A CONCEPTUAL FRAMEWORK OF RIGHT TO HEALTHY AND POLLUTION FREE ENVIRONMENT vis-à-vis ENVIRONMENTAL HUMAN RIGHTS

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ABSTRACT: The phase of economic environmental development takes place the prime area of concern shall be the enhancement of the ecology as well as the quality of life of the citizen with priority protection of the human rights of the individuals as well as the citizens. Connecting environment and human rights is the most valuable area that discovers the unexplored grey area that underlines between human rights and environment legislations. In India the apprehension for environmental fortification has not only been elevated to the grade of fundamental law of land, but it is also dedicated with the very basic human right of every individual to reside in healthy and pollution-free environment with full human dignity. The Fundamental Rights have been stated in a broader sense by the Constitutional Makers or framers giving more impact or effect to the Right to Life as envisaged under Article 21 of the Constitution of India. The advancing relation among the Environment and the Human Rights is the essential element of the incorporated Human Rights Principles which achieves the Environmental Scope such as removing discrimination in standards, the necessary requirement for social participation and the prior establishment of vulnerable society through protective measures. The progression of the mutual relationship between the environment and the human rights will be enabling the assimilation of the principles of human rights with the view to achieve ecological balance and environmental human rights which will not have a discriminatory effect on its standard but shall progress the want for social contribution of the public and ensure shield to the susceptible groups.

Key Words: Environment protection, pollution, Human Rights, Framework, Sustainable Development

1. INTRODUCTION

In the economic growth phase, the government has the superior authority and resources to transform the ecology and the environment in various ways. While this phase of economic environmental development takes place the prime area of concern shall be the enhancement of the ecology as well as the quality of life of the citizen with priority protection of the human rights of the individuals as well as the citizens. In the same way the power coupled with duty can cause huge harm to the society and its being and can bring down the quality of life. In this century we have seen prior threat to the environment with rise in level of air, water and soil pollution with air pollution causing the most death in the country and in the global land. There is a major threat to the mere existence of human beings in this world as due to rise in pollution we see a major change in the climate causing a huge effect in globalisation and affecting the human rights as it is grossly affecting the mental and physical status of the human and its surrounding. There is depletion in the quality index of the human beings and their rights concerned towards it.

We have understood and recognised that the earth heavily depends upon the natural resources. Water, air and soil are the most important natural resources that compile the fundamental element to each being’s life form. For the minimal existence of survival these are the most vital elements rather than fiscal or economic development. Economic development and Infrastructure have no value if it is done at the cost of the environment. India is a country where around 70% of the population directly derives its livelihood from land and water-based occupations, forestry and marine life. Ecology and environment have always laid basis sustenance for food, medicine, fodder and housing for more than 3/4th of the country’s population. The traditional culture of our Indian society has its emphasis laid on the environment and the dependence of human beings and their rights are heavily dependent of the mere existence of the environment to its purest form. The aspect of harmony, spirituality, cosmos, ethics, study of theological aesthetics is heavily mattered by the presence of the environment. The natural environment is just not restricted or dependent on the primitive society of the ecosystem.
Environmental law or ecological rights coupled with Human rights have been recognized as two identical and sovereign domains of rights. In the correct framework of human rights, the prime concern of protecting the environment has been a matter of the law and its practice in the 20th Century.

1.1 ENVIRONMENTAL HUMAN RIGHTS

Every man in the society has its own fundamental right to equality, freedom and adequate conditions of life. Connecting environment and human rights is the most valuable area that discovers the unexplored grey area that underlines between human rights and environment legislations. The Indian Constitution enshrines that Right to reside in a healthy and pollution free environment is a Fundamental Status granted to every individual with complete dignity. Living and non-living things around us forms the part of the Environment. Land, water and soil add up to the non-living ingredients of the environment whereas the human, plants, and other living macro and micro-organisms add to the living components of the Environment. Environmental Index Quality helps us to identify the healthy conditions of the society and that decides the life span of the citizens. Environmental Quality decides the economic growth of the nation keeping in mind the social and human rights.

