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Intersection between Human Rights and Environmental Law: The Scenario in India

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ABSTRACT

International concern to protect environment has expanded in recent years. A healthy environment and human rights are closely inter-connected and mutually receptive in nature. Close study between these two concepts is important to improve the environment for sustainability. Health is a subject that bridges gap between human rights and environmental law. In the last four decades the link that was established in Stockholm conference is expanded and various international treaties and convention have been done for the protection of human rights and environment. Poverty and failure to protect basic human rights are placing the environment under severe stress. In this article we will do a detail study of how human rights are interlinked with environment laws and role of judiciary in development of environment jurisprudence. It then explores different treaties and steps taken by different organisations and countries for betterment of environment and protection of human rights. Paper also analysis government measures and judicial interpretation of international conventions and legislation.

Keywords: Human rights, environmental laws, public health, sustainable development, environment

I. INTRODUCTION

Environmental law and human rights are both interrelated and go hand in hand, they both have same goal to recognize the rights of human and intended to the wellbeing of humanity. They both are concerned with the promotion and development of human wellbeing. Interrelation between environmental law and human rights has recognised by various international and national organisations and governments. Human rights and environment protection is linked because both are required for better quality of life. Right to life is recognised as a fundamental right, when courts interpreted and widen the scope of right to life, right to live in clean environment is also included in right to life and this is how environmental law and human rights are connected. The results of international conferences, summits and rulings of various

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tribunal considered human rights as an effective tool to protect environmental rights and duties toward environment. Despite visible relationship between human rights and environment protection, every international organisation and government treat this interrelation as unrelated issue. Industrialization, urbanisation, globalization, and exploitation of natural resources has created natural imbalance which leads to various serious environmental problems like climate change, global warming, loss of biodiversity, public health issues and ozone depletion. Such issue are not only environmental issues but includes various economic, political, and social factors. Interrelation between human rights and environmental law created a rights-based approach to solve an environmental issue. It is important to bring together governments, businesses, civil society, and other stakeholders to agree on policies to address the world's most pressing environmental challenges. The importance of environment and its sustainability is surely interlinked and interdependent on how human race practices its rights. International bodies have widely recognised the fact that a healthy environment is essential to the fulfilment of human rights. But what is less accepted and discussed about is how on the other hand, humans have an obligation and must practice the rights towards environment and consider beyond mere resources necessary for survival and life. Specifically stated, where there is a right, there is a duty. Socio-economic development depends on environment. Since Stockholm environment conference in 1972, protection of environment and nature is in the list of most important issues. The declaration makes a detailed analysis of leading environmental problems and human rights. The protection of basic human rights is the duty of the state and also protection and conservation of environment is very important for enjoyments of basic human rights even the right to life itself. This problem can only be checked through proper laws and legislation. Need for proper environmental laws is very important so that man can live in harmony with nature and attains his goal of happy life.

II. INTERNATIONAL CONVENTIONS, TREATIES AND LAWS

Initially, the subject of protection of nature and environment was not taken seriously by any international or national organizations or by any government. Since 1972 onward continues efforts are made for the protection of environment. Various international conventions, treaties and laws have been made for the protection of environment, some of them are discussed below.

- **Stockholm Declaration (1972)**

UN conference on human environment in Stockholm (Sweden) in 1972, brings mankind closure to environment in which declaration on the human environment was adopted. 1972 marks a landmark year in the history of environmental laws and is considered as environment

movement in the world. Principle 1² of the Stockholm declaration established an interrelation between environmental law and human rights. After this declaration UNEP was set up, a dedicated organization for the protection of human rights and environment.

- **Rio Declaration (1992)**

The united nations conference on environment and development in 1992 restate the Stockholm declaration of 1972. Rio declaration formulates a link between human rights and environmental laws. Declaration adopted a set of principles for the sustainable development, these principles define the right of people to live in healthy environment and their responsibility to protect the environment. Declaration links right to development and right to live in healthy, clean, and sound environment and reaffirms interdependence of all human rights and environment protection. Rio declaration is a milestone that set a new agenda for sustainable development.

- **World Summit on Sustainable Development (2002)**

World summit on sustainable development was held in Johannesburg and its main idea is to focus the world's attention to sustainable growth for the better future without compromising the present need. It mainly focuses on implementation rather than new treaties and targets. The main issues discussed were gender equality, democratic society, good governance and enhance international cooperation for protection of environment.

Besides these conferences some progress made in the form of resolutions and debates by international organizations, human right bodies and special agencies working for the betterment of world and environment. UNGA in its resolution in 1990 observed that environment protection is very important for the enjoyment of basic human rights. Special rapporteur on human rights and the environment of 2012 emphasis on environmental consciousness for state to provide environment protection.

