

Research Paper

ISSN: 2321-1520

Environmental Rights and Human Rights of Women in Unorganized Sectors

Vaishakhi Thakkar & Prachi V. Motiyani*

Ph.D Research Scholar, University School of Law, Gujarat University, Ahmedabad.
Assistant Professor, University School of Law, Gujarat University, Ahmedabad.
E-mail: prachivinod3012@gmail.com

*Corresponding Author

Received Date: 12-11-2019

Published Date: 15-03-2020

Abstract

The use of the term 'organised' and 'unorganised' as used in India, which is internationally known as 'formal' and 'informal'. "Unorganised workers consist of those working in the unorganised enterprises or households, excluding regular workers with social security benefits, while the workers in the formal sector without any permanent employment and social security benefits provided by the employers". Basically there is lack of employer-employee relationship in unorganized sector. In recent years, the problems relating to empowerment and improvement of women have gained much attention. These women are paid less and are deprived of other necessary benefits. Some of the young women are even subjected to sexual exploitation. There are virtually no medical facilities, rest rooms and crèche facilities. It is a harsh reality that a woman of this country has been socially and economically handicapped. As a result, they are unable to participate equally in the socio-economic activities of the nation with their male counterpart and hence the basic human rights are snatched away from women labours. They have to work in unhygienic, polluted and unhealthy

environment. In such an environment, the quality of women's employment is very important and depends upon several factors. If labour rights are incorporated in human rights documents, they are human rights. This paper discuss about the human rights and environmental rights which are given to the women workers. However, due to illiteracy and other factors, many of the women workers are unaware about their rights.

Keywords: Unorganised sector, Women workers, environment and human rights

Introduction

In India, most of the tentatively 260.3 million people living below the poverty line are women. There is lack of means, education, skills in women workers. The women workers are generally engaged in the informal sectors like handlooms, handicrafts, weaving, fisheries, construction, agriculture and domestic help, putting them outside the traditional covers. Women as workers, mostly unskilled, are engaged in agriculture and, in particular, home-based work (over 50 % of non-agricultural workers). Women are dependent on unofficial arrangements and contracts and few are dependent on domestic and local market. Women thus find themselves unprotected, trapped between unorganised work and household responsibilities, and lacking access to support in the work of seasonal contingencies. Their contribution is not recognized even though they contribute a lot to the income/saving of the family.

Unorganised sector formulates a huge part of work-force in the Indian economy. The unorganized economy employs about 86 per cent of the country's work force and 95 per cent of its women workers. A high proportion of socially and economically impoverished women of society are vigorous in informal economic activities. These women workers are earns for their families. The reasons for their vulnerability are:

- (a) Non-uniform work,
- (b) Low economic level,
- (c) Lack of bargaining power,
- (e) Need to balance paid work with child care and household work,
- (f) Little or no access to institutional credit, training and information, and

The link between human rights and environmental protection has become increasingly clear in recent years. Environmental damage is often worse in countries and in areas with human rights violations. Rights of association, access to justice, access to information and freedom of expression, are covered under environmental and human rights. Environmental and human rights issues are closely linked and exist coextensively.

1. Objective of the Study:

The basic aim of the study is to understand the environment and human rights of women who are engaged in unorganized sector. Issues and challenges facing by women worker is also one of the vital parts of this research paper. This paper will discuss the reasons why women workers are not getting environment rights, human rights and social securities.

The specific objectives of the research paper:

- (a) To know the human rights in context of women workers engaged in unorganized sector.
- (b) To explore the basic concepts and principles of environmental law.
- (c) To know about the issues and challenges facing by women workers who are engaged in unorganized sector.
- (d) Lastly, to suggest ways for their betterment in future.

2. Environment and Human Rights:

An important problem confronting policy makers today is the challenge of preserving the natural environment while side by side promoting development to meet the basic needs of humanity. According to the United Nations Millennium Eco-system Assessment Report (MEA), released in 2005, ecosystem changes 'may occur on such a large scale as to have a catastrophic effect on the economic, social and political process on which social stability, human well-being and good health depend. Advances in science and technology have substantially changed our understanding of the environment over the last century. The relation between the environment and human rights has led to considerable interest in the subject of 'environmental rights' – which raises the possibility of formulating claims relating to the environment in terms of human rights. As well as the case law concerned with certain human rights, we therefore find environmental treaties with provisions on

freedom of information and similar guarantees and, at the most general level, a discussion of the advantages of adding a broad 'right to environment' to the list of traditional human rights. This article discusses the value of rights, the rights we have, who can have rights, issues of determinacy and consistency, who bears the corresponding obligations, the content of rights, the relationship between different rights, and legal rights and moral rights.

