



People's right to healthy environment and protection: Indian perspective

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Abstract: *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. In the long 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 manmade 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.*

Keywords: *Right to Health environment, Fundamental Rights, Human Rights, India and Human rights, Environmental protection in India*

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 also facing this 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.¹ 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."²

¹ Anderson, Michael and Galizzi, P., International Environmental Law in National Courts, London : The British Institute of International and Comparative Law, 2002.

² Abraham, C.M.; Environmental Jurisprudence in India, 1999. Kluwer Law International



Right Healthy Environment- International Principles

Do people have a right to clean air, safe drinking water, and a healthy environment? Fifty years ago, the concept of a human right to a healthy environment was viewed as a novel, even radical, idea.³ Today it is widely recognized in international law and endorsed by an overwhelming proportion of countries. Even more importantly, despite their recent vintage, environmental rights are included in more than 90 national constitutions. These provisions are having a remarkable impact, ranging from stronger environmental laws and landmark court decisions to the cleanup of pollution hot spots and the provision of safe drinking water.⁴

Environmental rights and responsibilities have been a cornerstone of indigenous legal systems for millennia. Yet the right to a healthy environment is not found in pioneering human rights documents such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), or the International Covenant on Economic, Social, and Cultural Rights (1966). Society's awareness of the magnitude, pace, and adverse consequences of environmental degradation was not sufficiently advanced during the era when these

agreements were drafted to warrant the inclusion of ecological concerns.⁵

The first written suggestion that there should be a human right to a healthy environment came from Rachel Carson in *Silent Spring*, published in 1962:

If the Bill of Rights contains no guarantees that a citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because our forefathers, despite their considerable wisdom and foresight, could conceive of no such problem.⁶

Similarly, in her final public speech before dying of cancer, Carson testified before President Kennedy's Scientific Advisory Committee, urging it to consider a much neglected problem, that of the right of the citizen to be secure in his own home against the intrusion of poisons applied by other persons. I speak not as a lawyer but as a biologist and as a human being, but I strongly feel that this is or ought to be one of the basic human rights.⁷

The first formal recognition of the right to a healthy environment came in the Stockholm Declaration, which emerged from the pioneering global eco-summit in 1972:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a

³ Deswal, S., Deswal, A., *A basic course in Environmental Studies*, 2004, Dhanpat Rai and Co. New Delhi.

⁴D. R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver: University of British Columbia Press, 2012).

⁵J. Borrows, *The Indigenous Constitution*. (Toronto: University of Toronto Press, 2010).

⁶R. Carson, *Silent Spring* (Boston: Houghton Mifflin, 1962), pp. 12-13.

⁷J. Cronin and R. F. Kennedy, Jr., *The River Keepers: Two Activists Fight to Reclaim Our Environment as a Basic Human Right* (New York: Scribner, 1997), p. 235.



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.⁸

Healthy Environment-constitutional Provisions in India

India has been independent for 63 years but India has yet to provide its citizens the basic amenities like food security, health care, housing and good environment which are the basic amenities for a reasonable human existence. A highly inequitable health system has denied quality health care to all those who cannot afford it. Although the Directive Principles are asserted to be “fundamental in the governance of the country,” they are not legally enforceable.⁹ They are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the Constitution's Preamble. Both the Centre and the State have powers to legislate in the matter of social security and social insurance, medical profession and prevention of the extension from one State to another of infections or contagious diseases or pests affecting man, animals or plants.¹⁰

The obligation on the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives

contained in Articles 39(e) (f), 42 and 47 in Part IV of the Constitution of India. Securing the health and strength of workers including men, women and the tender age children by ensuring that the right of individuals are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength (Article 39(e)). The opportunities and facilities are maintained in a healthy manner and in conditions wherein the freedom and dignity and individual(s) are protected against exploitation, moral and material abandonment. (Article 39(f)). Right to a healthy environment safeguards human life itself under two aspects, namely, the physical existence and health of human beings and the dignity of that existence, the quality of life that renders it worth living². The State is required to make provisions for just and humane conditions of work and for maternity benefit (Article 42).¹¹

