

Need For Sensitizing Environmental Rights as Human Rights In India.

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ABSTRACT:

The Direction of Supreme Court on Stubble Burning gave blow to prolong burning of crop waste by farmers of Punjab, Haryana and Uttar Pradesh. It not only contaminated air but also put large number people's health at risk. Similarly, National Green Tribunal ordered the LG Ploymer company to deposit 50 crore, for the major gas leak of Styrene Gas from the polymer plant that has killed 12 people and over 5000 people fell sick due to inhalation of gas. Former incidence was done with the knowing fact that stubble burning will pollute the air; later was the gross negligence on the part of the company both has put large number of people into health risk which was the gross violation Article 21 of the Indian Constitution. These incidences gave us a sight to think on sensitizing the environmental rights of the people with that awareness.

INTRODUCTION:

All over the world Human Being is confronting with tremendous environmental issues and challenges in the form of pollution, ecological imbalance, deforestation, global warming, climate change, contaminated water and desertification. The plethora International treaties as well as domestic laws for environmental protection were not sufficient enough to reverse the destruction of nature and consequently fail to protect the human being from environmental degradation. With the increasing industrialization and the tendency of the majority of industries to congregate in areas which are already heavily industrializing, the problem of air pollution has begun to felt in the country. The problem is such acute in those heavy industries area which are also densely populated. In India the cities like Kolkata, Bombay, and Delhi facing the impact of air pollution with the steady increasing level. The pollution be, it air, water or noise is menace to the society. All the developed and the developing country are facing this hazard, with the industrialization of a country problem of pollution comes in. If it is allowed to go unabated there will be the serious health hazard of the human community. Nut the fact is No Country can

prosper without industrialization at the same times it should be Endeavour of all to control pollution. The constitution of India originally was silent on the environment rights and environmental issues and challenges. Since Independence the industrialization was the only aim India to elevate the economic development. Environmental issues and challenges was the result of acute industrialization in India. It was in the year 1972 Constitution of India was amended and inserted two provisions which explicitly place fundamental duties on the states and the citizen to protect and preserve the environment. With this India enacted Water Pollution Act 1974, Air Pollution Act 1981, and Environmental Act 1986, hazardous and waste management regulations. These environmental laws are only to regulate the environmental related activities. Human right has the potential to address environmental degradation on human being. Human right provides us with the legal as well as moral rights that can be utilized to tackle the environmental ill effect on human being. Universal Declaration of Human Right is basically silent on the environmental right as a human right. According to United Nation human right and the environmental right are interconnected with each other and without environmental rights human rights cannot be enjoyed. According United Nation more than hundred countries have enshrined environmental rights as a fundamental right in there constitution. In India, judiciary has played a protector and defender role for protecting the environment and gave us Galaxy of landmark cases on environmental issues, challenges and rights. Stubble burning and vizag gas leak has opened our eye to think on environmental degradation by mankind. These incidents were considered as the gross violation of the fundamental right guaranteed in Article 21 of the Constitution. Though the Constitution is silent on the environmental rights as a fundamental right but the judiciary has widen the scope of Article 21 of the Constitution and included environmental right as one of the fundamental right in India. These has created awareness among the citizens but stubble burning case and LG Polymer gas leak has made to think on generating the sensitivity of environmental rights among the people. The stubble burning was not new and farmers deliberately burned the Residue Instead of using Waste management. Supreme Court was of the view that No farmer can put the life of sizeable population in danger under the pretext that he is not having sufficient time to use the stubble for the purpose of fertilizer, as they have few time for crops, cutting and sowing of next crop. This paper analyses the environmental rights are interconnected with Human rights and there is a need to make people respect such rights.

