



RIGHT TO WHOLESOME ENVIRONMENT UNDER INTERNATIONAL ENVIRONMENTAL LAW

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ABSTRACT

Individuals are the creators and moulders of their environment, which gives them bodily sustenance and presents before them the possibility of intellectual, ethical, social and religious growth. In the long and tortuous evolution of the human race on earth, a degree has been reached when, through the fast acceleration of technological know-how and generation, an individual has acquired the energy to convert his/her environment in limitless methods and on a scale that is unheard. The protection and improvement of the human surroundings is a primary difficulty which influences the prosperity of people and their monetary development at a certain stage in the arena of life and so far it has now become a matter of sheer preference for the humans all over the globe and the duty of all international as well as regional governments. Moreover, a certain level has been reached in records whilst we have to form our strategies throughout the global arena with greater and prudent care for the environment. Conversely, through fuller expertise and wiser action, we are able to acquire for ourselves and our posterity, a better lifestyle and our surroundings coping with human needs and hopes. Consequently, it has turned out to be an imperative intention for mankind to shield and improve the human surroundings for present and upcoming generations.

INTRODUCTION

Indeed after a few endeavors were being made to create worldwide environmental law within the 19th century, it was not until the Stockholm Conference, 1972, that the right to a wholesome or healthy environment was unequivocally recognized in a worldwide environmental law archive. The conference adopted what is known as the Stockholm Declaration, comprising of three non-binding instruments: a resolution on institutional and financial arrangements; a declaration containing 26 principles; and an action plan containing 109 recommendations which is considered as the starting point in developing environmental law at the global as well as national level. Principle 1 of the Declaration linked environmental protection to human rights norms stating that- “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment 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”. A notable influence of the Declaration was the creation of the United Nations Environment Programme (UNEP) which laid down a total of 26 principles. Twenty years after Stockholm, in June 1992, the UN Conference on Environment and Development (UNCED) was held in Rio de Janeiro, Brazil which adopted three non-binding instruments, one of which was the Rio Declaration, which identifies 27 principles. The purpose of the conference was to create methodologies and measures to end and invert the impacts of environmental degradation.

METHODOLOGY

This paper highlights upon the international legislations, treaties or conventions and related precedents that has been adopted with



the aim to achieve a wholesome environment and also comprises of my personal suggestions which has been incorporated as the conclusion of the essay. The data mentioned in the said paper has been collected and theoretically in great detail. Therefore, the research done hereby is purely based on empirical data which makes it an empirical research study.

The right to a wholesome environment as a human right

As it has been specified already, the right to a healthy environment was to begin with unequivocally recognized in the Stockholm and Rio declarations as non-binding principles in spite of the fact that those declarations did not aim at forming lawful rights and commitments. Many national constitutions and laws recognize the right to a healthy environment inferred from the commitment of States to embrace the standards reflected in the Stockholm and Rio declarations wherein some domestic courts have also referred to principles enshrined in these Declarations. In spite of the fact that, the legal status of a sound environment as a human right shifts among diverse frameworks, numerous nations have created sacred arrangements that ensure the right to a healthy environment. Additionally, environmental degradation caused by economic activities is often accompanied by and related to infringement of civil and political rights, including lack of public access to information, citizen participation, freedom of speech and association. In many cases where industrial development and resource extraction (e.g., mining or oil development) affect communities, those who

address the negative impacts of the developmental action are subject to badgering or concealment by government or venture specialists. As our generation faces genuine environmental and social crisis, the potential of the right to a healthy/wholesome environment for progressive development and accountability cannot be understated. However, its global recognition is long overdue.

LEGAL ANALYSIS

In relation to environmental obligations, certain treaties potentially having global application, include:

- **The Rio Declaration**, although not a treaty, stipulates certain state obligations. Principle 1 of the Rio Declaration states that human beings are “at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” Although it failed in recognizing a healthy environment as a basic human right, but Principle 1 points in that direction.
- **The 1985 Vienna Convention**, whose purpose is to set up a framework within which countries can cooperate to tackle the problem of ozone depletion in order to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.¹
- **The 1987 Montreal Protocol** on Substances that Deplete the Ozone Layer (UNEP), aims to reduce and eventually eliminate the emissions of man-made ozone depleting substances.

¹ Available at https://ec.europa.eu/environment/international_issues/pdf/agreements_en.pdf



- **The 1992 Framework Convention on Climate Change (UNEP)**, which requires parties to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system," aims to protect the climate system.

There have been successful domestic court cases guaranteeing the right to a healthy environment in various countries. For instance, in India, the enforcement of the constitutional right to a healthy environment can be seen in the case of *M.C. Mehta v. Union of India*². This case is about pollution by a number of tanneries and the failure of the authorities to take appropriate steps. The petition asked the court to restrain certain industries from discharging trade effluents into the Ganges River. The Supreme Court ordered the tanneries to close down unless the trade effluents were subjected to a pre-treatment process by setting up primary treatment plants that are approved by the State Pollution Board. The court noted that "closure of tanneries may bring unemployment and loss of revenue, but life, health and ecology have greater importance to the people."

