
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**ENERGY LAW AS BASIC HUMAN RIGHT UNDER THE
CONSTITUTION OF INDIA**- Tushar Nagpal¹**INTRODUCTION**

Energy is one of the most fundamental parts of our life. It can be neither be created nor be destroyed, but it transforms from one form to another, for instance, chemical energy can be converted to kinetic energy in the explosion of a stick of dynamite. To run a car or any vehicle, gasoline or a type of stored energy is required. Electrical energy is required for the use of several machineries including household appliances. Man needs food to get energy. Energy can be found in a number of different forms, it can be chemical energy, light energy, mechanical energy and nuclear energy, solar energy, ocean energy, biomass energy, etc. Modern society consumes a large amount of energy. The government also regulates the production supply and consumption of energy through various laws and steps.

In the rural areas of India, many remote villages are beyond the reach of the electricity grid. There are also many families in electrified villages that cannot pay for expensive electricity.²In urban areas, in addition to affordability, the constraints on the poor accessing coal power include the absence of ownership rights to the houses in which the families reside and the unsafe condition of the houses itself. The supply of² energy is the basic right of a human being and that is why more and more power generation industries are being established in India. There is also growing public opposition to industrial projects, especially large centralised power plants, whether coal-based, hydro or nuclear,

¹ Law Student, Amity law school Noida

²1994-2012 California Energy Commission, www.energyquest.ca.gov/story, (01 march , 2024, 11;30 am).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

as they uproot thousands of families from their lands, pollute the environment, and disrupt their lives. Upstream, coal and uranium mining activities are equally destructive.

CONCEPT OF HUMAN RIGHT IN INDIA

Human right is as old as the history and development of human civilisation. It is one of the essential right without which dignified life is not possible. The official reorganisation for the concept of human right is developed along with civilisation. It is not true to claim that human rights began with the adoption of the Magna Carta in England or that the world came to know of them for the first time through the endeavours of Lock, Roussecue and Jefferson or through the historic documents and revolutions of the West. The truth is that the philosophy of human right had already occupied a place of prime importance in ancient Indian society. The philosophers of the Vedic period endeavoured to define human rights as those rights which are inherent in nature, and without this right, human beings cannot live as human beings. The concept of “Dharma” is the basis of the ancient human rights theory, which denotes to the establishment of human unity and of a world free from traces of conflict and misery. The phrase, ‘*VashudhaivaKutumbakam*’ means ‘Welfare of all’ or welfare state is the main goal of the concept of Dharma as well as of the modern government.

It was believed that only in³ a welfare state, human right protection and recognition is possible. UNO is the primary source of International Human Right Law. By adopting the Universal Declaration of Human Right in 1948, UN Member States recognised Fundamental Rights and the universal freedom of common men. Following this, two more significant treaties, i.e., International Convention on Civil & Political Rights and the International Convention on Economic, Social & Cultural Rights also strengthened human right. It is called the International Bills of HumanRight.

In India, before the adoption of the Indian Constitution, there was no specific legislation to protect human right as such. Some welfare legislations were passed by British India. After independence, while framing the India Constitution, the Constituent Assembly was strongly concerned with the welfare of the masses. During the draft stage, the preliminary

³P L Mehta & Neena Verma, Human Rights under the Indian Constitution, (1st ed Deep & Deep Publications Pvt Ltd. New Delhi, 1999), At

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

notes on Fundamental Rights were prepared and circulated among the members. After examining the genesis of civil liberties, K. T. Shah wrote:

“Life, that is to say, the mere right to exist, will have little value if it is to be bereft of any opportunity to develop or bring out what is in every man and woman. It follows inevitably that the right to live is the right to live decently as a member of a civilized society and have all the freedoms and advantages that would go to make life agreeable, and living assured in a reasonable standard of comfort and decency. This right and all it implies cannot be conditioned or restricted except by its own corresponding obligations”

