

# Preservation of the Environment

## Abstract

The Environmental issues are the most important in the World. Now days the world face the global warming is the product of the environmental disturbances. So Preservation of the Environment is the very important and we must think about the different ways of Preservation of the Environment. In my research Shelton proposed three ways in which human rights law and environmental protection law could co-exist. In her final Report she identified certain human rights which would be affected by the degradation of the environment; some of them being. (1) Right to life, (2) Right to health, (3) Right to food, (4) Right to safe and healthy working conditions, (5) Cultural rights.

**Keywords:** Right to Life, Right to Health, Right to Food, Right to Safe and Healthy Working Conditions, Cultural Rights.

## Introduction

The protection and preservation of the environment is one of the most important issues facing mankind. The centrality of this issue is clearly onset today with Australian and Brazilian forest burning day and night.

There are hundreds of activists working for protection including known and unknown, the famous like Greta Thunberg and the ones the pile stones. There is movement across the globe today, to protect and preserve the environment. International laws form a major part of these activities. Various agencies forming the international law, dealing with protection of the environment. There are approaches emerging that says environment is a basic human right. The logic follows that human rights mechanism can be used to prevent the degradation of the environment.

The various treaties including Paris convention, Kyoto convention etc. are in place but the real scenario is clearly on world's agenda.

## Aim of the Study

This paper talks about environment as a basic human right as in India and in international arena.

Shelton proposed three ways in which human rights law and environmental protection law could co-exist [1].

The first view about environment protection is that since the motive of environmental protection is to improve the standard of human lives, there exists a human right to environment which we would have as its centerstage of for betterment of human lives. If a conflict arose between the need to protect the environment and other human rights, like the right to development or the right to livelihood, environmental protection would not get priority. Right to environment in that case would be considered another human right; the right to environment shall not stand one amongst the equals.

The second view is that because environmental law is meant to protect nature and that humans were only a part nature; human rights would have to be subservient to the main goal of protecting nature. This too recognizes that a human right to environment existed. [2].

The third view is that these were two different bodies of law which had certain common objectives. This view did not acknowledge the existence of a human right to environment.

There exists one more argument, it is that the right to environment does not exist as a separate human right; rather it forms an integral part of other human rights. This is because a neat, clean and healthy environment is necessary to enjoy human rights in their entirety. Here the interests of the environment would have to be balanced keeping in mind the other human rights. Where environmental degradation is absolutely necessary in order to satisfy other human rights such as a right to livelihood, then the right to environment should not be cited to block such degradation. This covers right to environment as holistic human right.



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The second part of paper deals with India specific and the third part of paper deals with International laws regarding environment protection related laws and rights.

### **Human Right to Environment in the International Arena**

The human right to environment can be defined in two different approaches: first as an independent right and second as a part corollary to basic human rights defined in UDHR. Some of the major international instruments including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights were basis for defining environment as integral part of human right. Though there does exist international instruments which talk of the human right to environment, it is still state who is responsible for enacting the stage for environment protection.

#### **Existence as an Independent Right**

The first effort to link environment protection to human right was made at the UN Conference on the Human Environment in 1972 at Stockholm. Principle 1 of the Declaration of the UN Conference on the Human Environment stated that ('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...') Although many commentators were disappointed that the Stockholm Declaration did not expressly declare the existence of a new human right, yet this Declaration is in many ways the furthest the international community has come to recognize an independent human right to environment as it expressly declared that every human is entitled to like own life in an environment of a quality that permits a dignified life is well being.) [Bib.2]

The UN Conference on Environment and Development in Rio de Janeiro in 1992 further elaborated on this. Rio declaration says in first article that Human beings are at the center of concerns for sustainable development. It further states that human are entitled to a healthy and productive life in harmony with nature. Although this principle brought to the foreground the concept of sustainable development which is one of the most important issue today. It clearly recognized that human life requiring sustainable development should be in harmony with the nature and the habitat be in line with no environmental hazard and in harmony with nature.

Besides these international instruments, there are regional instruments which speak of the human right to environment. Article 24 of the African Charter on Human and Peoples' Rights states that 'All peoples shall have the right to a general satisfactory environment favorable to their development.' Article 11(1) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights states 'Everyone shall have the right to live in a healthy environment and to have access to basic public services.'

At the International Court of Justice, Judge Weeramantri states incase of Gabcikovo Nagymaros Dam; the need for environment as human right. The

## *Remarking An Analisation*

Judge Weeramantri, stated that the protection of the environment is a vital part of the contemporary human rights phenomena. It is compulsory to have protected environment suiting to human being for enjoying other human rights.

