

Clean Environment as a Human Right: A Global Concern

Dr. Parvez Ahmad Khan*

Principal, Krishna College of Law, Bijnor (U.P.), India

Abstract – Right to clean and healthy environment is one of the essential ingredients for human existence. Speedy scientific and industrial development has polluted the environment to such an extent that the survival of human existence on earth is in danger. Taking pollution as a big threat for human existence, the international community has been trying to combat the same. The United Nations has always been a strong supporter of clean and healthy environment. The General Assembly on Decemblers, 1968 passed a resolution calling upon the member states to pay attention to the problems of environment. The Stockholm Conference on Human environment developed the concept of "Environmental Jurisprudence". The "Earth Summit" organised by United Nation at Rio de Janario in June 1992 sets out specific programmes to put an end to ecological destruction.

India being a member of the United Nations, has made elaborate provisions in its Constitution and in other laws to protect and preserve the environment. Article 21 of the Constitution includes clean and healthy environment as an essential ingredient of right to life. Some specific laws have been made to deal with environment. The Indian judiciary has also been in favour of pollution free environment. It has issued various guidelines for better environment protection.

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Clean and healthy environment is an ingredient of right to life or right to live with human dignity. Scientific and industrial developments that have taken place in the society have been spectacular that it has affected the presence of those constituents in the atmosphere which are regarded essential for the well-being of human life. Right to health is also an ingredient to right to life.

Meaning of the term "Environment" is very wide in the sense that it takes in to account of all those factors which directly or indirectly have bearing upon the natural surroundings of human life. Change in biological, physical and chemical conditions in the environment is called "Pollution of the Environment". Natural or human life is adversely affected by environmental pollution. There may be various kinds of pollutions- air, water and noise pollution.

International community has always been expressing their concern of environmental pollution. "Right to life" as provided under Article 6(1) of the Covenant as Civil and Political Rights, includes right to those basis necessities that are essential to a man as a consequence of being human. The right to clean and healthy environment is a condition precedent for better human existence.

Right to life or right to live with human dignity also includes right to health and it is possible when the environment is clean and healthy. The United Nations

has always played a significant role in the protection of environment. On December 3, 1968 the General Assembly passed Resolution No. 2398 (XXIII), calling upon the member States to pay attention to the problems of human environment as it is essential for economic and social development.

The Resolution also expressed the hope that the developing countries, will, through appropriate international cooperation, derive particular benefit from the mobilization of knowledge and experience about the problems of the human environment. In 1969, the U.N General Assembly assigned to the Secretary General the over all responsibility for organizing and preparing the conference and to establish a preparatory committee of twenty seven members to assist him.

Systematic International concern for the protection and preservation of the global environment started with the Stockholm Conference on Human Environment in 1972. It led to the recognition that all human beings should be given healthy and clean environment. It was this recognition that was responsible for the enactment of various environmental protection treaties.

This Conference also developed the concept of environmental jurisprudence around the world. It was an effective international effort to solve the global problem of protection and improvement of

the human environment. The Conference encouraged and provided guidelines to protect and improve the human environment.

The important recommendations of the Conference are :-

- (i) The Conference adopted the “Declaration on Human Environment”. It calls upon the States to take all possible steps to prevent environmental pollution and cooperation to develop further international law regarding liability and compensation for the victims of pollution and environmental damages.
- (ii) The Conference prepared “Action Plan for Human Environment”.

The Action Plan also included supporting measures such as education, training, public information and finance.
- (iii) The Conference recommended that World Environment Day will be observed on June 5 every year.
- (iv) The Conference recommended for the establishment of Governing Council for Environment Programmes, an Environment Secretariat for coordination of environment programmes of the United Nations, and an Environment Fund to provide for additional financing for voluntary financial support.

The Stockholm Conference is a significant development to protect and preserve human environment. To implement to the recommendations of the Conference several States have incorporated provisions within their Constitutions and other laws to protect human environment. The United Nations Environment programme (UNEP) is also an outcome of the Stockholm Conference. It was set up by the General Assembly through Resolution No. 2997 on Dec.15, 1972. The Assembly again reaffirmed the UNEP through a Resolution on December 16, 1976. Some of the important functions of the United Nations Environment Programme include:-

- (i) Promotion of international cooperation in the implementation of environment policies.
- (ii) Review of world environment situation for a global environment order.
- (iii) Review the reports of various international agencies on environment policies.
- (iv) Review and approve the programmes of utilization of resources of the Environment Fund.