SIGNIFICANCE OF ENVIRONMENT IN INDIA:

If we look into Ancient India, our ancestors start their day with chanting mantra and offer prayer to SurajDewata, VarunDewata and PawanDewata (Sun, Water and Air). In brief they worship Environment as God and respect every component of the environment with fear of unknown strange spirits that may punish. It Shows that the instinct of environmental protection were inherent in human being which motivated them to lay down certain religious precepts and rules and to take reserve in an attempt to protect the environment. Ancient India was more concerned with nature; they respect and offer prayer to nature which constitutes the environment or the ecology of man. Not only the beauty but the very existence of life depends on nature. Due to these principles the nature was considered as a mother who gives everything to its children. According to Vedas and Upanishads, The man and nature lives in harmony with each other. In the middle era invasion and subjugation of India under alien rule with variant philosophical and ideological beliefs weakened the influence of nature in the society. In post-independence era activities related to economic development got acceleration and greater emphasis was given to increase industrialization. The industrialization has been used to achieve affluence which is regarded as the sign of development. The increasing industrialization and the tendency of the majority of industries to congregate in areas which are already heavily industrialized the problem of air pollution have begun to contaminate air in that area. The presence in air various pollutants discharge from the industrial emissions and from human activities connected with traffic, heating, burning, use of domestic fuel, has a fragile effect on the health of the people and also health of animals, vegetation and property.

Any type of Pollution, be it water air or noise, is a menace to the society and it amounts to environmental pollution. Environmental pollution was started with the advent of man on earth they grew extremely acute in developed as well as in the developing country. Stringent safety standard are let down for Industrialists Developed country were as in developing country the law is quite lenient as compared to developed country. Thus multinational companies are marching towards the third world countries like India. Third world countries like India are utilizing the transfer of Technology scheme without any insurance against the risk of danger of pollution and posting in Frontline the workers and the people in the vicinity. It is said that The Third world has no tomorrow due the heavy industrialization without any stringent law against environmental pollution. Consequences of environmental pollution give catastrophic, crime, starvation, war and deteriorating environment and man life. Therefore with industrialization or

development, it comes with the consequences which will affect the environment and ultimately health of the human community. A country cannot prosper without development and this development includes industrialization. Environmental degradation due to industrialization is not restricted to a one country but it is a global issue which had addressed many times at International platform. The first conference on environment was the Stockholm conference in June 1972 which is also called as United Nations Conference on Human Environment, in which India has also participated and the decisions were taken to take appropriate measures for the preservation of quality of air and to control the pollution.

LEGAL POSITION OF ENVIRONMENT IN INDIA

Post Stockholm conference brought 42nd Amendment, Act 1976 in India that placed the fundamental duty of the state and the citizens to protect and improve the environment in Article 48A of the Indian Constitution provides that the state shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A of the Indian Constitution application on the citizen to protect and improve the environment including forests lakes rivers and wildlife to have a healthy environment for living creatures.

With this India enacted water Prevention and control of pollution act 1974, Air prevention and Control Act 1981, Environment Protection Act 1986, the Hazardous Waste Management Regulations, Forest Conservation Act 1980, The Motor Vehicles Act 1988, Silent Valley Protection And Ecological Balance Act 1979. Beside these laws there are various legislation which protects the environment, for instance under the Head Of Nuisance section 277 and 278 of the IPC, Law Of Tort, CRPC Inception 133 and 144, the Atomic Energy Act 1962, Factories Act 1948, all these laws in India where directly or indirectly protects the environment.

Indian Constitution beside Article 47, 48A and 51A(g), Union List entry number 31 and State List entry number 6 clearly speaks for Environmental Protection and to take care of citizens of the state because citizen health is fundamental to the Nation's National progress.

Today we cannot run away from the environment crime which has been took place with the advent of industrialization. Environmental crime is an illegal activity of environment which causes damage to rights of the person. NO doubt that the legislature in India has enacted of law

for the protection, reservation and improvement of the environment but due to lack of effective implementation of the constitutional provisions as well as legislative provisions problem of environmental crime could not be controlled in India. Therefore it becomes very necessary for the Indian judiciary to adopt some of the effective remedial measures to prevent the environmental crime. In *Municipal Council Ratlam vs Shrivarddhi Chand and others*, Supreme Court of India providentially respected the needs of strictness in the ecological matters. The Supreme Court of India in *MC Mehta vs. Union of India* 1986, was of the view that there is need to evolve new principle and norms that would satisfactorily deal with emerging environmental issues due to industrial economy. In *Indian Council for environmental action vs. Union of India* the principle was first time applied and defined. The Polluter Pay Principle means the absolute liability for the harm to the environment extend not only to compensate the victims of it but also extend to the cost of restoring the environmental degradation.

