

## RIGHT TO ENVIRONMENT VIS-À-VIS WILD LIFE PROTECTION

Manisha Manaswini

LL.M student, Gandhinagar National Law University

Delegation to the 1<sup>st</sup> International Congress on Human Rights & Duties  
(Regd: 16ICHRD2015)

### Abstracts:

This is a research essay summarizing various environmental issues of India with prime focus on the Animal Rights with justification to wild life issues, protection and promotion. The thorough of summary begins with Indian mythological context followed by development of society through various stages leading to millennium growth of industrialization and population growth with critical discussion on Indian law.

**Keywords:** *Animal, Environment, Indian, Rights, Law,*

In a society, there are many individuals playing different roles or jobs so as to ensure smooth running of it. An engineer, a doctor, garbage man, mailman, waitress, farmer, driver etc. all play an important and distinct role in our society. Similarly in an environment each species has a role for the ecosystem to run smoothly. For example, the predators keep population of mice under control, insects help in pollination of flowers etc. Thus, every species is important and help in keeping the ecosystem balanced. According to various online dictionaries the term 'Ecological balance' means "a state of dynamic equilibrium within a community of organisms in which genetic, species and ecosystem diversity remain relatively stable, subject to gradual changes through natural succession." and "A stable balance in the numbers of each species in an ecosystem." The various organisms are not only dependent on the environment for their needs but also on each other. Such a dependency is mainly for food and this in turn results in the existence of food chains or food webs. When a single thread of the ecosystem is broken, the entire ecosystem begins to unravel. The most important point thus is that the natural

balance in an environment should be maintained. But, however this balance is getting disturbed due to various factors like the introduction of new species, the sudden death of some species, natural hazards or man-made causes. Abuse of the natural balance in the environment has long term effects.

Environment is the aggregate of all social, cultural, economical, biological, physical and chemical factors surrounding us to give us necessary protection. All the human beings depend upon the environment in which they live. To ensure full enjoyment of a wide range of human rights, including the right to life, health, food, clean water and sanitation protection of environment is an integral unit. Without a healthy environment it is impossible to even live at a level equivalent with minimum standards. Through a series of resolutions the United Nations Human Rights Council and the United Nations Environment Programme (UNEP) have drawn our attention to the relationship between a safe and a healthy environment and enjoyment of the human rights. Such resolutions have raised awareness of how fundamental environment is as a prerequisite



for the enjoyment of human rights. The Stockholm Declaration and to some extent the Rio Declaration also show the link between human rights and dignity and environment. Earlier the concept of human right including the right to a healthy environment was considered as a novel idea. However, today it is recognized in international law and accepted by almost every country. The first formal recognition of this human right to a healthy environment was given in the *Stockholm Declaration, 1972*:

*“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.”<sup>1</sup>*

It is thus popularly known as the ‘Magna Carta of human environment’. These conventions and programs have helped in deepening our understanding about the direct and the indirect links between the protection of the environment and enjoyment of human rights. It also states the obligations and responsibilities of States for the protection on environment under various multilateral environmental agreements.

There are three important dimensions of the inter-relationship between human rights and the protection of environment: environment as a pre-requisite for enjoyment of human rights (duty of the State to ensure the level of environmental protection for full enjoyment of protected rights); implementation of human rights in order to ensure environmental protection; and the right to safe, healthy and ecologically-balanced environment is a human right in itself. In the recent years, recognition of the link between human rights and the environment has increased to a great extent. This has led to

the rapid growth in the number and scope of international and domestic laws, judicial decisions, academic studies and research on the relationship between human rights and environment.