Another such important case in India which is notably a landmark case is the case of *Subhash Kumar vs. State. of Bihar*. In *Subhash Kumar vs. State. of Bihar*³, 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.' Through this case, the court recognized the right to a wholesome

environment as an integral part of the fundamental right to life. Furthermore, this case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. Henceforth, they could be also compelled to take positive measures to improve the quality of environment to ensure better living conditions. The Supreme Court in this case held that Right to life is a fundamental right under Art. 21 of the Constitution which included the right to enjoyment of pollution free water and air for full enjoyment of life and therefore if anything endangers or impairs that quality of life in derogation of laws, a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life.⁴

IMPLEMENTATIONAL FAILURE

There are several reasons due to which there is no legitimate execution of the legitimate measures adopted for a wholesome environment. A few of which are promptly clear and a few others which require a broader understanding of universal, comparative and domestic laws. Some of them have been discussed below:

1. The first reason being moderately direct. The Rio Declaration is not authoritative as such, and this feature has anticipated a few standards from conveying their full effects.
2. The second reason is the non-appearance of a broader common center of lawfully binding principles on which critical crevices within the direction seem to depend upon, which leaves certain critical questions unsettled.

² (1987) 4 SCC 463

³ (1991) 1 SCC 598

⁴ Available at <https://thelawblog.in/2017/10/27/right-to-environment-calls-for-justice/>



3. Third, there are even broader questions that influence the operation of the entire international environmental law framework which have been to a great extent ignored. For instance, consumption-driven environmental degradation, that is, environmental degradation in one country led by utilization in others and tragically, neither the Rio Declaration nor the various Multilateral Environmental Agreements (MEAs) have much to offer in this regard.
4. Fourth, a form of gap concerns the conceivable clashes between instruments with constrained sectoral or spatial scope. Lawfully, there are no overarching standards, aside from the restricted set of standard universal environmental law standards, that seem to give arrangements to such far-reaching clashes. In this regard, when one considers the questions of 'gaps' genuinely, beyond the shallow references to commonly recognized lacunae, there is a much more profound requirement for an authoritative overarching framework.
5. A fifth issue is that a few of the Rio principles have been caught on and treated in an unexpected way over settlements and their related dispute settlement instruments, with imperative viable suggestions whereby, three illustrations concern the diverse positions taken. Those are- with regard to the nature and scope of the precautionary principle/approach, those with respect to the spatial scope of the prerequisite to conduct an environmental impact appraisal and those relating to public interest. This disparity is conceivable because of a need of an overarching explanation of binding principles
6. A sixth and imperative reason is that the direction given by the Rio Declaration to national lawmakers and courts is neither clear nor solid enough.

CONCLUSION

The several years that have passed since the Rio Conference have been characterized by globalization whereby, numerous nations have seen economic conditions decline and public administrations fall apart resulting in an increment in wage imbalance among and within the nations. In order to curb the threat, it is fundamental to form a shared worldwide vision of long-term objectives and to construct Universal frameworks that will offer assistance to each nation to play its portion in meeting the common objective of accomplishing a wholesome environment. To conclude with, I would like to suggest the following ways so as to achieve a decent and healthy environment to live in:

1. There should be proper implementation of Carbon Tax by the government in the countries which is a form of pollution tax levied on the production, distribution or use of fossil fuels based on the emission of carbon combustion.
2. Electric Vehicles should be used in place of gasoline or diesel engines that are expensive, especially when the ever-fluctuating price of gasoline is high. This will also reduce the vehicular emissions and help the environment become energy independent.
3. Avoid the use of plastic as it has toxic pollutants that damage the environment and cause land, water, and air pollution creating a long-lasting damage to the ecosystem.
4. Use of recycled materials as it reduces the amount of waste sent to landfills and incinerators which will also conserve natural resources such as timber, water and minerals, resulting in an increase in economic security, preventing pollution by reducing the need to collect new raw materials, which will save energy.



5. Lessen the consumption of meat. Cutting back our meat consumption and replacing them with vegetables or seafood can make a huge difference in the environment. More than 30 percent of the Earth's surface is being used to raise and support livestock. According to a United Nations study, "the livestock sector accounts for 9 percent of CO2 deriving from human-related activities, but produces a much larger share of even more harmful greenhouse gases. It generates 65 percent of human-related nitrous oxide, which has 296 times the Global Warming Potential (GWP) of CO2." Hence, this can be an important step in reducing the overall emission of GWP gases.

6. Old tungsten bulbs that consumes more energy should be replaced with a Compact Fluorescent Light (CFL) or LED bulbs as they last five times longer than normal bulbs, consumes less electricity and are comparatively brighter.