3. Collaboration between Human Rights and Environment Rights:

Human rights and the Environment are intertwined; human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights. This relationship is increasingly recognized yet paradoxically environmental rights are increasingly violated. Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to achieve substantial rights). Beyond equal distribution and access to clean and sustainable resources, Environmental Rights also include an additional obligation from those in the industrialized nations. It requires us to act responsibly in our own use of natural resources, and to regulate our levels of consumption in a more equitable manner. Environmental Rights are the protection of natural resources; the access to and use of natural resources; and how the access to and use of these resources affects surrounding populations, as well as the resources themselves.

4.1 Environmental Rights

Having the right to food, shelter, education, clean water, having a safe and sustainable environment is paramount as all other rights are dependent upon it. The right to a clean environment is fundamental and deeply connected to the right to health and well-being. It is of fundamental importance to note that there is a connection between the quality of the environment and the health of the people living to those environments. The responsibility for the provision of a safe and healthy environment is outlined in a range of legislation and different sections of the Constitution. Section 24 of the Constitution provides that everyone has a right to an environment that is not dangerous to their health and well-being; and to have the environment protected for the benefit of current and future generations, through valid legislative and other measures that prevent pollution and ecological degradation and secure ecologically sustainable development and use of natural resources. The

Constitution provides an obligation in terms of section 152 (1)(b) and (d) on the part of local government as stipulated in sections 4(2)(d) and 4(2)(i), 73(1) and (2) of the Municipal Systems Act 32 of 2000 to ensure that the right to a clean and healthy environment is satisfied.

Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to reach substantial rights).

4.1.1 Considerable Rights of women workers:

- To have a protection against discrimination and have equal protection of the law, in relation to the get benefit of a safe, clean, healthy and sustainable environment.
- To freedom of expression and to seek and impart information and ideas via any media and nevertheless of boundaries.
- To freedom of federation and peaceful assembly in relation to environmental matters.
- To work at a safe, clean, healthy and sustainable environment.
- To freedom from threats, harassment, frightening and violence whilst working on human rights and the environment.
- To self-determination; to freely determine your political status and freely chase your economic, social and cultural development.

4.1.2 Procedural Rights of working women:

- To take part in public decision-making about environmental affairs.
- To equivalent access to public service in his country.
- To effectual legal remedies for violations of these rights.
- To be intimated, at the time of arrest, of the reasons for arrest and shall be punctually informed of any charges against one.
- To seek, receive, and provide environmental information
- To compensation after unlawful arrest or detention.

4.1.3 Private Sector Obligations:

Business have a liability to respect environmental rights. This means that they should avoid violation on the human rights of others and should address unfavorable human rights impacts with which they are involved. This includes the obligations:

- To evolve policies that respect environmental rights.
- To undertake due diligence processes to identify, prevent, moderate and account.
- To create processes to enable the corrective of any adverse human rights impacts that they cause or to which they contribute .

4.2 Human Rights:

Most human rights treaties were drafted and adopted before environmental protection became a matter of international concern. As a result, there are few references to environmental affairs in international human rights gadgets, although the rights to life and to health are of course included and some formulations of the latter right make reference to environmental issues. Human rights are the basic rights and freedoms that belong to every person in the world. They are based on important principles like dignity, fairness, respect and equality. Our human rights are protected by the legislation. If your employer is a public authority, they must follow these principles.

Human Rights are universal legal guarantees protecting individuals and groups against actions which obstruct with fundamental freedoms and human dignity. These rights are the due birthright of every human being, for the sole fact of being human. They can be understood to be a social contract between individuals and the State (we allow the state to rule over us, in exchange for specific guarantees), naturalistically, as inborn properties of every human being.

4. Linkage between Human Rights and Constitutionalism :

Reporting of human rights incidents, barriers to human rights enjoyment and protection in a country are important. Human rights supervising and reporting provides individuals and their government objective information on the country's performance with respect to examination of human rights, their protection and above all respect for rule of law, and maintenance of the dignity of the individual.

Constitutionalism is a system of political arrangement that is governed by a supreme law, that can

only be amended by the will of the people or through their constituent representatives, in which the practice of the rule of law, separation of powers, checks and balances and good governance are examined, and the rights and development of the citizens are paramount.

