

OP-50: ENVIRONMENTAL LAW ON HUMAN RIGHTS

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ABSTRACT:

This paper deals with human rights, environmental law and its protection. Rights that inhere in a human being by virtue of his birth as a human being are human rights. Human rights do not depend for their existence on the legal and moral practices of different communities. Human Rights are based on mankind's increasing demand for a civilized life in which the inherent dignity of each human being is well respected and protected.' These rights are essential for the spiritual, physical and moral development of the individual. They are associated with the dignity of the individual and it is the enjoyment of these rights that makes a human being worthy of human dignity. Environmental protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized as 'giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood.' Here, the end is fulfilling human rights, and the route is through environmental law.

Keywords: Environmental law, Human rights

1. HUMAN RIGHTS:

Human rights are international moral norms that aspire to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial and fair hearing when charged with a crime, the right not to be tortured and the right to engage in political activity. The main source of the contemporary conception of human rights is the 1948 Universal Declaration of Human Rights and the many human rights documents and treaties that have followed in its wake. The Universal Declaration of Human Rights (UDHR) sets out a list of over two dozen specific rights into six or more families namely political rights that protects the liberty to participate in politics through actions such as communicating, assembling, protesting, voting and serving in public office;

Equality rights that guarantee equal citizenship, equality before the law, and non-discrimination, and welfare rights or economic and social rights that require provision of education to all children and protection against severe poverty and starvation

Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two seemingly distinct spheres interact, it is to be expected that there are different views on how to approach 'human rights and the environment'.

Environmental protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized as 'giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood.' Here, the end is fulfilling human rights, and the route is through environmental law.

Human Rights: Rights that inhere in a human being by virtue of his birth as a human being are human rights. Human rights do not depend for their existence on the legal and moral practices of different communities. 1 It is not the particular privilege conferred or granted upon a man by the

State but something that due to him or owned by him by reason of his birth. Human Rights are based on mankind's increasing demand for a civilized life in which the inherent dignity of each human being is well respected and protected.' These rights are essential for the spiritual, physical and moral development of the individual. They are associated with the dignity of the individual and it is the enjoyment of these rights that makes a human being worthy of human dignity.

Human right is explained as something due to a person in a social context because he is a human being. According to R.J.Vincent, human rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature."

D.D. Basu defined human rights as those rights which every individual must have against the State or public authority by virtue of his being a member of the human family irrespective of any other considerations.'

These rights are inalienable because the enlightened conscience of the community would not permit the surrender of them by any person on his own volition." These are essential for the development of a human being, to preserve his personality and dignity without which he is reduced to the level of animals. Human rights are not rights which derive from a particular State: they are rights which belong to a man simply because he is a man.' So human rights are the natural, inherent and inalienable rights without which a man cannot exist, and are positive obligations on the part of the State. It is universal, do not differ with geography, history, culture, economic system or stage of development, gender, race, class or status and are to be protected by the State.

The struggle to preserve, protect and promote human rights is as old as human civilization! The origin and development of human rights can be traced to the very beginning of life in the society. In primitive societies man had a number of limitless freedoms; but in ~ organized society these freedoms have no meaning because the limitless freedom of some people must have resulted in the miserable suppression of the freedom of another class of people. For example, in a feudal society only the rulers, the nobility and the clergy have freedoms and rights, other people have only burdens and duties.

Locke's idea of limited government has become part of the Bill of Rights of 1689, 17 The Habeas Corpus Act and the Bill of Rights were the results of the civil war and the peaceful revolution of

the 17th century. The Habeas Corpus Act was enacted for the purpose of protecting the personal liberty of the people. It could be said that the Bill of Right of 1689 was a document consolidating the human rights and liberties of the people."

The World Commission on Environment and Development In 1983, the General Assembly voted to create the World Commission on Environment and Development, an independent body linked to but outside the U.N. system and later more commonly known as the Brundtland Commission. Its mandate was to take up the critical relationship between environmental protection and economic development and to formulate realistic proposals for reconciling or balancing the two subjects; to propose new forms of international cooperation on these issues to influence policies in the direction of needed changes; and to raise the levels of understanding and commitment to action of individuals, organizations, businesses, and governments. The conclusions of the Brundtland Report⁴ stressed the need for an integrated approach to development policies and projects that, if environmentally sound, should lead to sustainable economic development in both developed and developing countries. The Report emphasized the need to give higher priority to anticipating and preventing problems. It defined sustainable development as development that meets present and future environment and development objectives and concluded that without an equitable sharing of the costs and benefits of environmental protection within and between countries, neither social justice nor sustainable development can be achieved.