Again Apex Court in *Vellore citizen welfare forum vs. Union of India* has declared that the Precautionary Principle and Polluter Pay Principle are the part of the environmental jurisprudence of India. These principles have been accepted as a part of law of the land and inclusive in Article 21 of the Constitution of India guarantees the protection of life and liberty. In 1996 yellowing and decaying of the *Taj Mahal* case Supreme Court reiterated the Polluter Pay Principle and emphasized the need to apply it.

All these shows that judiciary is not only played or Playing the most important role of Protector of the democracy as well as the environment in India. Since independence many environmental issues came in the limelight and the apex court of India played the role of protector of the environment that gave us landmark case laws in India. The Indian judiciary very courageously tried to fill the gap between the environmental issues and effective implementation of environmental laws in order to achieve sustainable development. The Indian judiciary therefore played the role of Defender and protects of the fundamental rights to life including the environmental right.

ENVIRONMENTAL RIGHTS AND DUTIES AS HUMAN RIGHTS

The main reasons for incorporating environmental concerns into the human rights sphere. The human rights has unique framework to promote and protect the environment by placing duties on the government as well as citizens to protect the environment. It also provides to defend the interest of both human rights and environmental rights. Environmental rights equip human rights activists, environmentalists and victims of environmental degradation with a powerful tool with which to overcome the 'sovereignty wall' often raised as a barrier to any form of state liability. International human rights law, unlike other forms of international law, deals with issues that arise between individuals or groups of individuals and an offending state, whether it is their state of citizenship, state of residence, or a foreign state.

Inception of the doctrine of human rights is based on Natural Law and Positive law. At International platform the sources of human rights are not clear. There is an unsettled debate on sources of human right; Debate is whether human right emanates from inherent dignity of the human person or emanates from the will of the state. According to Bentham, Positive Law is the most accepted form of law and that the rights emanate from natural law are 'metaphysical'. On the contrary John Locke view on natural rights was exclusively confined to human rights. Thus the enforcement of human rights is not necessarily tied to its judicial applicability. Contrary to the traditional legalist view that sees the legal component of a Human Rights as the main factor in its recognition and implementation.

Post World War II, International Human Rights get more popularity. With inception of Universal declaration of Human Rights, 1948 the international community started verifying the commitment of the country towards protecting the human rights of their citizens. It took 18 years for the Human Rights embedded within UDHR to materialize into a treaty. In 1966 International Covenant on Civil and Political Rights, its first Optional Protocol and International Covenant on Economic, Social and Cultural Rights was adopted. These covenants along with UDHR are commonly known as International Bill Of Rights. The Universal Declaration Of Human Right is silent on environmental rights. Due to fast growing recognition of the environmental right or environmental degradation in the contemporary Era it has become common understanding with international law that the environment can affect the enjoyment of other human rights. Thus according to United Nations the human right and the environment are interconnected with each other, thus human rights cannot be enjoyed without a safe clean and healthy environment and sustainable environmental goal cannot be achieved without the establishment of and respect for

human rights. This relationship between the environmental right and human rights has been recognized by many states and the right to healthy environment is enshrined in over hundred constitutions.

In India the Constitution put an obligation on the state as well as citizens to protect and respect the environment via Article 48A and 51A (g). The commencement of the Constitution on 26th January 1950, the constitution of India have not made direct reference to the environmental right or Environment protection rather it was more concerned with the development of the country. The aftermath of Stockholm conference by United Nation of 1972 has Amended Indian Constitution and inserted Article 48A and 51A (g) exclusively for the Environment protection. According to Justice Krishna Iyer both the provision are a “remedial weapon of versatile use”.

Shrisachidanand Pandey vs. state of West Bengal, Supreme Court has rightly pointed out that whenever the issue or problem of ecology placed before the court, the court is bound to consider Article 48A and 51A (g). In *Damodar Rao and Others vs. SO Municipal Corporation Hyderabad*, Supreme Court pointed out that Article 48 A and 51 A(g), puts not only the duty of the citizen but it is also place the obligation on the State and all the State ,including the court.

ENVIRONMENTAL RIGHTS AND ARTICLE 21 OF THE INDIAN CONSTITUTION.