The deterioration in the environmental protection will eventually endanger life of not only the present generation but also the future generation. Therefore, in the Indian scenario ‘Right to life’ has been used in a diversified manner. This right i.e. ‘Right to life’ in India includes, inter alia, right to survive as a being, right to maintain quality of life, right to live with dignity and right to livelihood. Article 21 of the Indian Constitution states: ‘No person shall be deprived of his life or personal liberty except according to procedures established by law.’ The Apex court of India interpreted this negative right in two ways: firstly, any law that affects the personal liberty should be reasonable, fair and just and secondly, the Court recognized many in-articulated rights present in Article 21 in implied form. It is by this second method by which the Court interpreted the right to life and personal liberty to include the right to environment. “Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air, water, sanitation without which life cannot be enjoyed”<sup>2</sup>. The ‘Wild life’, which consists of flora (plants), fauna (animals, insects etc.) that are usually found in the forests, is a part of the environment, essential for maintaining the natural balance and hence should be protected. There are numerous laws enacted in India for the protection of wild life for example- The Wildlife Protection Act, 1972 ; Prevention of Cruelty to Animals Act 1960 etc. Environment Protection Act of 1986 is considered as Umbrella legislation as it fills many gaps in existing rules. These certain specific Constitutional provisions and the landmark judgments of the Supreme Court

<sup>1</sup> *Stockholm Declaration (Declaration of the United Nations Conference on the Human Environment), 1972, UN Doc. A/Conf.48/14/Rev.1.*

<sup>2</sup> IA 670/2002 AIR SC 724



form the bedrock on which conservation and protection of wildlife rests. In spite of the existing laws and rules the environment is deteriorating for the satisfaction of various human needs and comforts, wildlife is being inhumanely exploited leading to extinction of wild species and degradation of the environment.

### Indian scenario

The ancient philosophical and mythological scriptures, the Vedas, Upanishad, Puranas of the Hindu religion give a description of plants, trees and wildlife and their importance for the existence of the of human life. The potentialities of the nature in controlling the climate, enhancing the fertility of the land and improving the human life which emphasizes the intimate kinship of the man and nature is highlighted in Rig Veda. Atharva Veda also considers trees as hearth of various gods and goddess. Yajur Veda emphasizes that the relationship of nature and animals should be of mutual respect and compassion, not of dominion and subjugation. Many animals, birds, plants were also associated with different Gods and Goddesses so that they can be protected and preserved for future generations. It is this association of various plants, animals and birds with the supernatural forces that they were preserved and protected for a long period. In the Mauryan empire King Ashoka could feel the necessity for protection of environment and did as much as possible for preservation and protection of resources and the environment including forests and wildlife by making several laws. This same trend continued to the era of medieval India when Mughals ruled over India. Britishers

however, took the strongest steps in the protection of the environment and wildlife<sup>3</sup>.

It is now pertinent to discuss the constitutional provisions prevailing in India over the period for the protection of environment and wildlife. India was under the colonial rule of British for a large period. The British people over exploited India's rich biodiversity and resources to generate revenue. This revenue orientation of the British government worked towards destructive deforestation, converting forest into desert and denudation of wildlife. The first step taken by the British Government to ensure State's monopoly rights over the forest was the enactment of the Forest Act, 1865. The Act was revised in 1878 and extended most of the territories under the British rule. This empowered the state to encroach the reserved forest to fulfill the immediate needs of the State and also empowered the forest administration authorities to impose penalties for any transgression of the provisions of the Act. The first Forest Policy was declared in 19<sup>th</sup> October 1884 by the British government. Many other Acts were enacted during the British period for the protection of environment like the Indian Forest Act of 1927. The framers of the Indian Constitution had not foreseen the importance of environmental protection in 1950 when the Constitution of India was adopted. No laws were enacted for the protection of wildlife. However, with the expansion in agricultural sector, industrial and other developments for the satisfaction of multiple human need and greed depletion in forest and decrease in the number of wildlife species could be seen. It is then this aspect gained attention around 1972 in response to the Stockholm declaration. Excessive poaching,