In his opinion, right to life is the basis of all other rights. But during that time India was suffering from poverty, caste system, and several other problems. So, it was decided that the economic rights of the people could not be guaranteed. So, all the civil and political rights were provided as Fundamental Right and the remaining ⁴rights were mentioned in Part IV, i.e., Directive Principles State Policy, which is an unenforceable part of the Constitution. Nevertheless, all internationally recognised human rights are protected through the Constitution of Indian, not as right alone, but by spreading it into three parts, that is, the Preamble, Fundamental Rights, and Directive Principles of State Policy. Art. 21, which deals with right to life and personal liberty has been interpreted by the judiciary several times to widen the scope of right to life. Thus, in India, the preamble, Fundamental Rights and Directive Principles of State Policy together guarantees basic human rights for the people of India. The idea of recognising the basic necessities of life like food, drink, clothing, housing, and health services has received attention in the modern era. It is true that there is diversity of food systems among different classes of people in different places. It does not mean that raw vegetables are used, but almost all cooked food, and for this reason, the fuel is mostly in the form of shrub, sticks, dung. Apart from this, food security, clothing, shelter, and health services are major aspects, which affect human right. The rapid growth of the urban population and low investment in urban development have credited shelter problem and deficiencies in basic amenities like, electricity, water and sanitation services in the towns and cities of the country. To lead a dignified life, basic amenities are essential. A house without basic amenity is not

⁴P.Ishwara Bhat, Fundamental Rights- A Study of Their Interrelationship , (1st ed. Eastern Law House Private Ltd, Kolkata, 2004), At 79

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

sufficient. There should be proper drinking water, supply of electricity (continuous), food security with proper facilities for cooking food, and sanitation facilities.¹³ These facilities should be affordable by the poor people to achieve the protection of human rights.

ACCESS TO ENERGY AND HUMAN RIGHT

Supply of energy plays an important role in the development of a human being. It provides the basic materials for a good life in the form of heating (for cooking and warmth),⁵ cooling, and lighting. Energy supports people's health through the refrigeration of vaccines and medicines. Alternate energy sources for cooking reduce air particulates and associated respiratory problems. The supply of energy enhances social relations through various forms of communication such as radio, television, internet, mobile phones, transportation, etc. The overall development of an individual depends upon the supply of energy. Energy is also crucial for the development of industry, transportation, agriculture, educational sector, health sector, etc., and more importantly, it is essential for survival, and this is why at the international level, access to energy, especially electricity is often seen as a human right. Various conventions at the international level, directly or indirectly recognises access to energy as a human right. For example, under the Convention on Elimination of All Types of Discrimination against Women, state parties are obliged to take all opportunities and measures to eliminate discrimination against women in rural areas by providing adequate living conditions, particularly in relation to electricity. According to ICESCR (International Convention on Economic, Social and Cultural Rights), everyone has the right to an adequate standard of living, including adequate food clothing, housing, and the continuous improvement of living conditions. Energy provides for a safe means of cooking and preservation of food, adequate lighting facility in the house, security to life, health, etc. The Right to Development is nothing but the ability to participate in political, economic, educational, and social development. It is not possible without exercising Right to Information access, which is dependent upon technology and sophisticated infrastructure of telecommunications, which in turn are entirely dependent upon the availability of reliable electrical connection.

⁵Mahendra P. Singh et al., Human Right and Basic needs; Theory & Practice, (Universal Law Publishing Co. Pvt. Ltd. Delhi, 2008), At 218

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

CONCEPT OF ENERGY LAW

Energy Law governs the generation, use, and taxation of both renewable and non-renewable energy. It includes contracts for siting extraction, licenses for the acquisition and ownership⁶ rights in oil and gas, both under the soil before discovery and after its capture, and adjudication regarding those rights. Energy is essential to satisfy basic human needs and to achieve the goals of prosperity and welfare of all as mentioned under the Indian Constitution. As stated by the WEHAB working group,

‘Although energy itself is not a basic human need, it is critical for the fulfilment of all needs. Lack of access to diverse & affordable energy services means that the basic needs of many people are not being met.’

Energy is essential to realise all human rights as well as sustainable development. Energy poverty correlates closely with poverty and can hinder the process of overall economic development. Mere access to energy service is not sufficient. There should be uninterrupted energy services available throughout the year. In other words, energy must be available at all times in sufficient quantities and at affordable prices, to support the goals of sustainable development. But achieving energy security is difficult because of the uneven distribution of both fossil fuel resources and capacity of the nation to develop other renewable resources (Some developing nations are not able to invest money in renewable energy sources). To meet the growing energy needs of the population, developing countries require large capital investment in the field of innovations and reduction in the cost of renewable energy. Whether it is renewable or non-renewable source of energy, for human development, continuous supply of energy is essential. Unfortunately, the importance of energy is discussed only in relation to sustainable development and it is yet to be considered as an important aspect of human right.