The State should ensure the raising of the level of nutrition and standard of living of its people by improving the public health of its citizen's. Protection of health of citizens and improvement in their healthy existence is an enshrined cardinal duty of the State³. The State legislature is under Entry 6 of the State List contained in the Seventh Schedule to the Constitution, empowered to make laws with respect to Public Health and sanitation, hospitals and dispensaries. Article 21 embarks on the State the duty to safeguard the Right to Life of every person, preservation of

⁸Stockholm Declaration (Declaration of the United Nations Conference on the Human Environment), 1972,

⁹ Bharti, H.K. and Dubey, B.K.; *Manuel of Environment and Pollution Laws*, ed. 1st, 2010, Wadhwa and Company, Indore

¹⁰ Entries 23, 26 and 29 respectively contained in the Concurrent list of the Seventh Schedule

¹¹ Chandra Pal., *Environment Pollution and Development: Environmental Pollution Policy and Judiciary*. 1999, Mittal Publications, New Delhi.



human life being of paramount importance.¹²

The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures."¹³ In addition to the Constitution, there are five main instruments in the Indian legal system that deal with regulation of health care and safeguarding individuals against medical negligence. These are: Law of Torts; Consumer Protection Act, 1986; Indian Penal Code, 1860; Indian Medical Council Act, 1956; Indian Contract Act, 1872.¹⁴

Judicial Trends in Environmental Rights in India

India is notably one of the most progressive countries in terms of judicial awareness and application of contemporary concepts including environmental rights and notions of sustainable development. Indeed, since the 1990s, the Supreme Court has stated that "issues of environment must and shall receive the highest attention from

¹² Anderson, Michael and Galizzi, P., *International Environmental Law in National Courts*, London : The British Institute of International and Comparative Law, 2002.

¹³ Dubey, B.K., Bharti, H.K., *Manual of Environmental Laws*, 2010, Wadhwa & Company, Indore

¹⁴ Abraham, C.M.; *Environmental Jurisprudence in India*, 1999. Kluwer Law International

this Court".¹⁵ A few cases are discussed to highlight how the courts have given effect to these principles that would otherwise have been deemed unenforceable because they are principles of state policy.¹⁶

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,¹⁷ one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance, the petitioner alleged that unauthorised mining in the Dehra Dun area adversely affected the ecology and environment.¹⁸ The Supreme Court upholding the right to live in a healthy environment issued an order to cease mining operations despite the amount of money and time the company had invested. Similar decisions were reached in *Subhash Kumar v. State of Bihar*,¹⁹ where the Court observed that "right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life" and in *Mathur v. Union of India*,²⁰ where the Supreme Court, once again, used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution.²¹

¹⁵ Tarun Bharat Sangh, *Alwar v. Union of India*, 1992 Supp (2) SCC 448

¹⁶ A Usha (edited), *Endangered species and forests: Legal Perspectives*, 2007, Amicus Books, the Icfai University Press

¹⁷ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, AIR 1985 SC 652

¹⁸ Desai, Ashok. A., *Environmental Jurisprudence*, 2002, Modern Law House

¹⁹ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420

²⁰ *Mathur v. Union of India*, (1996) 1 SCC 119.

²¹ Bharti, H.K. and Dubey, B.K.; *Manuel of Environment and Pollution Laws*, ed. 1st, 2010, Wadhwa and Company, Indore



With regard to the duties of the State regarding the environment, the case of Kinkri Devi and Another v. State of Himachal Pradesh and Others,²² is illustrative. The petitioners sought an order to have a mining lease cancelled, to restrain the respondents from operating the mines covered by the lease in such a manner as to pose a danger to the adjoining lands, water resources, pastures, forests, wildlife, ecology, environment and the inhabitants of the area, and for compensation for the damage caused by the uncontrolled quarrying of the limestone.²³

The Court held that operations from the mines should stop pending the government's proper determination of the balance between development and environment from mining operations and submission of the report to the Court. It also held that no lease for mining of limestone was to be granted or renewed nor temporary permits issued till the report of the committee is received and further orders were made by the Court. The Court reasoned that Articles 48A and 51A(g) placed a constitutional duty on the State and citizens to protect and improve the environment and that it was left with no alternative but to intervene effectively by issuing appropriate writs, orders and directions in furtherance of this.²⁴

²²Kinkri Devi and Another v. State of Himachal Pradesh and Others, AIR 1988 HP 4

²³ Bakshi, P.M., Public Interest Litigation. , 2004, Ashoka Law House.