All forms of pollution and degradation which modifies the environment which in turn leads to climate change which eventually affects the prospect for development and health. From a historical view point if we have close look at the living human society, we can clearly presume that preserving and protecting the environment has been one of the essentials to the social, religious and cultural ethos of the human community. With the advent of time, the organisations and international forum or communities have widened its perception on the association between human rights violation and environmental pollution. It is well-known that, poverty riding situations and human rights exploitations are degenerated by dilapidation of the healthy environment. The very concept of over-utilisation of natural resources has led to unemployment and expatriation to cities; furthermore, the same disturbs the gratification and with-hold of basic human rights, for example, conditions of environment has contributed to a larger extent, for the blowout of infectious diseases; then such disastrous conditions will surely lead to environmental refugees.

The environmental refugees have constantly suffered from the consequences of socio-cultural, economic and political problem leading to human rights violations. Consequently, talking of reasonable right and fruitful for contesting with some of the most heinous human consequences of environmental degradation. Particularly, the right to a healthy and safe environment can produce a handle and reasonable part in preserving human welfare in a clean environment and in subjecting a link between the human rights and environmental activities. Most of the nations have come up with legal establishment to protect the human rights of the citizens keeping in view the safety of the environment. The schemes of the environmental laws are available in numerous forms. The National Constitution of some nations have secured the highest place for Environmental Protection and in context to the same some have given it a statutory level. Positive rights ensured upon various nations, the government plays the lead role in protecting the environment and the human rights. The concept of environmental protection in India has not only been granted with the status of Fundamental right but has been correctly interred with the objects of human rights protection.

There is enormous interrelationship between life and environment. The mere existence of human being and its rights depend upon the harmonious balance between the environment and the ecosystem. To achieve the purpose of sustainable development, human beings revolve around the centre of the issue.

1.2 LIFE AND ENVIRONMENT

The existence of human life depends upon the fundamental facets of culture, life, society and livelihoods and their enhancement and protection is the most essential feature of the human rights. Human rights related to environment are violated when there is evident destruction of the environment and concurrently the natural resources which has a direct response through societal conflicts, external wars and social commotion. Violation of human rights lead to destruction of human rights as lengthy displacement occurs by war causing ecological imbalances in the relocated area and breakdown in the sustainable process. Such manifestation lead to violation of human rights as right to clean air to breathe is not merely available and unclean water is available for drinking and the productive purpose of the land is lost and loss to the extent of biomass and energy sources is caused; health security is at threat with no or less availability of food leading to marginalization of societal and economic development intend leading to physical displacement.

We have encountered enormous situations in the global arena where millions have people have forced to live far below the minimum standard of living which calls for violation of human rights. We have seen instances where humans have been deprived of adequate or clean water, food, shelter, clothes, education and sanitation. In the due process of development which is supposed to eradicate the above issues has

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actually added more to the cause and is increasing them by allowing the powerful sector of the society to overtake the resources of the meagre society and people dependent on resources.

