



## HUMAN RIGHTS AND THE ENVIRONMENT: A REAPPRAISAL

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### Abstract

Violation of various enviro-human rights has now become an important concern for countries. The problem arises as to the lack of clarity and relativity of the scope of the right to environment. In relation to first world countries, the scope is different which does not fit with the conditions prevailed in less developed countries. Even within a country the meaning and scope of the right to an environment are not similar for all people of the country. Right to environment often comes in dispute with other rights such as the right to development, right to livelihood, right to housing, right to shelter. The linkage between these environmental and human rights has recognised in various international and regional instruments, resolutions of the UN subsidiary organisation, documents of international conferences, and the judicial dictum of tribunals, which consider the human rights frameworks as an effective way to achieve the ends of environment protection. The present study is intended to describe the interlink between environmental protection and human rights approach by analysing instruments, initiatives taken by environmental and human rights bodies and the judicial pronouncement of various tribunals. It seeks to reveal the underlying assumptions and preconditions upon which a discussion of environmental human rights rests. Further, it also evaluates both are mutually responsive and necessary for human welfare. The equitable development and promotion of both are desirable and feasible for the welfare of humanity.

**Key Words:** Human Rights, Environmental, Human Welfare.

### Introduction

For a long time, there has been a lot of discussion and debate over the relationship between human rights law and environmental harm. It is clear now that in many ways the environment can affect our enjoyment of human rights. So that it's important to protect the environment in order to be able to safeguard other human rights. There is no single definition of the environment that has been adopted by a national regulation system or regional or international agreement. However, there is a broad agreement that it refers to a global system in constant interaction which consists of physical, chemical, biological and socio-cultural elements.

### The Base for the Protection of the Environment.

During the 60's, a global movement was born which sought to regulate and provide legal protection to the environment. There has since been a discussion about what is the legal protection of the environment and what is a legal value that has to be protected or safeguarded. Some favour as 'eco-centric' approach, which considers that object of protection is the environment as such, with all its components like the air, sea, land, flora, and fauna. That is, the environment would be an autonomous legal, value worth protecting itself. On the other hand, there are those who proclaim an 'anthropocentric' approach, according to which environmental protection is justified only to the extent it is directly related to the individual legal right, such as life and health of people.

The majority of environmentalist has adopted an anthropocentric approach and in some cases, a moderate anthropocentric approach depending on the degree of the interrelationship they see between the environment and individual legal right.

The provision of UN Stockholm Declaration (1972) is a clear example of the anthropocentric view, as they focus the concerns and efforts to protect the environment on the fact that it is essential for human well-being and the enjoyment of basic fundamental rights (Boyle and Anerson M:1996).

### The Protection of Environment as Human Rights.

Although they are separate fields, human rights and environmental protection are closely related to the point that they are actually interdependent. Human rights are based on respect for the fundamental human attribute such as dignity, equality, and freedom and the proper attainment of these depends on the exercise of Human rights such as freedom of expression and information. Environmental policies, environmental degradation also affects directly the enjoyment of various human rights, including the rights to life, health, food, and water.

The relationship between human rights and the environment has been recognised in two ways:

- a. Through the proclamation of new right to healthy, safe and sustainable environment.
- b. Deepening the links between human rights already recognised -such as rights to life and health and the environment. In this regard, the tendency of human rights bodies has been to adopt. This second form of recognition, emphasizing the 'green' dimension of human rights.



There are two sets of rights which are closely linked to the environment. Firstly, rights whose enjoyment is particularly affected by environmental degradation. Thus specific environmental threats have been identified as having a damaging effect on certain human rights. For example, with regard to the right to life and health, there are important threats such as the inadequate management of toxic and hazardous wastes, or the effects that climate change will generate on the rights to life, health, food, and water etc. Some human rights treaties including the Convention on the Rights of Child, explicitly refer to this relationship regarding human rights to water, it was recognised as such in 2002 from the General Comment No.15 of the Committee on Economic, Social and Cultural Rights (2002), considering it as an implicit element, but essential to the right to enjoy an adequate level of living.