It is this concept of constitutionalism, this intersection of law and politics, which lies at the heart of the present investigation. This intermingling of diverse fields creates an inherent need for an approach which is somewhat syncretic in nature.

5. Women workers in the Unorganised sector in India:

6.1 Unorganised Sector:

Unorganized sector means an enterprise owned by individual or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employees workers, the number of such worker is less than 10.

The term "unorganised sector" used by the Indian National Account Statistics is equivalently known as informal sector internationally. Unorganised, unregulated, traditional, household and informal are different terms used interchangeably in contrast with organised, regulated, modern, corporate and formal sector. The increasing interest of the researchers over the problem of urban unemployment and poverty has given birth to this concept.

The first National Commission on Labour, under the Chairmanship of Justice Gajendragadkar, defined the unorganised sector as that part of the workforce 'who have not been able to organise in pursuit of a common objective because of constraints such as

- (a) Casual nature of employment,
- (b) Ignorance and illiteracy,
- (c) Small size of establishments with low capital investment per person employed,
- (d) Scattered nature of establishments and
- (e) Superior strength of the employer operating singly or in combination.

In India, the terms 'unorganised sector' and 'informal sector' are used interchangeably in research literature. The term 'unorganised sector' is used commonly in all official records and analyses. It is

defined as the residual of the organised sector. The term 'organised' is generally used when we refer to enterprises or employees in which 10 or more employees work together. The unorganised sector is in no way an independent and exclusive sector. It cannot be denied that the unorganised sector does not get enough protection through labour legislation. As the workers in the unorganised sector, particularly women, have not been able to organise themselves, they are further discriminated against in the sector.

6.2 Issues and Challenges of Working Women :

A high proportion of socially and economically underprivileged women of our society are concentrated in informal economic activities. Many of these women workers are primary earners for their families for sheer survival. Low income women workers, especially in the informal sector form one of the most vulnerable groups in the work force.

Despite of having Human Rights, women workers are facing following issues:

- (a) irregular work
- (b) low economic status
- (c) little or no bargaining power
- (d) lack of control over earnings
- (e) need to balance paid work with child care and household work
- (f) Little or no access to institutional credit, training and information, and
- (g) Lack of assets
- (h) Lack of Social Security

Moreover, women workers are also facing environmental issues. They have also given the environmental rights. But there are few factors, who snatched away the environmental rights of women workers of unorganized sector.

Let's discuss environmental issues:

- (a) location of work place

- (b) poor health condition
- (c) absence of social security
- (d) occupational hazardous and health issues
- (e) lack of physical environment at work place
- (f) lack of sanitary and urinal facilities
- (g) lack of permanent residence
- (h) Safety and Social Sustainability

These women find themselves vulnerable, caught between unorganised work and household responsibilities, and lacking access to support in the event of seasonal or life-cycle contingencies. Though they are contributing a lot to the income/saving of the family and to the GDP of the country, their contribution is not recognized. Sometimes they are subjected to many social evils like gender discrimination, domestic violence and sexual harassment at work-place. Despite the existing laws like, 'Prevention of Domestic Violence Act of 2005'; 'Sexual Harassment Act of 2013'; 'Anti Dowry Act etc., they are subjected to different kinds of exploitation. Therefore, it is time to address their issues, evolve policy measures, and initiate reforms and institutional changes for their emancipation and empowerment.

6. Case studies

7.1 Vishaka vs State of Rajasthan (AIR 1997 SC 3011)

This is a case which deals with the evil of Sexual Harassment of a women at her workplace. It is a landmark judgment case in the history of sexual harassment which as being decide by Supreme Court. Sexual Harassment means an uninvited/unwelcome sexual favor or sexual gestures from one gender towards the other gender. It makes the person feel humiliated, offended and insulted to whom it is been done. In many of the cases, it has been observed that homosexual labor harass an employee belonging to the same sex to which he belongs.

The Supreme Court held that, women have fundamental right towards the freedom of sexual harassment at workplace. It also put forward various important guidelines for the employees to follow them and avoid sexual harassment of women at workplace.

7.2 Jackson v. Birmingham Board of Education (2005)

In a 5-4 decision, the Supreme Court rules that Title IX, which prohibits discrimination based on sex, also inherently prohibits disciplining someone for complaining about sex-based discrimination. It further holds that this is the case even when the person complaining is not among those being discriminated against.

7.3 Mary Roy Vs State of Kerala

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a woman's right activist and educator.

After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance. Though the plea was rejected by the lower court, the Kerala High Court overruled the previous judgment.