Environmental Rights and the UN Human Rights Institutions Unlike human rights courts, it has not been clear until now how far the UN human rights community takes environmental issues seriously. There is no doubt that the UN institutions realize that civil, political, economic, and social rights have environmental implications that could help to guarantee some of the indispensable attributes of a decent environment. A 2009 report for the Office of the High Commissioner on Human Rights (OHCHR) emphasizes the key point that "[w]hile the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing".¹⁹ The 2011 OHCHR Report notes that "[h]uman rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection and promoting policy coherence,

legitimacy and sustainable outcomes',²⁰ but it does not attempt to set out any new vision for the relationship between human rights and the environment. It summarizes developments in the UN treaty bodies and human rights courts, and records what the UNHCR has already done in this field. Three theoretical approaches to the relationship between human rights and the environment are identified. The first sees the environment as a 'precondition to the enjoyment of human rights'. The second views human rights as 'tools to address environmental issues, both procedurally and substantively'. The third integrates human rights and the environment under the concept of sustainable development. It identifies also 'the call from some quarters for the recognition of a human right to a healthy environment' and notes the alternative view that such a right in effect already exists.

According to section 2(A) of Environment Protection Act, 1986 Environment includes: (a) Water, Air and Land (b) The interrelationship which exists among and between- (i) Water, Air, Land (ii) Human being, other living creatures, plants, microorganism and property. Man, moving on the path of development has turned from changer to transformer and now to destroyer of the environment. He is progressing continuously and meticulously. Simultaneously natural environment is disintegrating. Socio-economic development of man depends on the environment and this development influences the environment. Mankind therefore made a bold move and held the UN Conference on Human Environments in Stockholm (Sweden) in 1972 that brought man closure to nature. The preamble of it states, 'the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. The declaration makes a historic analysis of the problem of global environment and human rights. It says, 'Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of man's environment, the natural and man-made, are essential to his well being and to the enjoyment of basic human rights even the right to life itself.

According to International Plant Protection Convention, 1951, Laws made by national, provincial and local government add to the rights and responsibilities that are part of the constitution and the common law. These laws also called legislations must comply with the constitution but they can amend change the common hand. Environmental laws made by the government set out the rights and responsibilities of people relating to three overarching areas,

namely land use management, pollution control and waste management control and natural resources. Environmental laws therefore regulate various activities, including who can build, what can be built and when they can built, who can fish or mine, cut trees and shoot animals, as well as when and where this can happen. The right to work, the right to adequate standard of living, including food, clothing and housing, the right to healthcare are the prominent human rights those are classified by various declarations on human rights. The protection and promotion of the basic human rights is the duty of state. Also to protect the environment is essential because with the growth of commercialization and man's greed, over exploitation of environment has become a common feature. This can be checked only through proper legislation. So the need is to make such environmental laws those concerned to protect global and national environments so that man lives in harmony with nature and attains his goals of a creative and happy life. The conservation and protection of environment in general as well as of its specific variables like air, water, forests, sea, wildlife, etc. is controlled through several international and national laws. Initially, the subject of protection of human rights and environment was dealt with in a fragmentary manner under international law through various international conventions, treaties and laws. A few important of these are :- 59 • The International Convention for the Prevention of the Pollution of the Sea by Oil, 1954.

UNO has also adopted a programme known as UNEP (United Nation Environmental Programme) and also 'Earthwatch' and 'Global Environmental Monitoring system' and declared 5th June as 'World Environment Day'. Another international machinery known as 'Habitat' was established in Nairobi (Kenya) and in 1982, the tenth anniversary of Stockholm conference was celebrated in Nairobi, followed by the 'Nairobi Declaration'. In fact, a number of conventions, treaties and instruments have been concluded or adopted dealing with the problem of the control of environmental pollution in one way or other, which shows that all over the world, environment and its protection has become an issue of concern and that all international bodies have shown their concern over it. Apart from international laws, every country has enacted laws regarding environment protection, pollution control etc. In India, there are several acts for environment protection that say protection of environment is the duty of government. Also the purpose of state is welfare of citizens and establishment of such a society that ensures people a human dignity a human living and finally an equal and humane socio-economic relationship. The

intermeshing of human rights can be seen from the fact that ecology and environment are today considered control focus of a person's entitlement. In India a separate ministry namely The Department of Environment was established in 1980 to ensure a healthy environment for the country. The main acts for environment protection in India are as follows :-