1.3 ENVIRONMENT AND POLLUTION

To have a view at the society from the historical background, the most integral part of our responsibility is to preserve and protect the environment through which all the ethos of culture and religion has been derived. The nature has always been worshiped by the Indians, Americans, Greeks and other communities all-round the globe to develop the spirituality of God. Hindus consider earth as its mother and says us to be her children. In Greece the Greeks worshipped the Goddess as earth. The Nigerians always considered the land to be there God and always worshiped the land and also considered the sea to be sacred and also dictated their faith in thunder. The law of Islam or Islamic law has devoted the duties of God to the nature and its resources. The Christians have always this Earth to be a gift given by God through Adam and Eve for taking full care of the earth and pass on the same from generation to further generation. The concept of terra Firm has evolved from the Environment itself. Both the concept natural and man-made is covered under the terminology of Environment. It covers the aspect of protecting the land, environmental conservation project, preserving wildlife, resolving global warming issue, fighting air, water and soil pollution, increasing access to public for enjoyment of the native land while protecting and preserving to restore the historical monuments, architectural buildings and granting education on environment and interpreting the urban and rural generation. The Environmental Pollution is divided into category of Land Pollution, Water/Marine Pollution and Air Pollution. But this Environment is depleted and degraded by human beings through methods are process of introducing materials which are harmful and noxious products like smoke, fumes, dust, grit, carbon-monoxide, sulphur-dioxide, ammonia, human toxic waste, chemical and industrial waste, poisonous fertilizers, harmful emissions and pollution caused from Noise. Air, Water and Soil are turned toxic by the compounds emitted into them and which in turn pollutes the organisms residing there and further cause ailment to the Human Society. This in particular increases the human tumour, increasing diseases in human respiratory and reproductive process, changes human behaviour both physically and mentally causing further neurological diseases and decline in human endocrine and immune system. The activities of the industries have added more to the achieving of the highest level of environmental pollution and increase in pollutants. The above-mentioned waste is not as harmful or noxious as compared to that of Gas and Oil Industry in context to the amount of toxic ingredients present in the hydrocarbon properties which gradually cause the depletion of marine life, wildlife and ecological imbalances. The pollution arising out of such operation consists of geothermal blow-out streams, flaring gas and oil spills from oil drills which erodes and completely destroys that aquatic life. So, the notion which is widely accepted is that pollution is a concept of an unavoidable consequence and sine-qua-non of industrialization which is paving a way to the rising concept of sustainable development. It simply does not imply that development shall always have a destructive nature or purpose but shall be concluded with preventive measures. All the planning in regards to development shall be done take into consideration the environment and all development perspective shall be achieved through management of the environment first.

2. ENVIRONMENT AND THE INDIAN CONSTITUTION

The Constitution of India echoes the approach to human rights for the protection of the environment through the various directives. In India the apprehension for environmental fortification has not only been elevated to the grade of fundamental law of land, but it is also dedicated with the very basic human right of every individual to reside in healthy and pollution free environment with full human dignity. The Indian Constitution necessitates the State as well as the individuals to improve and protect the environment. The two decades of the previous century, in the arena of Environmental Law the Indian Legislature, numerous changes were drafted and the concept of social change was brought in new horizon. The provisions of Fundamental duties and Directive Principles of State Policies have various provisions for the protection of environment vis-à-vis maintaining the human rights and dignity. The fundamental Right to live in a clean, healthy and pollution free environment having no specific provision in the Indian Constitution has been set off by Judicial Activism.

Article 14 of the Indian Constitution enshrines the concept of Right to Equality.

1 Y.K. Sabharwal, Human Rights and the Environment. (Internet Sources)
2 The Right of Children to a Pollution free life Campaign
The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The government decisions may violate the right to equality of the citizens as well as of every individual which invariably has grave impact on the environment, in matters of arbitral permissions granted for development which in turn violate the regulatory laws and having environmental damage significances. Legal actions can be initiated to check and challenge the Constitutional validity of the Arbitral Official Sanctions.

**Article 21** of the Constitution of India protects the Right to Life and Liberty which being the fundamental rights of the citizens of India. The Article reads that no person shall be deprives of his life or personal liberty except according to procedure established by law. The protection of Right to life under dignified humanitarian ground and rights entails the enjoyment of life and its achievement within its sphere. The preservation and protection of the ecology from air and other pollution is necessary for life to be enjoyed. Any contractual activity causing environmental pollution would be subjected to violation of the principles of Article 21. The basic facet of Right to healthy life is environmental hygiene and human dignity cannot be achieved without it. Now the existence of human society is under the threat of Environmental Pollution.

**Article 47** of the Indian Constitution is regarded to be one of the most important Article as it dominates the prime duty upon the states to provide the public with attributed level of nutrition, improved health and appropriate standard of living. The prime health of the public can only be assured by ensuring the protected and safety environment to reside in.