ENERGY RIGHT UNDER THE CONSTITUTION OF INDIA

In India, through the Preamble, Fundamental Right, and the Directive Principles of State Policy, human rights are recognised as embodied in UDHR. But Right to Energy is not recognised as a human right separately. It is recognised and realised through other human

⁶Convention on Elimination of All Type of Discrimination Against Women. Art.14(2) (h)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

rights. The Constitution of India is the fountain head of power and authority, so all the laws derive its force and authority from the Constitution.

FUNDAMENTAL RIGHTS AND ENERGY LAW

Art. 12 to Art. 35 deals with various fundamental rights.⁷ Among these fundamental rights, right to access to modern energy is not expressly provided as a fundamental right. Yet without access to energy many rights are not useful, hence it is implicit in the various rights mentioned in Part III of the Indian Constitution.

3.6.a) Right to Equality and Universal Access to Energy Services

There is no doubt that all humans have the right to have access to energy. Access does not mean one-time access. There should be continuous supply of electricity to all.

Art 14 of the Constitution of India reads as:

“The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India” As per this Article, the phrase ‘equality before law’ prohibits all types or sorts of discrimination and the concept of ‘equal protection of the laws’ requires the Government to give special treatment to individuals in different situations in order to establish equality amongst all. The actual intention of these two phrases of Art. 14 is that equals will be treated equally and unequal will be treated unequally. Similar right is embodied under Art. 2 of UDHR, which states that, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs. Whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”

As per the Constitution of India, each individual has the right to universal access to basic energy services in India. The state should not deny access to electricity, if it available. But the average level of electricity supply in India is low as per the international standard, and interstate inequality in electricity supply has been observed.²⁰ Among 17 major

⁷Id. At 8

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

states, per capita electricity consumption of states such as Punjab and Gujarat was more than 1000 KWh in 2006-2007, and on the other hand, it was less than 100 KWh in Bihar, the lowest of all.²¹ As per the report of the World Bank, 84.52% of the population⁸ in India has access to electricity in 2016. About 98.44% of the urban population and only 77.62% of the rural population had access to electricity in 2016.²² Thus, the urban – rural divide in energy access is very common in India. Electricity provides essential services for the life and development of human beings. The government or company cannot give away the energy product free of cost. But the government can regulate the pricing and access policy. The regulations and pricing policy should guarantee fair access to electricity, gas, and other energy products to lower income communities. Equality before law means equality among equals. That is why with regard to supply of electricity, the rural and urban people cannot claim equality in continuous supply of electricity.

Earlier, if electricity had reached the boundary of a village, it was considered that that village was electrified. But after 2004, based on the population with electricity connection at their homes was considered as the base to decide if that village is electrified or not. If energy equality is brought under the larger ambit of the Fundamental Rights of the Indian Constitution, the Government will give more emphasis on equitable distribution of energy among the citizens. There is not only lack of rural electrification, but also load shedding in rural areas. There is disparity between rural and urban areas not only in regard to electricity, but also with other energy services like natural gas, petroleum products, etc. Modern technology relating to renewable energy is also not common in rural India. People in rural households still use wood, charcoal, or animal waste for their basic energy needs. This has serious implications for social development, e.g., possibilities for education, and economic development, where access to energy services is considered to be an engine for economic growth and poverty reduction.

Gender Equality: Access to energy services is the right⁹ of all individuals, both men and women. But both men and women face certain institutional barriers to realising these

⁸Art. II of Universal Declaration of Human Rights, 1948

⁹Margaret Jungk & Robert Pinamonti, 10 Human Rights Priorities for the Power & Utilities Sector.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

rights. Women's 'Right to failure' in energy systems concern two interrelated areas such as the lack of recognition of women's energy needs, knowledge, and contribution and the unequal distribution of control over energy resources and benefits from energy services between men and women.