The Indian Constitution since its birth was being silent on environmental rights as the human rights of the citizen. It was Indian Judiciary gave Article 21 of the Indian Constitution broader scope and inclusive nature. Article 21 of the Indian Constitution guaranteed that people shall have full liberty to enjoy his own life.

There are various human rights which are directly or indirectly related to environment. The environment rights are composed of Substantive Rights that are fundamental rights and Procedural Rights that is the method or tools to achieve the Substantive right. Substantive right comprise of Civil and Political rights for example right to life, freedom from discrimination, economic and social rights which include right to health food and adequate standard of living; Cultural rights such as right to access religious sites and Collective rights affected by the *environmental* degradation such as right of the indigenous people. Procedural rights comprise of the steps to be taken to enforce as a legal right; the procedural rights include fundamental

exercise of rights, access to information public, participation, filing PIL that is Public Interest Litigation and access to justice.

The major contribution of the Supreme Court in the protection of environment has been in two fold First in the form of giving access to substantive rights via Article 21 and secondly through procedure innovation of PIL. This is evident from the landmark cases like *Rural Litigation And Entitlement Kendra vs State Of UP* and the *MC Mehta versus Union Of India*, *Subhash Kumar vs State of Bihar*, *Parmanand Katara vs. Union of India*, *Union carbide Corporation vs. Union of India*.

In *Damodar Rao and Others vs. Special Officer Municipal Corporation Of Hyderabad and others*, Supreme Court stated that:

“..... it would be reasonable to hold that the enjoyment government of life entertainment and fulfillment which is guaranteed under article 21 of the constitution embraces the protection and prevention of nature's gift without which life cannot be enjoyedThe slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation regarded as amounting to violation of article 21 of the constitution”

Subhash Kumar vs. State of Bihar Supreme Court was of the view that Right To Live is a fundamental right under Article 21 of the Constitution and it includes right of enjoyment of life, if anything dangerous or impair that quality of life is in derogation of laws, citizen has the right to recourse to article 32 of the Constitution for removing such pollution of water or Air which may be detrimental to the quality of life....

In *MC Mehta vs. Kamal Nath* the apex court decided that any disturbance of the basic environment element namely air, water or soil which are necessary for life would be regarded as hazardous for life within the meaning of Article 21 of the constitution.

Above case laws exclusively Addresses environmental issues and expanded the scope of Article 21 to include environmental right as a the Human Right. Scope of Article 21 includes Right for Clean, healthy sustainable environment which is the integral to enjoy other human rights including right to life, health, food, water and sanitation. This makes universal truth that without healthy environment we are unable to enjoy other inherent human rights and fulfill our aspiration to have good standard of human dignity. Though Indian Constitution is silent on the Environmental Issues but Judiciary has played a protector and the defender role of the

environment and provided access to Environmental Rights via Article 21, Public Interest Litigation and access to justice.

AWARENESS OR SENSITIZATION

Post-independence Indian government concentrated on industrialization and elimination of poverty rather than equally concentrating on conserving natural resources. In the year 1972 the first United Nation conference on human environment was organized which adopted the declaration on human environment. The Stockholm conference impacted India with the number of legislations on various environmental issues. Since then in India environmental jurisprudence has been growing day by day which is conclusive enough that citizens are aware of environmental jurisprudence and environmental rights. This Jurisprudence in India was revived not only by the Judiciary but also by the environmental activist Mr MC Mehta. Establishment of the Doctrine of Sustainable Development, The Polluter Pay Principle and the Precautionary Principle, all these were framed and promoted by the judiciary prior to Commencement of National Green Tribunal, Act 2010. In India Ministry of environment forest and climate and Central and State Pollution Control Board of each States and Union Territory govern and enforce the environmental laws. There are various regulatory bodies for proper implementation of environmental laws such as Environment Impact Assessment Authority, this authority in every states supervising environmental clearance application and environmental impact assessment reports; the Ozone cell supervising compliance with ozone depletion substances rule, the Forest Advisory Committee, Coastal Zone Management Authorities was constituted with aim to control, abate and prevent the environmental pollution in coastal area. Recently, the two incidence shocked the nation was based on environmental issues that shows lack of respect for environmental rights of others i.e. *Stubble Burning* case and *Vizag Gas Leak* case.

