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## HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION

**Vinod Tiwari and Birendra Kumar Tiwari**

Professor & HOD of Law – Rajeev Gandhi Law College Bhopal  
Assistant Professor of Law – Rajeev Gandhi Law College Bhopal

**Abstract:-** This Article seek to provide a assessment & Environmental rights. It discuss. How the environmental law has encompassed procedural human rights and How human rights law recognizes the consequences of environment degration on enjoyment of human rights. Human Rights are those minimum rights available to every person by virtue of being a member of human family. It means man gets minimum rights by the nature since birth as right to speech and expression, right to get pure water, right to food and right to fresh environment etc, all these rights are mentioned in Part III of the constitution of India.

**Keywords:** Judicial protection, Fundamental rights, Combat air and water pollution.

### INTRODUCTION

Human Rights are fundamental rights is the modern name for what have been traditionally known as “Natural” rights or Moral rights. Human rights have a direct relationship with human development and therefore, the universality of human rights demands an equitable global order. To achieve this goal, the importance of “Right to Development”<sup>1</sup> cannot be over emphasized an basis human rights for all people across the globe. But the main question arises as to whether environmental protection is an appropriate subject of humans right such as those guaranteed in the Indian constitution Bill of Rights. Human Rights also have the feature of non-negotiable values, which is desperately needed for effective environmental protection. Environmental legislation can often be undermined by political will and economic pressure. Adopting environmental rights “Human Rights” status would give them “trumping” power over competing agendas. But questions arise here that what is environmental Human Rights<sup>2</sup>

The first idea of an environmental human rights was in principle of the 1972 Stockholm declaration at the United nations conference of Human Environment.

“Man has the fundamental right freedom, equality, and adequate conditions of life, in an environment of 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.<sup>3</sup>

That development of judicial protection of human rights in India recognized in Article 14, 19 and 21 of Indian constitution. In first time A.K. Goplan Vs State of Madras<sup>4</sup> where the judiciary through narrow constitutional interpretation held that freedoms granted under Article 19 and 21 were not available to detainee but, Menka Gandhi Vs Union of India<sup>5</sup>, the court held that the fundamental rights could be curtailed only through the reasonable procedure established by law.

All Human beings have fundamentals right to an environment adequate for their health and well being<sup>6</sup>In 1992 Rio-de-Janeiro Conference on environment and development all concerned, citizen’s at the relevant level, At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall provide and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative

proceedings, including redress and remedy, shall be provided.<sup>7</sup>

The U.N Commission on Human Rights presented a report, draft Declaration of principles on Human Rights and the environment,<sup>8</sup> this document was drafted on May 16, 1994 by an international group of Human Rights and environmental. It means Human Rights are fundamental, ethical principles that empower citizens and communities to experience freedom and dignity in their lives. Irrespective of any classification of all human rights are universal, Indivisible, Interrelated, interdependent and mutually reinforcing and must be treated in fair and equal manner, on the same footing with the same emphasis, the generation consist of those civil and political rights derive from natural law such as the right to life, liberty and security right to property and the right to live without discrimination etc.

#### **ENVIRONMENTAL RIGHTS IN INDIA.**

India is developing country in term of judicial awareness and application of contemporary concepts including environmental rights and human rights. In India Article 48-A, Article 51 A(g) and Article 21 is most important provisions for the protection of environmental rights.

In the above provision, Indian supreme court and high courts have breathed life into the above provisions by linking and enforcing these issues to the constitutionally guaranteed right to life contained under Article 21 of Indian Constitution<sup>9</sup>

In Rural litigation and Entitlement Kendra Vs State of Uttar Pradesh<sup>10</sup> one of the important case where the Supreme Court ordered the closure of certain time stone quarries on the ground that there were serious deficiencies regarding Safety and hazards in them. The court had appointed a committee for the purpose of inspecting certain time stone- quarries. The committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein. 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 decision were reached in Subhash Kumar Vs State of Bihar<sup>11</sup> Where the court observed that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the "Right to live" under Article 21 of the constitution. Again in Mathur Vs Union of India<sup>12</sup>, 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 pollutions.

In a historical judgement in National Human Rights commission Vs. State of Arunchal Pradesh,<sup>13</sup> the Supreme Court has held that the state is bound to protect the life and liberty of every human being whether he is citizen interest litigation was filed by the National Human Rights Commission under Article 32 for the enforcing the rights under Article 21 of the Constitution of about 65000 Chakmas. The issues of the case was that a large number of Chakmas who migrated from East Pakistan (Bangladesh) in 1964, first settled in Assam and Tripura and became Indian citizen in due course. Since the state of Assam had expressed its inability to rehabilitate all of them then about 65,000 of them were shifted to the state of Arunchal Pradesh. They have been residing in the state for more than three decades and have raised their families in the state. Their children were born in India. The Supreme Court held that the state is bound to protect the life and liberty of every citizen or non citizen. The court directed the state of Arunchal Pradesh to take all possible steps to ensure safety of their life and personal liberty. Further court also directed the state to pay to the petitioner (Human Rights Commission) Rs 10,000 as cost of the petition for bringing the matter before the court.

In Bhopal gas Peedith Mahila Udyog Sangathan Vs Union of India<sup>14</sup> The Supreme Court directed union of India and state of Madhya Pradesh that the huge toxic materials/ waste laying in and around of factory of union carbide corporation(1) Ltd, Bhopal, the existence of which was hazardous to health, needing to be disposed of at the earliest to be disposed of within six months which should be strictly a scientific manner which may cause no further damage of Human Health and Environment.

#### **CONCLUSION**

The most important achievement of the Indian constitution is the constitutionalisation of the Environment problems by the Supreme Court. There is an urgent need to formulate laws keeping in mind the fact those who pollute or destroy the natural environment are not just committing a crime against the nature, but are violating human rights as well. The advancement of the relationship between human rights and environment would enable incorporation of human rights principles with an environmental scope, such as anti -discrimination standards, the need for social participation and the protection of vulnerable groups. But in present time by the Indian expand the meaning of environmental rights. The Supreme Court making creating interpretation which led to the creation of new rights as under article 21 this court has created new rights including the right to health and pollution free environment.

**NOTES AND REFERENCES:-**

- (1) Article 1 of declaration on the right to Development on 4th December 1986
- (2) Abhinav Kardekar- Development of Human Rights Jurisprudence in India, LAW2, Nov 2012 Page 15
- (3) United Nations environmental program website [cinep.org](http://cinep.org)
- (4) AIR 1952 SC Page 27
- (5) AIR 1978 SC Page 957
- (6) World commission on environment and development, *Our common future*. (1987) Oxford University press, Page 348
- (7) Meinhard Schroder, *sustainable development. A principal for action and an instrument to secure the condition for survival for future generations*” 101-113 at 104, *Law and State*, Vol 51 (1955)
- (8) A copy of this declaration can be found Tufts university Websites.
- (9) Francis coralie mullin Vs Union of Territory of Delhi, AIR 1981 SC 7416
- (10) AIR 1985 SC 652
- (11) AIR 1991 SC 420
- (12) (1996) 1 SCC 119
- (13) (1996) 1 SCC 742
- (14) AIR 2012 SC 3081



**Vinod Tiwari**

Professor & HOD of Law – Rajeev Gandhi Law College Bhopal



**Birendra Kumar Tiwari**

Assistant Professor of Law – Rajeev Gandhi Law College Bhopal

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