The United Nations Environment programme (UNEP) has been playing a vital role in the protection and

preservation for a better global environmental order. Some other leading achievements of this programme include Ozone Depletion (Green House Effect), Vienna Convention for the Protection of Ozone Layer (1985), and the Basel Convention on the Control of Transboundary movements of Hazardous Wastes and other Disposal (1989). The term “Green House Effect” stands on the facts to describe the increased warming of the earth’s surface and lower atmosphere due to higher levels of carbon dioxide (CO₂) and some other gases. The Green House Effect and Ozone depletion as such effect climate and widespread changes in natural ecosystem.

To protect the stratosphere Ozone layer, the UNEP adopted Vienna Convention on March 22 1985. Article 2 of the Convention called upon the parties to take appropriate measures to protect human health and the environment against health and the environment against adverse effects the Ozone layer. This Convention is the starting point of the global cooperation for protection of the Ozone layer. The Basel Convention was entered into force on May, 5, 1992. It deals with substances or wastes or other objects which are required to be disposed of by the provisions of national law. The Convention has established a conference of parties as the governing body of the Convention which has been entrusted with the task of continuously reviewing and evaluating effective implementation of the Convention.

Another important step to protect and preserve the environment by the United Nations is Conference on Environment and Development (UNCED) which was held in Rio de Janeiro (Brazil) in June 1992. This conference is widely known as the “Earth Summit”. The Conference adopted two major documents- Agenda 21 and the Rio Declaration on Environment & Development. Agenda 21 sets out specific programmes to put an end to ecological destruction. It calls upon the States to take concrete steps to transfer environmentally sound technologies to developing countries.

The Rio Declaration was adopted in the Conference with the goal of establishing an integral and interdependent nature of earth. The Declaration says that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and it cannot be considered in isolation from it. It also says that environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment. It calls upon the States to develop national law regarding liability and compensation for the victims of pollution and other environmental damages.

Some other efforts of the United Nations to protect environment from pollution are UN Framework

Convention on Climate Changes 1992, Kyoto Protocol and the Convention on Biological Diversity. The Climate Change Convention came into force on March 21, 1994. It makes aware the intention community from the danger and consequences of climate changes. The climate change may result in the Sea rising, changing weather patterns and increasing risks to human health caused by global warming. It also provided that developed countries shall take measures to save the international commitment from environmental hazards.

The Kyoto Protocol to the United Nations Framework Convention on Climate Changes was adopted in December, 1997. It calls upon the Industrialized States to reduce their collective emissions. It became operational from December, 1, 2005. The Convention on Biological Diversity was adopted in May 1992 and it came into force on December, 29, 1993. The main object of the Convention is to conserve the biological diversity. It provides for adoption of national regulations to conserve biological diversity and compensation to developing countries for extradition of their genetic materials.

Another milestone in the process of international concern of environment is the Nairobi Declaration which was adopted by the United Nations in the Conference held at Nairobi in May 1980. The Nairobi Declaration reaffirmed the commitment to the Stockholm Declaration of 1972 and it felt the necessity for global efforts to combat environmental degradation. It also called upon the developed countries to assist developing countries to deal with their most serious environmental problem.

The United Nations Framework Convention on Climate Change (UNFCCC) finalized an agreement in Paris on 4th November, 2016. This agreement also known as Paris Agreement has been signed by about two hundred countries. About one hundred and ninety countries including India, have also given their consent to implement the same. The Paris Agreement replaces Kyoto Protocol and focuses on reducing the green house gas emissions. The main motive of this agreement is to fight back against climate change. This Agreement also aims to curb the emission of the green house to a certain level.