---

<sup>3</sup> Advantage, 'Environment Protection Laws in the British Era' (Legalserviceindia.com, no-date) <<http://www.legalserviceindia.com/articles/brenv.htm>> accessed 6 December 2015



deforestation and mass killing of the animals for trade in the animal articles such as meat, bone, teeth, skin, fur, hair etc. led to extinction of some species and some other were on the verge of extinction. Increase in the population as well as the expansion in the agricultural and livestock raising led to overexploitation of the resources of the environment. Further it could also be felt that the then existing State legislations were inadequate to protect the wildlife. Therefore, the need to protect the wildlife of India was felt necessary and immediate action for it was required. Hence, the parliament of India legislated the Wild Life (Protection) Act, 1972 for the conservation, protection and improvement of wild life. Later in the 42<sup>nd</sup> amendment in 1976 protection of wildlife and forests was incorporated in the Directive Principles of State Policy. It was also included in the concurrent List, Seventh Schedule, and Article 256 of the Indian Constitution. Now it is also enshrined in the Article 51(g) of the Constitution, making it a Fundamental duty of every citizen to protect, conserve and improve the natural environment including wildlife and forests, rivers, lakes etc and to have compassion for living creatures<sup>4</sup>. Article 48A of the Directive Principles of the State Policy also make it mandatory for the state to endeavor for protecting and improving the environment and for safeguarding the forests and wide range of wildlife of the country. In 2003 further amendments were made and Sections 5A, 5B, 5C were inserted in the Wild Life and Protection Act of 1972 which authorized the Central Government to constitute the National Board for Wild Life (NBWL). NBWL hence, is the topmost scientific body in establishing policies and advising the Central Government and the State government in the ways and means of wild life protection and conservation and to

review the progress in the field of wild life protection and suggest measures for improvement thereto. It is mandatory on the part of the Central Government and the State Government to abide by the suggestions and directions of the NBWL they cannot brush aside its opinion without valid and acceptable reasons. The legislators of India have enacted many laws and rules in order to keep pace with the provisions of various conventions such as the Convention on Biological Diversity (CBD) and also for ensuring proper implementation of IUCN, CITES etc. The Wildlife(Protection) Act, Bio-diversity Act, Forest conservation Act etc were enacted in the light of Articles 48A and 51A(g) of the Constitution. The Government of India has also laid down various action plans and policies for the conservation and improvement of wildlife and environment such as the National Forest Policy of 1988 (NEP), the National Environment Policy (NEP) of 2006, National Bio-diversity Action Plan on Climate Change (NAPCC) of 2008 and Integrated development of habitats for wildlife in 2009 and development of Wildlife Action Plan (2002-2016). The national animal of India is in the endangered group now. The elephants are also being killed in large scale for their teeth skin meat etc for the making of various ivory products. Thus, the Importance of Wild life could be drawn from the Inference of Project Tiger and Project Elephant. The Panchayats and the Municipalities through the 73<sup>rd</sup> and 74<sup>th</sup> amendments have also been given power for protecting the environment and play a vital role at the grass root level.

The High Court and the Apex Court of India interpret that the right to a healthy and wholesome environment is a part of the right to life, guaranteed under Article 21 of the Constitution of India. The slow poisoning caused by pollution that leads to depletion of environment and atmosphere amounts to violation of Article 21 of the Indian Constitution. As a matter of fact, the right to life i.e. guaranteed in Article 21 of the Constitution encompasses the protection and preservation of the nature's gifts without which life cannot be enjoyed to complete

---

<sup>4</sup> Durga Das basu , *SHORTER CONSTITUTION OF INDIA* (TWELFTH edn, Prentice Hall of India 1996) 309



extent i.e. to a minimum standard.<sup>5</sup> Moreover, environmental degradation has disastrous impact on right to livelihood which is a part of the protected rights. The Supreme Court of India in its decisions has rested upon the Directive Principles of State policy to extend the scope and content of the fundamental rights, so as to bring them within the ambit of the justifiable rights. Thus the protection and conservation of the wildlife, ecology and environment, based upon the principles of sustainable development to restore with harmony the conflicting interest for development with the protection of a healthy environment has been recognized as a particular aspect of right to life. This was first seen in the case of *Chhetriya Mukti Sangharsh Samiti v. State of UP*, the Supreme court held “Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or derogation of laws, that quality of life or living by people is entitled to be taken resource of Article 32 of the Constitution.”<sup>6</sup> The Odisha High Court in the case of *Kholamuhana Primary Fishermen Co-operation Society v. State of Orissa* has held that right to life includes right to pollution free atmosphere. This case was about pollution in the Chilka Lake leading to massive degradation of its ecosystem.<sup>7</sup> In Indian Council for *Enviro-Legal Action v. Union of India*, the Apex Court of India has implemented right to wholesome environment as a part of the right to life enshrined in Article 21 of the Constitution on behalf of villagers and involves invasion on their right to life because of the pollution caused by private companies manufacturing hazardous and inherently dangerous chemicals like oleum and H acid.<sup>8</sup> The

