

# RIGHT TO ENVIRONMENT *AS FUNDAMENTAL RIGHT*

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**ABSTRACT :-***The main idea for writing this paper “ right to environment – is the need of the hour” is to examine the sensitivity of the environmental issues and the rate of increasing threat to the environment due to the lack of the legislation framework regarding the environment made by the parliament. There has been increase in the environmental risk in India. The government is unable to tackle the problem of environment threatening because there is no proper implementation of the Acts and the exiting legal periphery. However the scenario is changing with the intervention of the apex court and the National Green Tribunal(NGT) to give the citizens with the clean and health environment to strive towards future.*

## I. INTRODUCTION

Environment is the term which holds lots of dimension and the parts of human existence. It the very basic need of the human being to have an environment without which they cannot exist in the cradle of the Mother Nature. Several cultures hold back several believe regarding the environment. Some worship the forces of nature, some fears the components of the nature and some took the simple to maintain the status of the environment as it's has been given to us. To settle the human existence in this “blue planet” and the solo water containing planet of the solar system the Mother Nature has bestowed the human beings with the best possible gift – The Environment.

Several environmentalists as well as several took the vey step to define the term environment but India plays a vital role in defining the term. In the history of the environmental law India defined the term with much more vivid manner. Its defines it as – the term environment includes the water,air,land and the interrelation which exists among and between water, air. Land and human beings other creatures, plants, micro-organism the property<sup>1</sup>. In general literary sense we can define the term environment as the surroundings of the living beings in which the living creatures find the ways of sustenance. Environment has always been the basic need of the individual for its sustenance. Thus in the era of internet, countries looks into the matter of the environment with importance. As because they know the need and the necessity of the environment required for every country to reached the goal of development. Thus several countries finds the solution to the problems of the environment in the legislation only. India is also no exceptions to it, several legislation has been taken place to secure the best of the environment and also to curb the environmental degradation. But the saddest part of the story is that the activist of the individual is degrading the environment day by day.

<sup>1</sup> Section (a), Environment (Protection) Act,1986.

And the introduction of pollution several other impurities made the matter worse. During the post world war II era, the world felt the need for the protection of the pollution and the need for the world wide legislation for the protection of the environmental degradation. Thus as a solution to this the meet and resolute the Stockholm Declaration.<sup>2</sup>

## II. OVERVEIW OF THE EXISTING LAWS

### CONSTITUTION OF INDIA AND PROTECTION OF ENVIRONMENT:-

To establish the relationship between the Indian constitution and the environment protection. It is very much needed to understand the background of the ethnic structure that grew around environment in India. The ancient India has really got some serious environment ethics. According to Hindu scriptures, the forces of the nature were worshipped in the form of god and goddesses especially *mother nature, sky, air, water* etc. The holy books of the Hindus the Mahabharata and Ramayana also establishes the importance of the environment protection. And following the historical past the legislation of the Environment (Protection) Act of 1986 has been ratified by the parliament. Though at the time of ratification of this legislation it was the solo Act passed for the protection of environment was passed but as the time leaped forward several associative Act has been passed to support the main Act and to make the concept of the environment protection a strong and stable one.

The Constitution of India is considered to be the mother of all law, it is believed that law finds it sources in the constitution and the Environment Protection Act , 1986 was no exception. In the Indian Constitution two articles has been incorporated related to environment – Art 48-A<sup>3</sup> and Art 51-A(g)<sup>4</sup>. With these two provisions of the constitution , it is very much evident that the protection of the environment is the fundamental duty of the every citizen. The Art 48-A of the constitution envisaged the state to follow and maintain the policy of environment protection. Despite to these constitutional provision the results were very upsetting because these provisions were nonjusticable. Thus people started becoming ignorant of maintaining these provision. Thus for a breakthrough from this situation, the parliament passed few statutes as well. But the problem of ignorance still persisted and then the Supreme Court directed the State Governments and the governments of the Union Territories to organise consciousness programmes at least once a year, during which the city or the area would be cleaned as possible.<sup>5</sup>

<sup>2</sup> Stockholm Declaration,1972

<sup>3</sup> Art 48-A “ a state shall endeavour to protect and improve the environment and to safeguard the forest and the wildlife of the country”

<sup>4</sup> Art 51-A(g) “it shall be the duty of the citizen to protect and improve the natural environment including forest,lakes , rivers , wildlife and to have compassion for living creature

<sup>5</sup> M.C Mehta v. Union of india ,1988,SCC 471.