**Article 48-A** of the Constitution of India dictates that Protection and improvement of Environment and safeguarding of forests and wildlife: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

**Article 51 (A):** This Article to the Indian Constitution was added through the 42nd Amendment which specifically dealt with Article 51-A(g) which lays down the fundamental duty of the citizen towards the environment by protecting and improving the natural ecology or the environment which includes wildlife, forests, rivers, lakes and to have compassion for living creatures. The Amendment which brought various changes in the Seventh Schedule of the Constitution. Wildlife and Forest was transferred to the Concurrent List from the State List. The framers of the Constitution were of the concern to give environmental a National Agenda.

**Article 246** of the Indian Constitution has segregated the various subjective areas of the Indian Legislation between the States and the Union. The State List (List II) includes fisheries, drainage, irrigation, water supplies, agriculture, sanitation and public health. The Union List (List I) includes inter-state rivers, mines, oilfields, air trafficking, shipping, intestate transportation, atomic energy, foreign affairs and defence. The Concurrent List (List III) includes protection of wildlife, forests, mines and minerals and development.

### 2.1 CONCEPTUAL FRAMEWORK OF RIGHT TO HEALTHY AND POLLUTION FREE ENVIRONMENT

The provisions of the Indian Constitution provide the framework of the environment and its relevant Environmental Human Rights. The Fundamental Rights have been stated in a broader sense by the Constitutional Makers or framers giving more impact or effect to the Right to Life as envisaged under Article 21 of the Constitution of India. With the aid of the Constitution the highest Court of the land i.e. the Supreme Court of India has also laid down the prime essence of Right to Life to the highest extent possible. The mechanism and justice bound by rules was broken by the Indian apex court to extend it branches towards the horizon of Right to Life especially in aspect of Environmental Human rights. To solidify the various facets Article 21 the Supreme Court has resorted to the procedure of testing the same by the test of article 14 and Article 19 of the Indian Constitution and hereby ensures that any procedures which deprives a person of Article 21 shall be just, reasonable and fair. The rights enumerated under Article 21 of the Indian Constitution are matriculated rights as enshrined. The Supreme Court of India through this method has only variably interpreted the Right to Life and Personal Liberty to include the concept of Right to healthy and pollution free environment forming the part of Right to wholesome environment. The idea of progress of the

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3 Article 14 of Indian Constitution
4 Article 21 of the Indian Constitution
5 https://www.constitution.org/cons/india/p04047.html
6 Article 48-A of the Indian Constitution
7 Article 51-A(g) of the Indian Constitution
8 Article 246 of the Indian Constitution

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Environment and its concerning human rights have been explicated by the Supreme court through various judicial pronouncements. The judiciary has actually constructed a pathway connecting the Environment and the Human Rights involved in the Ecology within the ambit of Article 21 of the Indian Constitution. The concept of only right to life has been widened by the court or the judiciary itself. To include within the aspect of Personal Liberty of Human being and its life the object of Environment has been added to it to make it a complete right. The concept of Right to Sustainable development has also been added to the facet of Right to Life making it a distinct sphere in the object of wholesome environment. The incorporation of the same has been done by the judiciary through relevant judgement by direct and indirect methods. It is clearly evident that Article 21 has a wide dimension of Interpretation. An action which is arbitral or violative on part of the public authority or the Government would be depriving the individual of its Environmental Human Rights as laid down under Article 21 of the Indian Constitution.

The Present and the Future generation is primarily at danger with the advent of ecological destruction. The concept of Right to Life has to be utilised in a meaningful process. Right to Life under Article 21 of the Indian constitution includes life with quality, to live with prime dignity, right to livelihood and right to clean and good environment. All these rights under Article 21 are Constitutional rights forming the part of Fundamental Rights of the Citizen as well as the Environmental Human Rights.