²⁴ Chauhan ,J.K., Relations in Working of Legislature, Executive and Judiciary: An introspection and Prospective Vision, 2007, Allhabad law Agency.

The Supreme Court had to consider the development/environment dilemma in Rural Litigation and Entitlement Kendra v. Union of India (Doon Valley Limestone Quarrying Case -II).²⁵ Following a public interest petition addressed to the Supreme Court by the Rural Litigation and Entitlement Kendra of Dehra Dun in the State of Uttar Pradesh, the Court directed that all fresh quarrying in the Himalayan region of the Dehra Dun District be stopped. Subsequently, the mines were ordered to be closed based on reports of the Bandyopadhyay Committee and a three-man expert committee, both of which were appointed by the Court. The lessees of the mines thereafter submitted a scheme for limestone quarrying to the Bandyopadhyay Committee that was rejected. The lessees challenged the decision of the committee in the Supreme Court. The real issue before the Court was to determine the conflict between the environmental consequences of the commercial exploitation and the economic benefits of the activity. The Court was of the opinion that the environmental considerations outweighed the economic benefits of the project and thus approved the decision of the Bandyopadhyay Committee. It also held that workmen affected by the closure of the mines should, as far as possible and in the shortest time, be employed in the reforestation and soil conservation programmes to be undertaken in the area.²⁶

²⁵Rural Litigation and Entitlement Kendra v. Union of India (Doon Valley Limestone Quarrying Case -II), AIR 1985 SC 652.

²⁶ Anderson, Michael and Galizzi, P., International Environmental Law in National Courts, London : The British Institute of International and Comparative Law, 2002.



Similarly, in *M.C. Mehta v. Union of India*,²⁷ a public interest case was brought against government administrators as well as the tanneries whose effluents polluted the River Ganga. The petitioner claimed in his petition, inter alia, for the issue of a writ/order/direction in the nature of mandamus to the respondents restraining them from letting out the trade effluents into the River Ganga until they put up necessary treatment plants for treating the effluents in order to arrest the pollution of the river. While the pollution of the river by the effluents was not contested, the companies argued in defence that they lacked the physical facilities, technical competence and funds to install adequate treatment facilities. While some of the tanneries pleaded for time to install pre-treatment plants, all of them claimed that they could not install secondary systems for treating waste water due to the costs.²⁸ The Court held that it was the fundamental duty of every citizen to protect and improve the natural environment just as it was a duty of the State to protect and improve the quality of the environment. The Court held inter alia that a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence particularly as the possible impacts of continued effluent discharge into the River Ganga would outweigh the inconveniences caused to the management and labour employed by it

on account of the closure of the tanneries.²⁹

It is important to note that although India is generally hailed as a progressive country with regard to the recognition and enforcement of contemporary notions of sustainable development generally and environmental rights in particular, this is not without criticism. Rajamani, for instance, criticises the Court as being perceived as consisting of middle class intellectuals that are more receptive to issues that affect their contemporaries.³⁰ In a nutshell, based on the analysis of the decisions in *M.C. Mehta v. Union of India (Delhi Vehicular Pollution Case)*³¹ and *Almitra Patel v. Union of India (Municipal Solid Waste Management Case)*, Rajamani argues that the courts are more receptive to 'certain social and value preferences (for instance, the right to a clean environment rather than the right to livelihood), and certain modes of argumentation over others (technical rather than social) resulting in the deep restriction of participation. While recognizing the exemplary work of the courts, the fundamental questions raised are with regards to access, participation, effectiveness and sustainability in public interest environmental jurisdiction. 100 The feeling expressed by Rajamani is that

²⁷*M.C. Mehta v. Union of India*, (1996) 4 SCC 351

²⁸ Bakshi, P.M., *Public Interest Litigation*, 2004, Ashoka Law House.