Thus, in most developing countries, women experience energy poverty differently and more severely than men. In India, most women and girls, who have no access to modern energy services, spend their day performing basic subsistence tasks, including time consuming and physically draining tasks of collecting biomass fuels. In recent years, the Government of India has promoted several programmes to improve access to modern subsidised cleaner cooking energy (LPG). But in most of states, it is reported that the majority of consumption of LPG has remained in urban areas. Women and girls have little economic rights and they cannot afford modern clean cooking energy. Even if there is access to electricity, the unreliable supply of power/continuous load shedding makes electricity useless for cooking purpose. Due to these reasons, women and girls in rural areas are forced to collect bio-mass which is available free of cost in village areas. Similar to household gender discrimination in the field of education, health, work or earnings, discrimination in the field of energy access is also common in most parts of India. As per Art. 15 of the Indian Constitution, the Government should not make any discrimination while supplying power. Equals should be treated equally. Access to electricity becomes equitable only when the reliability of power supply is ensured. The mere extension of a wire connection is not a fundamental right that the wire must carry reliable, affordable power to all households.

But if there is scarcity of power or energy sources, the state cannot be held responsible for non-supply of energy services to the people. For the purpose of equitable distribution of available power, load shedding or power cuts are inevitable. It was held in *K.M. Nataraj & another V State of Karnataka & another*, that if power is available, then only the Electricity Board can reschedule the supply of electricity to the public to enable their demand.

https://www.bsr.org/reports/BSR_Primer_Human_Rights_Power_Utilities_Sector.pdf(March 26th 2024 8:15 pm), At 3

¹⁰Indian Constitution. Art. 15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

In Mahashakti Cold Storage v. State of UP and Others, the question came before the Court whether in the matter of supply of electricity, if there is scarcity, proportionate equitable distribution of available energy should be made to all the consumers, irrespective of place of their residence, but if there is such a discrimination founded on the basis of residence only, whether the respondents are empowered and entitled to do so. The petitioner was running a cold storage industry (continuous process industry) and was in requirement of continuous supply of electricity, which was denied. The contention of the respondent was that electricity is in great scarcity and there are priorities, which have to be looked into while supplying electricity. By looking in to the situation of a large number of residents in the state, the court converted this writ petition into PIL and said that discrimination in continuous supply of electricity to some districts is amount to infringement of Art. 14 of the Constitution. The different hours of supply on account of importance of city and frequent visit of VVIPs and their protocols are not justification for their act. It was held that the Electricity Board should proportionate equitable distribution of available energy to all consumers, irrespective of their residence. In the words of Justice Sudhir Agarwal,

“We, thus, have no hesitation in holding that manner in which distinction has been made in the period of supply of electricity to the same category of consumers, merely for the reason of their place of residence is patently arbitrary, illegal and illogical. The "State" under Article 12, is under statutory obligation to equitably distribute material resources available to it. If there is a rational classification, the distinction may be made, but the reason assigned herein cannot be termed as rational or logical constituting a valid classification. We strongly disapprove, discard and condemn this kind of approach on the part of respondents. It cannot have sanction of law”.

However, the rural population are depending upon the biomass and other traditional sources of energy. Not only electricity, but even clean cooking energy is also not accessible by most of rural population. The lack of transport facilities to villages for supplying clean cooking gas, irregular load shedding / power cuts problem will

discourage the rural people from claiming access to modern energy. The poor people from village area, perceived access to modern energy is luxury and not basic necessity¹¹

3.7. CONCLUSION

It is a universally accepted truth that access to energy affects productivity, creativity, health, standard of living, education, environment, climate change, etc. Lack of continuous supply of energy at an affordable price is challenge for all developing countries. Increasing the generation of energy with minimum impact on environment is a big challenge to a developing country like India. The courts in India are stressing on the fact that sustainable energy is essential for the overall development of the citizens. And in many cases held that access to modern energy are essential for a decent life with access to all basic fundamental rights as provided under constitution of India.

¹¹Bushra Quasmi, Access to Clean Energy: Challenges Faced by India, (Sairam Bhat (ed.), Energy Law and Policy in India.) NLSIU publication, 2016), At 23

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>