The Indian parliament has taken some steps for a better protection of the environment. The statues are as follows<sup>6</sup>:-

- Air(Prevention and Control of Pollution)Act, 1981.
- Water (Prevention and Control of pollution )Act ,1974.
- Wildlife(Prevention) Act,1972.
- Biological Diversity Act , 2002.

### **WHAT IS THE RIGHT TO ENVIRONMENT?**

Right to environment has not been stated anywhere in the statute directly but it has appeared several times indirectly from the backdrop of several statues as well as case laws. From there only the definition of the right to environment comes into the light. They defines it as *the right of every individual to sustain in and around a clean, healthy and sustainable environment.*<sup>7</sup> The increased rate of industrial failures which stands as the mojour cause of environmental degradation has given potential to the activist to move forward to the call of right to environment.

### **NEED FOR STRICT LIABILITY TO SECURE RIGHT TO ENVIRONMENT:-**

Human being is considered to the creator and the moulder of its own environment. Over the years man has gather immense knowledge and has crossed several path of developments been it in the form of industry or the science. With these development man has given a scare upon the face of the environment and with the every passage of time the scar has become a big problem which were costing at the sustenance of the human being. With the age old concept of the ignorance and indifference we are harming ourselves , it is only costing us in return. The Indian subcontinent has some serious ignorance issues which costs the life and the degraded environment. The Bhopal Gas Leakage<sup>8</sup>. Several real life struggles has been threatening the day to day life of the every citizen of the country. The rapid and excess industrialization has resulted in the decreased quality rate of the air for which several air borne diseases' covered the metropolitan cities of India like Delhi , Kolkata etc.

With this rapid growth of industrialization , the pollution has also increase and it eventually ended up in the need of the some strict action against those whose ignorance are causing hardship to the substance of life of the others. The Constitution of India provides for the right to life which states that the right to life which incorporates the right to safe and clean environment<sup>9</sup>. To give the citizen the right to environment , the

<sup>6</sup> S.C Shastri, Environmental Law.

<sup>7</sup> Virendra Gaur v. State of Hariyana, 1995, SCC 577.

<sup>8</sup> Union Carbide corporation v. Union of India and others ,1989, AIR 273 SCC 540

<sup>9</sup> Virendra Gaur v. State of Hariyana, 1995, SCC 577.

Indian parliament has setup the special and separate courts solely to hear the case on the environmental issue as in the modern day of industrialization as well as globalisation. It is known as National Green Tribunal (NGT)<sup>10</sup> which solely hears the cases on environment issues. Not only the constitution or the environmental laws which hears the case based on the environmental issues. There are several criminal statutes are there which though indirectly looks into the matters of right to clean and sustainable environment. There are as follows<sup>11</sup>:-

- Factories Act, 1948.
- Indian Penal Code, 1860.
- Criminal Procedure Code , 1973.
- Explosive Act , 1884.

M.C Mehta, the famous environmentalist has taken several steps to make the legislation strong enough so that it become independent enough to run on its own. He find that to fight back the problem of the environmental degradation is better to aware the generation next and for that reason he moved to Supreme Court and SC held that maximum of 1hr weekly the study of the environmental studies to be introduced in every educational institutes till class 12.<sup>12</sup>

### III. CONCLUSION:-

Every individual has the right live in a pollution free environment and this right can never be exchange with any other as it is the integral part of the Right to Life. The more the issue of environment degradation will be ignored in the name of the non important issue , the more grave the problem would turn toward. The right to life has been always incorporated with the right to live in pollution free state and to susutain their life under a disease free environment for a proper development of life and an uninterrupted path to strive towards the bright future. But before looking into the legislation or the statues we need to look in and around us and raise the question that whether we actually want to stay in a clean and fresh environment because the same is never reflected from our activities around the cities. Of course not all the person are alike exceptions are always there but the concept of sustainable development can only be reached when every individual will come forward to fight back common cause of environmental degradation. and the same can only be attained when the concept of Right to Environment and its importance will be spread among the

<sup>10</sup> The National Green Tribunal Act 2010

<sup>11</sup> Chapter 2 , S.C Shastri , Environmental law

<sup>12</sup> M.C Mehta v. University Grants Commission, 1992.

masses and the population would be conscious enough in exercising their right to environment and at the same time about securing the same for the others.

**Right to environment – is actually the need of the hour**

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