The advancing relation among the Environment and the Human Rights is the essential element of the incorporated Human Rights Principles which achieves the Environmental Scope such as removing discrimination in standards, the necessary requirement for social participation and the prior establishment of vulnerable society through protective measures. To strengthen the Human rights the best alternative would be incorporating and protecting environmental Concern thereby establishing a pathway for the protection of the human rights and creating a solution for the abuse related to the Environment. The formulation of access to justice shall be increased and provided speedily to the victims of environmental degradation. By linking the environment to the human rights, we can actually provide for the basic human rights to the victims of environmental and ecological destruction who are helpless in nature and shall uplift their basic Human Rights through the law established. All of the provisions, judiciary and rights shall play the role in upholding the basic human rights of an individual to reside in a healthy wholesome environment which is pollution free.

3. **APPROACHES TO ENVIRONMENTAL LAW AND HUMAN RIGHTS**

Human rights and environmental law have customarily been envisioned as two discrete, sovereign domains of rights. Towards the end of 20th century the observation rose that the cause of fortification of the environment could be endorsed by placing it in the context of human rights, it is being firmly recognized as an issue of international law and procedure. Because of the arising complex issues when these two apparently separate matters coincide, it is to be perceived that there are apparent eyes on how to line 'environment and the human rights.'

- The *first* method is one where fortification in the direction of environment is designated as a conceivable means of gratifying human rights ethics. Here, environmental law is hypothesized as ‘giving a safeguard that would help certify the comfort of future compeers as well as the endurance of those who hinge onproximately on natural resources for their means of support.’ The purpose of fulfilling human rights is through the means of environmental law and justice.

- In the *second* instance the two spheres have been placed in an inverted position- it has been stated that the means to achieve the end goals of environmental protection and conservation effectively the human rights can be legally protected. The way to protect the ecology and the environment heavily depends upon the fortification of human rights. The human rights have heavily demanded its focus on this context. Now the debate on the table is all about that an independent right and actual right to a healthy and pollution free environment shall be enforced as a legal right. By doing this the emphasis would shift towards the environment and less away from the concerned human rights. An approach has to be adopted where both the option can be coordinated appropriately.

- In the *third* instance the question which arises between the environment and the human rights is that of denial in context to the formal connection between the two. If this approach is accepted then there shall be no formal requirement of Environmental Human Rights. To argue on the context of Stockholm Conference in 1972, internationally developed Environmental Law is being raised to such level that the domestic legislation in relation to the Environment are being globally justified. The conceptual formulation of Environmental law and policy has brought in a rightful aspect of protecting the environment in the international arena as well as in each and every domestic statehood and thereby it is
being argued that no separate human rights are required for a sustainable environment. Here comes in the confusion of having two distinct aspects of environmental law and human rights law. But this view is opposed by many. The argument is all about bringing the legislation of environment under the umbrella of human rights. In the various parts of the world environmental Law either be it domestic or international has suffered the problem of standing. This being the largest barrier has often created difficulties for both individuals and groups to challenge the violation of environmental law, convention, treaties and directives.

The idea of a human right or rights to a satisfactory environment has been around the debating corner of the soundness of the theory. The established Human Rights and Environmental Protection has always revolved around the objectives of conflicts and controversy related to various undiscovered questions. If talking about Right to life which includes Right to livelihood, right to wholesome environment and sustainable living there has to be a certain amount of environmental depletion or degradation. The issue of making environment a part of human rights is a prima facie concern of the rhetorical society. Simultaneously the claim for environment and human rights are increasing day by day, which clearly reflects the relation between the Environment and the human rights and the human life is completely dependent on the environment.

3.1 IMPORTANCE OF THE RELATIONSHIP BETWEEN THESE TWO SPHERES

The issue of human right violation and environmental pollution is been given the priority in the international arena due to the increased awareness over the years. Ecological depletion is the prime reason for situations leading to poverty and human rights violation. The obvious several reasons for the above are:

- **Firstly**, the main cause of emigration and unemployment is purely due to exhaustion of natural resources.
- **Secondly**, the basic exercise and enjoyment of human right is affected and violated. The wide spread of infectious diseases is mainly due to environmental degradation. Around 4,400 million people residing developing countries, 60% population out of it lack basic health care services and 1/3rd of the population does not receive the adequate amount of clean water for drinking.
- **Thirdly**, problem of environmental refugees has arisen due to environmental depletion. Environmental refugees grief from substantial political, socio-cultural, and economical consequences. And
- **Fourthly**, developed and developing countries face the most problem of the environmental pollution and degradation. Air pollution counts for 2.7 million to 3.0 million of deaths annually and of these developing countries accounts for 90% of it.