India is one of the member states of the United Nations and it is natural that it has included itself in every effort of the world body to protect and preserve the environment. Therefore it is necessary to discuss here in short the efforts to protect environment in our country. Elaborate provisions have been made in the Constitution of India and other specific Statutes for environment protection. The Indian Constitution in one of those that contains specific provisions on environment protection. Article 21 which protects the right to life includes right to clean and healthy environment. Article 47 provides for the improvement of public health as one of the primary duties of the

State. Article 48-A casts a duty upon the State to protect and improve the environment and to safeguard the forests of the country. Article 51-A fixes a duty of every citizen of India to protect and preserve the environment and have compassion to all living creatures.

Besides Constitution several other enactments have been made by the Parliament to make stringent law to protect environment. They include the Environment (Protection) Act, 1986. The water (Prevention & Control of Pollution) Act, 1981, The Air (Prevention & Control of Pollution) Act, 1981 and the National Environmental Tribunal Act, 1985.

The Law Commission of India, in its 186th report proposed to set up a judicial body in the form of Environment Court. On the basis of the recommendations of the Commission, the National Environment Tribunal Act, 1995 came into existence. It established a National Environment Court at the Centre and an Environment Court for each state.

The National Green Tribunal (NGT) Act, 2010 is also step forward in the Indian efforts to protect and conserve environment and other natural resources. The Act came into force on June 2, 2016. The Act has been passed to enforce clean environment as a legal right and it also provides for relief and compensation for damages to persons and property. The Act constitutes a specific authority-the National Green Tribunal to adjudicate multi-disciplinary issues relating to the environment.

The Constitution of India makes the Supreme Court as the guarantor of fundamental rights of the Citizen. As we know the most important fundamental right is right to life or right to live with human dignity. This right includes right to healthy and clean environment. In a number of cases the Indian Judiciary has insisted upon the protection of this right. It has also supported the concept of environmental jurisprudence. The guidelines issued by the judiciary are like a code of conduct to protect environment. Some of the remarkable judgments on environment includes - M.C. Mehta Vs Union of India (AIR 1986 SC 1086); Vellore Citizens Welfare forum Vs Union of India (1996 SC 2715) and Intellectual Forum Tripati Vs State of A.P. (AIR 2006 SC 1350). In above cases the Supreme Court besides condemning the environment polluters also laid down various guidelines for better environmental protection. In *sterile industries (I) Ltd. and others Vs. Union of India and others*, the Supreme Court has held that the Central government has power to prohibit construction or location of a industry. Public health is an important issue and it cannot be ignored at all.

In *Mohd. Ahmad Vs. Union of India & others* (2018), the Delhi High Court has directed the Central

government to make a law to protect and save public health. The Court said that it is the duty of a welfare State to provide healthy environment for its citizens. Healthy Environment is the basic of health. Again, in *United India Insurance vs. Jai Parkash Tayal* (2018), the Court recognized public health has a right which can not be attained without healthy environment.

The above discussion makes it clear that International community is well aware of their environment. Some of the suggestion for protection of environment at International level are as follows:

- (i) Public awareness is the most effective instrument for environment protection. This can be through education, media and other programmes. Environment has been included in syllabus upto graduate level in most of the States. The Rio Declaration also provides that each individual should have appropriate access to information concerning the environment. It also says that States shall facilitate and encourage public awareness and participation by making information widely available. Special programmes be organized on Environment Protection Day i.e. June 5 every year.
- (ii) Laws made for protection of environment must be implemented strictly. At the international level, Conventions and Treaties must also be implement in true spirit. There is a relation between human rights and environment and human life is not safe without safe environment.
- (iii) Elaborate provisions should also be made to punish those persons who pollute the environment. The Stockholm Conference also provides for the development of international law regarding liability and compensation for the victims of pollution and other environmental hazards caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction.
- (iv) International cooperation is a condition precedent for a better environmental order. The second United Nations Conference as Human settlement (Habitat II) calls upon the states to enhance international cooperation and partnership in the protection of environment. Cooperation can be through financial support, manpower or instrument to safeguard the environment.
- (v) Provisions be made to impose "Sanction" upon those states which pollute the environment. The Security Council should be empowered adequately as environment also affects international security.

- (vi) The United Nations should give prize or awards every year on International Environment Day to a State for best environment protector of the Year.

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Corresponding Author

Dr. Parvez Ahmad Khan*

Principal, Krishna College of Law, Bijnor (U.P.), India