Now coming to the question we posed at beginning, do these instruments relates the development and existence of a human right to environment? Answer is still fuzzy. The Rio and Stockholm Declarations have only persuasive value, they are non binding in nature as they are only indicators of their intentions. Instead African Human Rights Charter and the San Salvador Protocol guarantees environment as Human Right, but it also fails at cementing environmental protection as an international law. The budget constraints also plays a big parts since lack of financial resources and the lack of an independent authority.

(International Environmental Law deals with the attempt to control pollution and the depletion of natural resources within a framework of sustainable development. IEL is a branch of public international law. It is a body of law created by states for states to govern problems that arise between states.) [Bib.4]

The UN Environment Assembly is the most prime UN body. It has all the countries as member. The figure being above 220 recognized countries. It very clearly in 2014 promoted UNEA which feeds directly into the General Assembly and has universal membership of all 193 then UN member states as well as other stakeholder groups. This resulted in wide reach into the legislative, financial and development arenas, the new body presents a ground-breaking platform for leadership on global environmental policy.

Besides that there exists various other treaties including Vienna convention, ILO guidelines for safe work place, ECOLEX, ENTRI, UNFCC, CBD, Basel convention and other very specific conventions to specific problems. for e.g. the carbon foot print and less carbon emission and carbon credit is one of such example. It is one of well implemented treaty respected by many states resulting in safe environment.

#### **Human Right to Environment in India**

Indian regime is not much different than international scene. Although the right to a clean and healthy environment is recognized as a fundamental right, yet it exists only as a part of another fundamental right.

Although the degradation of the environment was not a very important issue at the time of the drafting of the Indian Constitution, yet the Constitution contained certain articles which were related to environmental protection. Article 47 – improvement of public health, article 48 – agriculture and animal husbandry on scientific lines and article 49 – protection of national monuments forms layout for definition for measuring sustainable development. As and when felt necessary and the specific issues arose, amendments were made to the Indian Constitution. In 1976 the Constitution was amended to include environmental protection as a mandatory duty of the state. Further article 48A was added to part IV of the Constitution on Directive Principles which

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stated 'Protection and improvement of environment and safeguarding of forests and wild life.' Article 51 A (g) of the constitution requires state to endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. It also calls citizens have a duty to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(Besides these constitutional mandate to protect and improve the environment there are plenty of post independence legislations on the subject the most important being. A few of them are the Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act 1986 (the Environment Act).

The Indian legal system, especially the judiciary, has been at the frontline of the movement to protect the environment.) [Bib.6] There is a national green tribunal with powers at par with high court. Apart from the provisions mentioned above, there is also the environmental jurisprudence under Article 21 of the Constitution. Article 21 states that no person shall be deprived of his life or personal liberty except according to procedure established by law. This is part of fundamental rights guaranteed by the Constitution. This right, popularly referred to as the right to life, has been interpreted as including within it the right to safe and pollution free environment with everyone having equal access to safe natural resources. This is well explained in case of Subhash Kumar v. State of Bihar by the Supreme Court, where the court declared: "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality.....of life in derogation..... of laws, a citizen..... has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists."

Similarly in Vellore Citizens Welfare Forum v. Union of India the Supreme Court stated that "The Constitutional and statutory provisions protect a persons right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment."

Thus the Indian legal system recognizes the inalienable right to a clean environment. In fact, the roots of this right are traced to the common law heritage of the Indian legal system.

### Conclusion

The difference between development and sustainable development is very stark. The distinction between protection of environment and development is very thin line considering various constraints. The claim saying there is right to environment; is just a mechanism in reality. Whereas other rights are questioned including right to life, right to food, right to health the certain other rights are suppressed. It just

## Remarking An Analisation

does not stay academic it becomes a national interest. A country for example like China often in the docks these rights to ensure implementing their national policy. China is one of the major powers of the world and it is vital that its help is enlisted in the fight against pollution and for the preservation of the environment. On other hand countries like India have done commendable work on environment Issues. It is part of every college curricula, there is awareness, the government is acting directly on it. There is legislature and various implementing agencies which are doing their job perfectly.

We shall always remember that a clean and healthy environment is essential for the realization of other human rights. It is an integral part of the concept of human rights. It will for sure be recognized as one of the fundamental human rights. It will be binding on each country and each country will have it's own legislation for it. Till that day arrives we all concern should make effort so that our own countries are force take measure in ensuring both protection to environment and is forced to recognize the right of environment.

### Endnotes

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