Supreme Court of India has also widened the scope of Article 21 in the case of *T.N. Godavardan v. Union of India* (1996) by providing the definition for ‘forest’ so that the Forest (Conservation) Act could be implemented more rigorously. Such landmark judgments might help in taking action against the pollution problem and the destruction of natural habitats for the wildlife.

### Need for proper implementation

Though there exists various laws that have been legislated or the protection and conservation of wildlife and in spite of multiple judgments of the Supreme Court and the High Courts to stop excessive poaching and illegal trade in wildlife of India, proper implementation in a strict manner of it is lacking even today. Human being’s voracious greed for resources and his unlimited desires to conquer the nature has brought about the collision course with the natural balance of the environment. The demand for his immensely technical society imposes stress on the state of equilibrium of the ecosystem. Hence to make it more effective these enacted laws, action plans, policies should be implemented with more certainty and with minimum time taken for imposing penalty and the exemplary weight of punishment. The forest authorities and the wildlife protection bodies should themselves stop illegal practices like illegal trading of animal articles and timbers. The participation of local people is essential for proper and effective implementation of the wildlife protection laws and for the conservation of wildlife as these indigenous people and indigenous knowledge about various plants and wildlife can help in restoring the disturbed ecological balance. There is no quick fix solution for this grave problem and just amendment in the laws is not sufficient. Several steps should be taken, first being the reconstruction of investigation process. This requires training, specialized courses and to some extent sensitization of law enforcing personnel. Persons might be appointed in the State Forest Departments and at the

<sup>5</sup> Durga Das basu, *SHORTER CONSTITUTION OF INDIA* (TWELFTH edn, Prentice Hall of India 1996) 168

<sup>6</sup> AIR 1990 SC 2060

<sup>7</sup> AIR 1994 Orissa 191

<sup>8</sup> Air 1996 SC 446



grassroots level who should be trained in dealing wildlife cases more effectively. It is very well known that the wildlife cannot survive until and unless their habitat is protected. More than 60-70 % of the wild fauna exist outside the protected area networks i.e. national parks and sanctuaries. Almost more than two thirds of the India's tiger population is found outside the protected area of Tiger Reserves with very minimal protection. These habitats outside the protected areas should be assessed and plans should be drawn to safeguard these habitats. Given the close proximity of the human habitation to the protected areas of the wild fauna, conflict between human and wildlife is inevitable but with the rapid growth in the population there is rise in the demand for place of habitation which leaves the State with less choice. The present system of exclusionary model for the protection of wildlife is proving to be ineffective. There is a deep kinship of the human beings with the environment, hence such a approach should no more be encouraged that separates humans from nature.

historical and cultural field but also in the resources and the biodiversity. The wildlife of India is a treasure and we must not lose it in the madness of satisfying our luxury, comfort and needs.

## Conclusion

Protection and preservation of wildlife is no more possible by the state Governmental approach alone. Public should cooperate actively and there is a need for committed, educated and active persons in the protection departments for the successful protection of the wildlife. A more participatory approach is required for wildlife conservation. Complete change in the vocabulary of conservation of wildlife is needed. The mode of separation and exclusion of humans for protection of environment should be replaced with the modes of inclusion and integration. We should never forget that all species are created equal and only one species (man) has no right to confer itself with the power that leads to the depletion of resources and environment, extinction of the other species, thereby disrupting in an irreversible way the natural balance of the ecosystem. India has a remarkably rich heritage not only in