1. The Forest Conservation Act, 1980.
2. The Prevention of Air and Water Pollution, 1974, 1981 (The Central Pollution Control Board) (CPCB) was constituted under this act.
3. The Air Prevention and Control of Pollution, 1981.
4. The Atomic Energy Act, 1982.
- The Environmental Protection Act, 1986 (It came into force soon after the Bhopal Gas Tragedy)
6. The Environmental Conservation Act, 1989.
7. The National Environmental Tribunal, 1995.
8. National Environmental Appellate Authority Act, 1997.
9. National Environment Management Act (NEMA), 1998
10. Handling and Management of Hazardous Waste Rule in 1989.

The Biological Diversity Act 2002. IV, Rights and Duties under the Indian Constitution Rights and duties of man are inter-connected. Human Rights can not be attained unless man fulfils his duties. The UN Declaration of Human Environment in 1972 has clearly brought on the balance between rights and duties. The general principles enunciated under the Declaration call for respect for nature, maintenance of genetic viability, protection and conservation of unique areas of the eco-system, etc.

Indian Environmental and Human Rights:

Indeed an ecological interpretation of the provisions of the Constitution of India has become inoperative. Many provisions relating to human rights are contained in Part III of Indian Constitution. These provisions consists of Acts 12 to 35. Some of the important articles on human rights are :- Art 14 provides for equality before law, Art. 15 prohibits discrimination based on religion, race, caste, sex or place of birth, Art. 16 provides for equality in public employment, Art 19 protects the right of freedom of speech Art. 21 provides protection of life and personal liberty. Art 25 to 28 ensure the right of freedom of religion. Art. 29 & 30 provide for cultural and educational rights. Thus, the Indian constitution ensures the protection of life and

liberty of individuals and groups.⁴ Let us examine the other provisions in the Indian Constitution for the protection of environment. The Art 47 provides that this is the duty of the state, to raise the level of nutrition and the standard of living and to improve public health, the state shall endeavor to bring about prohibition of the consumption except for medicinal purposes intoxicating drinks and of drugs which are injurious to health. Art. 48A provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Art. 60 Art. 51A, included in the Constitution by the 42nd amendment Act, 1976 has the provisions as fundamental duties, says that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures and to develop the scientific temper, humanism and the other spirit of inquiry and reform, and to safeguard public property and to abjure violence. Environmental law in the context of human rights presents a new vision and a new scenario for mankind.

A new hope is born of creativity, harmony and human brotherhood. An environmental perspective of human rights reveals that global progress is assured for the twenty first century based on eco-management of national and global society. Our Constitution provides for a balance between human rights and duties based on harmony with nature and harmony among people.

Thus rights and duties are two sides of a coin. Whereas rights provide for freedoms, duties provide for obligations of human behaviour without which rights can not be realized. A wider interpretation of duties listed in the Indian Constitution makes for a better life for all citizens. Preservation of our rich composite culture, protection of natural environment, developing a scientific temper and strike towards individual and collective excellence are all noble concepts to pursue for the citizens of India. In the age of environment, an ecosystem interpretation of rights and duties help us to achieve scientifically all the goals of human rights and excellence in life.

[5] Part IV of the Constitution of India. [6] Part IVA of the Constitution of India.

Conclusion:

Nearly all global and regional human rights bodies have considered the link between environmental degradation and internationally-guaranteed human rights. In nearly every instance, the complaints brought have not been based upon a specific right to a safe and environmentally sound environment, but rather upon rights to life, property, health, information, family and home life. Underlying the complaints, however, are instances of pollution, deforestation, water pollution, and other types of environmental harm. It may be asked whether or not a recognized and explicit right to a safe and environmentally-sound environment would add to the existing protections and further the international values represented by environmental law and human rights.

REFERENCES:

- [1] Preamble, The UN Conference of Human Environment (held in Stockholm, Sweden), 1972
- [2] Ibid
- [3] Environmental Policy Making in India - TERI reports.
- [4] Part III of the Constitution of India.