²⁹ Anderson, Michael and Galizzi, P., *International Environmental Law in National Courts*, London : The British Institute of International and Comparative Law, 2002.

³⁰L. Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, (2007) 19 *JOURNAL OF ENVIRONMENTAL LAW* 3, 293-321.

³¹*M.C. Mehta v. Union of India (Delhi Vehicular Pollution Case)*, Writ Petition Number 13029 of 1985.



“the courts are unlikely to be moved by or on behalf of the poor on ‘urban poverty’, or ‘livelihood’ issues, for the outcomes are predictable and unfavourable”.³²

Judiciary’s Role in Environmental Protection in India

The Indian courts have clear rules on locus standi that recognize and enforce the fundamental duty of every citizen to protect and improve the natural environment. The uncertainty in the rules results in denying claimants and entire communities their right to access justice and the consequences may jeopardize their environment and means of livelihood.³³

The Indian cases, on the other hand, often contain rich references to the international precepts upon which the right to a healthy environment are founded and refer to the growing jurisprudence on these issues in the decisions which solidifies the content. Furthermore, the Indian courts do not shy away from consulting widely with relevant authorities and consider practical consequences of its decisions. The Supreme Court has the power to, and does, refer scientific and technical aspects for investigation and opinion to expert bodies such as the Appellate Authority under the National Environmental Appellate Authority Act, 1997 and the power to direct the Central Government to determine and recover

the cost of remedial measures from the polluter under the Environment (Protection) Act, 1986. Furthermore, the Indian judiciary is noted for its enforced judgments on polluters.

Few of the potential downsides of constitutional environmental rights have materialized. The widespread reliance on the right to a healthy environment by citizens, legislatures, and courts demonstrates that it is not too vague to be implemented, nor does it duplicate the protection offered by existing human rights and environmental laws. Environmental rights have not been used to systematically trump other rights, with legislators and judges opting instead for careful balancing. There has been no flood of frivolous litigation, as lawsuits based on the right to a healthy environment represent a small fraction of the total number of constitutional cases in any given nation and enjoy a high success rate.³⁴

Two critiques have some degree of validity. First, there are some countries where constitutional environmental rights and responsibilities have had minimal impact. Problems such as the absence of the rule of law, widespread poverty, civil wars, or authoritarian governments can pose daunting obstacles to progress in realizing human rights, including the right to a healthy environment. Second, excessive judicial activism can undermine democracy by shifting power from elected politicians to unelected judges. The most

³²Almitra Patel v. Union of India (Municipal Solid Waste Management Case), Writ Petition Number 888 of 1996.

³³ A Usha(edited), Endangered species and forests: Legal Perspectives, 2007, Amicus Books, the Icfai University Press

³⁴ Bodansky, Daniel and Brunnee, Jutta, ‘The Role of National Courts in the Field of International Environmental Law, Review of European Community & International Environmental Law, Vol. 7(1), 1998



prominent example is the Supreme Court of India, which has been accused of exceeding its reach in several high-profile cases, involving motor vehicles in Delhi³⁵, pollution of the Ganges River³⁶ and forest conservation.³⁷ The Indian Supreme Court's actions can be defended as responding to government's persistent failure to implement and enforce its environmental laws, as mandated by the constitution. In general, however, excessive judicial activism is rare.³⁸

Conclusion

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.

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³⁵M.C. Mehta v. Union of India, 2002 (4) SCC 356

³⁶Ganges pollution—M. C. Mehta v. Union of India, AIR 1988 SC 1115

³⁷T. N. GodavarmanTirumulpad v. Union of India, AIR 1999 SC 43

³⁸ Anderson, Michael and Galizzi, P., International Environmental Law in National Courts, London : The British Institute of International and Comparative Law, 2002.



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