution free water and air under Article 21. In *Koolwal V. State of Rajasthan*, a petition to enforce improved sanitation measures in Jaipur met favorable disposition based in part in the expended right to life argument. No specific injury was alleged but 'poor sanitation and preservation of the environment due to slow poisoning of Jaipur resident was held to be Violation of right to health.' In this case a direct nexus with human health and injury has not been demonstrated at all. the court further ruled that 'fundamental duty enshrined under Article 51A (g) extends not only to citizens but to instrumentality of State'. Dovetailing the environment and health condition the Supreme Court in *Virender Gaur V. State of Haryana* delineated that 'the word environment is of broad spectrum which beings within its ambit hygienic atmosphere and ecological balance'. The citizen can not exercise the fundamental right unless the corresponding constitutional duty in being carried out by the municipality.

The broad sweep of right to decent environment as a pair of right to life extended even to those cases where mere apprehension to environmentally deleterious activities were anticipated but not committed. *In Law of Society of India V. Fertilizers & Chemicals Travancore Ltd.* is a case in point where mere likelihood of leakage of ammonia storage tank at cochin amounted to dark shadow of genocide. The Court ruled: A state of perpetual anxiety and fear of examination of life is not an environment adequate for the health and well being of human race. *It is the plain and clear negation of most basic human right guaranteed under Article 21.*

The Human Right to decent environment was recognized on *Ratlam Municipality* case where neither the writ jurisdiction was involved nor any branch of fundamental right was alleged. While hearing a appeal under special leave petition from the municipality against High Court's approval of magisterial order under section 133 CrPC to remove filth, menacing state of public health, malodorous fluids from the discharge of alcohol plant, breeding of mosquitoes, snakes and scorpions, the supreme court speaking through Justice Krishna Iyer in an unmistakable terms developed an alternative ratio:

A responsible municipal council constituted for the precise purpose of preserving health and providing better facilities can not run away from its principal duty, by pleading the financial inability. *Decency and dignity are non-negotiable facts of human right and are a first charge on local self governing bodies.*

The judgments invigorated fresh stamina into the seemingly dull legislation of public nuisance having wider ramifications in controlling enviro health derogation at grass root level. None the less it is quite astonishing to note the plea for human right was developed without any specific reference to Articles 21, 48-A and 51A (g). Rather the court preferred to be guided by the notion of social justice and public health. Giving a clarion call to rejuvenate public law glossed with human right values Justice Krishna Iyer further held:

There is an urgent needs to focus on ordinary man and a radical change in the hierarchy of values served by civil procedure. The municipality should not come to terms of paramount principle of governance by improving public health provisions.

In *Bayer India Ltd. V. State of Maharashtra*, a human habitation proximate to hazardous chemical process was thoughts to be confronted with perilous dimensions of chemical exposure and consequential threat to life. The court formulated the view that:

Nothing can be more fundamental than the issue of public safety and right to life and where these are infringed upon, *the courts will have to act in a general interest of the citizen and not the Government and public bodies.*

Another quantum leap in the arena of promotion of enviro-human right is the enforcement of these entitlements not only against state, instrumentality of state, statutory bodies but also to private entities. Cases are not rare where the courts have issued against many major industries in private sector. Even where the cause of environmental harm emanates from a private entity, a writ petition against the state may be successful if the court finds that a designated governmental authorities has not taken sufficient action to protect a healthy environment for the people. In *Ganga Pollution (Tanneries)* case the Supreme Court issued orders under article

32 of the Constitution to a number of private tanneries although the legal basis for issuing order against private entities was not explained. Under the pretext of lack of time the Supreme Court in *Sri Ram case* postponed the subtle delineation of applicability of writ jurisdiction against private entities. The position however, firmly crystallized in *Consumer Education and Research Centre case*. The Supreme Court issued orders against thirty asbestos mines and seventy four asbestos related industries relating to occupational health and safety measures under Art. 32, Justified on the ground of right to life approach the constitutional bench clarified that ‘*even private persons or industries are bound by the direction issued by this court under Article 32*’. A concurrent justification for such an approach derived from the judicial obligation underpinned under article 142.

The zealously guarded attitude of the court has not only cut short the want of proof, specific infringement of fundamental right, non-existence of statutory remedies but also given effect to international environmental law to promote enviro-human right. In the absence of specific treaty law commitment, such an approach led to filling of gap of municipal environmental and constitutional statutes with that of international standard. *Calcutta Wetland case* is a pointer to this effect. Since the court believed that ‘environmental degradation is a social problem having far reaching ramifications on society it is nothing but incumbent on law court to discharge social duty to preserve wetland as per *Ramsar Convention* This line of thinking has percolated down deeply in numerous recent rulings of Supreme Court. In *H-Acid and Vellore Citizen cases*’ the polluter pays principle’ incorporate under Article 130-R (2) of the *European Community treaty and European Community Fourth Action Programme* was judicially recognized. In *Jagannath case* the Supreme Court has given effect to *UN Convention on Law of Sea (UNCLOS) 1982* to protect coastal area and marine environment. Similarly the soft law principles such as ‘precautionary principle’ and ‘sustainable development’ are held to be part of law of land in *Vellore Citizen Forum, Badhkal and Suraj Kund Lake, Calcutta Tanneries, Taj Trapezium and Kamal Nath cases*. Building of sewer in Ahmadabad, protection of Doon and Saproon valleys, hygienic conditions at Ratlam, sanitary condition in Jaipur, fear of death from the escape of deadly gas are the cases where substantive and concrete orders were passed without any specific attendant fundamental right. In *Chilka Lake case* the fisherman’s traditional method of fishing as against the modern method amounted to violation of Article 21 on the ground of deleterious environmental impact of blue revolution.

Boban Joseph V/s Manikantan Nair ors Art 21 use of mechanical device to mine sand is permitted with restriction to protect the interest of the local public neighboring, owners etc. Apprehension of pollution on account of mechanized mining is absolutely out of place and unreal – rules (1) (e) not violative of Art 21 of Constitution in as much as it does not permit or justify pollution during mechanized mining.

V. 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. This 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 environmental 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. *Secondally*, 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 exhaustive in content and doors of inter preparation are still open. However, the preponderance of balance tilts towards absolutist and relativist approaches. In this relentless pursuit of paradigmatic course, the traditional remedies in crime, tort and civil and customary laws are fraught with under utilization. Viewed telescopically at desperate time and context, human right rehabilitative regime appears to perform the supplementary role in the enforcement of existing statutory provisions an alternative ration in human right perspective is generally advanced. As a natural sequel to this ambitious approach creation of extra executive and concurrent infrastructure are witnessed. The emergence of compensatory jurisprudence in public law constitutional domain appears to be an amplified version of damages under tort. None the less the PIL has a galvanizing effect in promotion of the enviro-human right and eco-justice in India. 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. This can be done through education. Strategies should be made for creating mass awareness. State can also play an important role in this direction. However, it is seen that legislative and judicial bodies have generally taken the lead in protecting Human Rights. 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 efficacy 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.

VI. SUGGESTION

- [1]. Equating directive principles with fundamental right through a Constitutional amendment.
- [2]. Development of a strategy for paying all financial resources displayed in the environmental sector.
- [3]. It is necessary to eradicate public environment care system which provides selective care through a multiplicity a scheme and programmes discriminates on the basis of residence (Rural-Urban) in providing for entitlements for environmental care.