III. INTERPRETATION OF RIGHT TO LIVE IN CLEAN ENVIRONMENT IN INTERNATIONAL FORUM

Right to live in clean and healthy environment is the basic human right and have been interpreted by various international forums. The decision of various international tribunals provide support for including right to live in healthy environment under right to life. Article 11 of the additional protocol to the inter-American convention on human rights (1994) talks about 3 important rights, right to live in healthy environment, access to basic public services and duty

² “Man has the fundamental right to freedom, equality, and adequate conditions 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”.

of state to protect and improve environment. Article 24(2)(C) of the convention on the rights of the child (1989) talks about maintenance of good health among children to combat disease, malnutrition and damage resulting from environmental pollution. Right to have good health and right to sanitization plays a very important role and can be interpreted in purview of right to life. In Article 24(1) of the African charter on human and people's rights 1981, it is clearly mention that availability of right to an acceptable and suitable environment compatible to their development. This article talks about development perspective as well as environment protection. In European convention on human rights 1950 the issue was raised whether to interlink human rights with environment protection or not but unfortunately no action was taken for interrelation between them. Issues and concerns regarding environment are not mentioned directly. In the landmark case of *lopez ostra v Spain*³ European court widen the scope of right to clean and healthy environment and protect human rights from all environmental problems, it was also held that environment problems may violates right to privacy without violating right to health. In *Diego Cali & Figli Srl v. Servizi Ecologici Porto di Genova Spa (SEPG)*⁴, the European court of justice held that protection of environment and prevention of pollution helps in sustainable development and refers to principle 3 of Rio declaration.

IV. PROVISIONS OF HUMAN RIGHTS AND ENVIRONMENTAL LAW IN INDIA

Right to safe environment has been mentioned in Indian Constitution under Article 21 of Right to life. Indian Constitution states that every person has fundamental right to live in a clean environment. It is made clear by the constitution that environmental rights and human rights are essential for each other. Importance of environmental law is mentioned in Directive Principal of State Policy under Article 48a. Article 48a states that state must try hard to protect and preserve the environment. Indian constitution focuses not only on the interrelation between human rights and environmental also but also make sure that measures must be taken by both the state to sustain and protect the flora and fauna of the country. Indian Constitution explains that clean environment is not only fundamental right of the citizens but also their fundamental duty. Article 51(g) of the Indian Constitution states the duty of every citizen to protect and preserve nature of the country in form of forests and water bodies along with not harming any wildlife. Indian Constitution, very elegantly, lays down how there is interrelation between environmental law and human rights. In **Sachidanand Pandey v. state of West Bengal**⁵,

³ Application No. 16798/90; (1995) 20 EHRR 277; [1994] ECHR 46; (1994) 303-C Eur. Ct. H.R. (ser A)

⁴ Case C-343/95. *European Court Reports 1997 I-01547* ECLI identifier: ECLI:EU:C: 1997:160

⁵ 1987 AIR 1109, 1987 SCR (2) 223

supreme court observed that whenever problems related to environment comes before court, the court is bound to keep in mind article 48(A) and article 51A(g).

Role of Judiciary on Protecting Environment

Although numerous legislative steps have been taken to protect environment and basic human rights, but courts and tribunals plays an important role in interpreting the legislature and development of environment jurisprudence. Indian judiciary plays a vital role in protection of fundamental rights. There are various judgements that clearly highlights the role of judiciary in protection of environment. In **Francis Coralie Mullin vs. Union Territory**⁶, supreme court held that right to life under article 21 of Indian constitution includes right to live with human dignity. In **M. C. Mehta vs. UOI**⁷, supreme court held that life, health, and environment have priorities over unemployment and gives more importance to environmental problems. Right to a wholesome environment was included under right to life in article 21 by supreme court judgment in Charan Lal Sahu case. In a landmark case of **Subhash Kumar vs. State. of Bihar**⁸, supreme court held that fundamental right to life under article 21 of Indian constitution includes right to live in pollution free and clean environment and enjoyment of pollution free water and air for full enjoyment of life. The Indian judiciary played a remarkable job to raise the environmental issue and protect the rights to citizens and including right to clean and healthy environment in the framework of fundamental rights to provide remedies to the victims of environmental law. There is a long list of cases in which supreme court recognized the right to healthy and sound environment as a part of human right and provides remedy to the victims of environmental law.

V. CONCLUSION

Failure in protection of healthy environment clearly affects full enjoyment of human rights. The relation between human rights and environment not only helps in sustainable development but also strengthens the human right system and enables the expansion of scope of human rights protection in the area of environment. Human rights and environment are interlinked so human rights are protected only when the environment is protected. In India, the courts are extremely cautious about the environmental and human rights, considering the loss of nature cannot be renewed. In India judiciary tries to bridge the gap and link human rights with environment laws. Despite various laws and legislature, environmental problems are still not solved. Proper implementations of laws and regular inspection is required for sustainable development. Law

⁶ 1981 AIR 746, 1981 SCR (2) 516

⁷ 1987 AIR 1086, 1987 SCR (1) 819

⁸ 1991 AIR 420, 1991 SCR (1) 5

commission of India in its 186th report made proposal for constitution of environment court with special judge to deal with environment cases, hence the creation of environment courts and strengthening the hands of judiciary is the need of an hour. It is time to recognize those who pollute environment not only harm the environment but also violate human rights.