A field of cooperation is built between the human rights and environment as they have some common points between them:

- **Firstly**, the fields have deep social roots; human rights law is even more rooted within the cooperative awareness, the augmented process of environmental deprivation is engendering a new “environmental perception.”
- **Secondly**, both chastisements have become international. The international arena has supposed the obligation to observe the comprehension of environment and respect for the human rights. From the beginning Second World War, the association State-individual is of appropriateness to the international public. On the other hand, the singularities brought on by environmental depletion surpass political limitations and is of perilous importance to the safeguarding of world security and peace. The Environment is internationally protected, while the relationship between the states and the Earth has become a major concern for the international community.
- **Thirdly**, the object of protection is to universalize both the field of human right and environmental law. The protection of the environment appears as everyone’s responsibility and the human rights are presented universally.

4. SUGGESTIONS & RECOMMENDATIONS

This research paper makes the following summary of suggestions and recommendations:

- A unified approach of Sustainable Development Programme must be adopted by the instrumental machinery for environmental protection and human rights.

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9. A. Boyle And M. Anderson (Eds.), Human Rights Approaches to Environmental Protection (Oxford, 1996).
Strategies shall be made and adopted where no Environmental Human Rights are violated while undergoing development.

Penal Provisions shall be enforced in a strict manner as to when and where human rights are violated in context to the environment.

Air, water and soil pollution quality index strategies shall be laid down so that Right to Healthy and Pollution Free Environment is maintained.

An instrument of check and balance shall be introduced to command and control the legal regime protecting the Environmental Human rights.

Environmental Enforcement Agencies shall step up in case of any violation of the legislation related to the environment for compliance of the same.

The role of the Government shall increase rather than Public Spirited Persons protecting the ecology as well as the human rights violations.

An integrated approach shall be ensured by the Government that all the Policies relating to the Environment and the concerned Human rights are strictly adhered to and no violation is being committed towards the same.

Substantial Restructuring of the Law towards the Environmental Human Rights and the ecology shall be implicated by the Legislature.

National Human Rights Commission and State Human Rights Commission shall play the major role in protecting Environmental Human Rights and also by granting justice to the Environmental Refugees.

5. CONCLUSION

The progression of the mutual relationship between the environment and the human rights will be enabling the assimilation of the principles of human rights with the view to achieve ecological balance and environmental human rights which will not have a discriminatory effect on its standard but shall progress the want for social contribution of the public and ensure shield to the susceptible groups. At the same moment, the system of human rights shall be widened and reinforced by the integration concerns related to the environment and it shall also protect and expand the wide scope of human rights and basic solution shall be adhered for violations or abuse of human rights. Out of it the most important area to be covered shall be that, quick justice shall be provided to the suffers of the environmental pollution. Given the sporadic feebleness which the victims of ecological degradation suffer, the process of linking the environment to the human rights shall enable to brings such fatalities near to the instrumental machinery of safety which the human rights legislation provides for.

It is very ostensible that both human rights and the environment are linked in complicated manner. The recognition of the increase in grievous intensification in the impact of the environmental degradation on human's health and their wellbeing, we are in a situation to accept our policies of the legislation and instantly reflecting the cultural values upon the enriched understanding. It is our prime duty to preserve the dignity of the human while protecting their human rights within the cultural, social and economic sphere by actively contributing towards the public health and the environment. This in turn builds up a healthy relationship between the environmental conservatives and the human right protectors. This will ultimately lead to the enunciation of an additional unified tactic to deal with environmental and socio-economic problems, reassuring the model of sustainable development for the preservation of organic resources and natural ecology, so that both the present and future generation can utilise and enjoy up to the maximum satisfaction.

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