In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

7.4 Lata Singh Vs State of Uttar Pradesh

Lata Singh was an adult when she left her family home to be joined in matrimony with a man from a lower caste. Her brothers, who were unhappy with the alliance, filed a missing person report, and alleged Lata had been abducted. This resulted in the arrest of three people from her husband's family.

In order to get the charges dropped, Lata Singh filed a petition which resulted in the landmark judgment by the Supreme Court that allowed an adult woman the right to marry or live with anyone of her choice.

The court further ordered that the police initiate criminal action against people who commit violence against those who decide on inter-religious or inter-caste marriages.

7.5 Termination of 24-week old pregnancy permitted on account of abnormal fetus

The petitioner, a rape survivor, who wished to remain unidentified, approached the Supreme Court

seeking permission to abort her 24-week abnormal fetus.

The petition challenged the 46-year-old Maternal Termination of Pregnancy Act that does not permit abortion of a fetus after 20 weeks.

The Supreme Court ruled in favour of the petitioner after the medical board submitted a report stating that continuing with the pregnancy would put the mother's life at risk.

7.6 Centre for enquiry into Health and Allied themes (CEHAT) Vs Union of India

With the advent of pre-natal diagnostic techniques that could determine the sex of a fetus, the growing trend of aborting female fetuses was observed. In a bid to curtail female feticide, the government of India issued the PNDT Act in 1996.

The provisions of the PNDT Act, however, were not being effectively implemented by the state and central government.

The Centre for Enquiry into Health and Allied themes filed a petition which led to the Supreme Court directing the Central and State governments to enact the provisions of the act immediately, and banned all advertisements relating to pre-natal sex determination techniques.

Conclusion

The rise in environmental movements is thus closely linked to the new phenomenon of globalization, which has transformed the structure of the international system, and which can be defined as ‘the process of increasing interconnectedness between societies far away. Environmental movements in the developing world have emerged in a distinct way from those in the developed world. Women, for instance, have played much more of a crucial role in the rise of environmental movements in developing world. No one can snatch away the rights of working women. The employers should provide the basic necessities, social security, healthy and clean environment to the women workers. The 1994 Draft Declaration of Principles of Human Rights and the Environment reiterates the importance of equality of access to a healthy environment.

References

Social Watch India Report 2005

Mean Years of Schooling of Non-agricultural Workers by Sector and Sex 2004 – 2005

MEA-Millennium Eco—system Assessment Report

World Health Organisation.2005.

Chief Justice Sabharwal, Y.K., ‘Human Rights and the Environment’

United Nations University, Environmental Changes and International Law

http://supremecourtofindia.nic.in/new_links/humanrights.htm.

<http://www.millenniumassessment.org/documents/document.357.aspx.pdf>.

Code of Ethics for Environmental Journalists, see <http://www.oneworld.org/slejf/ethics.htm>. Site visited on 04/08/02

The Constitution of the Republic of South Africa, Act 108 of 1996.

The sub-section states that the council of a municipality, within the municipality’s financial and administrative capacity and having regard to practical considerations, has the duty to strive to ensure that municipal services are provided to the local communities in a financially and environmentally sustainable manner.

Garret Gardin, "The Tragedy of the Commons" 162 Science (1968) 1243-1248

Ref: The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System" approved on behalf of the Administrative Committee on Coordination (ACC) by the Consultative committee on Programme and Operational Questions (CCPOQ) at its 16th Session, Geneva, March 2000.

http://unep.org/dpdl/poverty_environment/pdf.

<https://www.legal-tools.org/doc/1cbff0/>

The unorganized worker’s social security act,2008.

Data on workplace of the unorganized workers reveals that 5.7 per cent rural and 13.6 rural women workers have no fixed workplace. Larger proportions of rural women (41.1 %) are working at their own residence and are carrying out mainly home based works.

National commission for enterprise in unorganized sector.

See further on this Hinarejos (2008); Syrpis and Novitz (2008)

Article 37(2) of the ILO Constitution provides for a mechanism to set up a tribunal which has not been used.

Article 14, Constitution Of India, (Right To Equality)

Article 19 (1)(G) Constitution Of India, (Right To Practice Ones Profession)

Baylis, The Globalization of World politics, an introduction to international relations, p.7.

Womanaid International, 'The Green Belt Movement, at <http://www.unep.org/documents>.

<http://www.unis.unvienna.org/unis/pressrels/2010/html>.

(Endnotes)

*Assistant Professor, University School of Law, Gujarat University, Ahmedabad.