In November 2019, *stubble burning* by Punjab, Haryana and Uttar Pradesh gave worse air pollution in Delhi. Every year in the month of September and October, farmers from Punjab and Haryana burn the rice residue after harvesting. Smoke from such burning created the cloud full of particulate in Delhi area which is also called as toxic cloud. This resulted into alarming

emergency of air pollution. Petition was filed against it in the Supreme Court. The Supreme Court passes the directions to the States concern. According to the court

“This is not something new, every year this kind of piquant situation arises for a substantial period. It is compounded by the fact that year after year in spite of various directions issued by High Court, other authorities including this Court the State Governments, Government of NCT of Delhi and the corporations of Delhi and nearby States are not performing their duties as enjoined upon them”.

“.....Time has come when we have to fix the accountability for this kind of situation which has arisen and is destroying right to life itself in gross violation of Article 21 of the Constitution of India. No farmer can be said to be having a right under the guise that he is not having sufficient time to use the stubble for the purpose of manure, since they have less time between two crops, cutting and sowing of next crop. As such, they cannot by burning it in their fields, put life of sizeable population in jeopardy”

The Supreme Court issued the directions that:

- District collector, Tehsildars, Director general, IG/SP, police officers and Gram Panchayat, sarpanch of the concerned area must ensure that no such incident take place henceforth.
- The State Government, Central Government as well as Government of Delhi to take immediate steps to curb the air pollution and to tackle with waste and garbage management with priority.
- Ban on construction activities and demolition activities in Delhi.

Thus the burning of stubble which was not new in Punjab, Haryana and Uttar Pradesh has created alarming air pollution in Delhi. This act by the farmer by arguing that no time for waste management amounts to grave violation of right to live in healthy and safe environment.

Recently, Styrene Gas leak from the LG Polymer Company killed 12 people and 32 animals. Styrene is the organic compound found in the liquid form but vaporizes at high temperature. National green Tribunal order the LG Polymer Company to deposit 50 corers to district magistrate. Evidently environment pollution is a violation of fundamental rights that has affected our lives. It is clear that though the farmers was aware of the air pollution caused by stubble

burning but lack with sensitivity of environmental right of others. Simply arguing that farmer as no time convert the stubble into fertilizer cannot put life of other in danger. Though there is need for Awareness on the environmental issues and rights were the law makers and judiciary playing commendable role, but there is also a need for creation of sensitivity among the citizen to respect the universal rights of each other to live in healthy environment and to enjoy freely and breathily environmental rights.

CONCLUSION:

India being one of the countries with ample of natural resources, with the Industrialization India is losing the natural resources. The environmental pollution has been a challenge to the globe and it is globally recognized as a worldwide disaster. Development without the ecological equilibrium has led to an environmental crisis in the 19th and 20th century. urbanization modernization and the race for the technology and industrial development has caused the ecological imbalance. Commencement of constitution of India has not addressed the environmental issues till 1972 Stockholm Conference by United Nation. Constitution of India placed 42nd Amendment Act and brought fundamental duties of the States and the citizens to protect and improve the environment in India. Indian Constitution provides explicit duties for the states and the citizens to improve the environment but implicitly provides environmental rights as human right or a fundamental right via Article 21 of the Constitution. Despite the Indian Constitution being silent on the environmental right as a fundamental right of the citizen, Judiciary of India plays the protective role of the environment not less than that of Legislature and executive. At International platform Universal Declaration of Human Right has made no reference to environmental issue. According to human right and environmental right are intertwined with each other, without environmental right other human rights cannot be enjoyed. The environment rights include right to live in the safe, healthy environment, right to have healthy food, air, water and sanitization. Recent Incidents of stubble burning case and vizag gas leak are capable enough to open our eyes generate sensitivity of environmental rights in India. In the stubble burning case the farmers with the Knowledge of the consequences of burning the stubble continued burning and created unhealthy air pollution in the nearby area. Such incident is a gross violation of fundamental right to live in healthy environment. Thus with the campaign of

awareness on the environmental issues, there is also a need for generation of sensitivity for environmental rights of others. Role of judiciary in giving birth to environmental jurisprudence is not enough to provide environmental right as a fundamental right of the people.

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Online Resources:

- <https://www.unenvironment.org/>
- <https://www.livelaw.in/>