Secondly, there are those rights whose exercise is conducive to more appropriate and transparent environmental policy formulation. Examples are the right to freedom of expression (including the right to access to information), to the association to participate in decision- making processes, and to a legal remedy. These rights not only allow a better protection of the environment but also of those human rights that are more susceptible to environmental degradation. However, there is still a lack of determination of the specific obligations that human rights law imposes in order to protect the environment.

Finally, it is useful to highlight the concept of “environmental justice”, which was incorporated to the environmental debate in the U.S in the 70’s. This arises from the recognition that vulnerable groups have been particularly affected by environmental pollution and depletion of natural resources. The concept of environmental justice has two dimensions. Firstly, Distributive dimension (Peters 2015:27) points out to equitable distribution of environmental goods (such as parks) and environmental bad effects (such as polluting industries) Secondly, Participatory dimension (Peters 2015:34) rests on the assumption that citizens have the ability to influence the certain environmental decision. These two dimensions are an application of the Principles of equality, non-discrimination, and participation, which are recognised in multiple declarations and treaties on Human rights.

#### **The Birth of the International Environmental Movements (Main Treaties).**

The right to a healthy environment was established only in the second half of the 20th century. This rather late recognition is due to the fact that human intervention on the environment became stronger only since the industrial revolution. It grew further after the Second World War Starting in the 1960s, the environmental movement created awareness about the close relationship between Human Rights and Environment. In 1972, the UN Conference on the Human Environment was held in Stockholm, which led to the declaration of principles by which states recognised the importance of the environment to human well-being and agreed to a series of recommendations and action plans. The so-called ‘Stockholm Declaration’ (UN Conference on the Human Environment, 1972) is the first effort of the international community to introduce in the political agenda the environmental dimension as a condition for social and economic progress (Perrez 2004:4). That same year 1972, the UN Environment Programme (UNEP) was created, to coordinate the efforts of the UN organisation for the environment. Since that time, the international community has adopted several other agreements in order to address problems related to the environment in its various areas, such as climate change, depletion of the Ozone layer, conservation of biological diversity etc. In the 80’s, the approval of the World Charter for Nature stands out. This charter decrees a number of principles of environmental conservation. Other relevant international instruments are:

- a) UN Convention for the Law of the Sea (1982), which governs inter alia the exploitation, conservation and pollution of the sea and marine resources.
- b) The Vienna Convention for the Protection of the Ozone Layer (1985) and
- c) The Montreal Protocol on Substances that deplete the Ozone layer (1989).

Later on, in 1992, the UN Conference on Environment and Development was held in Rio de Janeiro, where the Rio Declaration on Environment and Development was adopted. This document is famous for introducing the concept of “Sustainable Development”. In the same decade the following environmental treaties were adopted;

- a) The UN Framework Convention on Climate Change.
- b) The Kyoto Protocol which imposes binding targets for reducing emissions of greenhouse gases for industrialised countries.
- c) UN Convention on Biological Diversity (1993).
- d) The UN Convention to Combat Desertification (1994) in those countries experience serious Drought and Desertification.

Regionally, the human rights agreements adopted after the 70’s include the right to healthy environment. The same has happened at the National level, where most countries have enacted laws aimed at protecting the environment, many of which have enshrined this right in their constitution. However, despite the many International Environmental instruments and



recognition in national legal systems, the right to a healthy environment is not recognised explicitly as such in any global agreement.

### **The Key Environmental Principles**

International agreements and declaration on the useful environment have established principles which are useful for interpreting specific legal rules and to adopt and carry out environmental policy tools.

According to the precautionary principle, in the event of threats of serious or irreversible damage, lack of full scientific certainty must not be used by states as a reason for postponing measures to prevent environmental degradation. This principle is enshrined in the Rio Declaration of 1992, has also been included in later agreements such as the Cartagena Protocol on Biosafety of the year 2000, the Rio Declaration also establishes the principle of sustainable development. This concept refers to the ability to meet current needs without compromising the resources and possibilities of future generations.

The Rio Declarations stresses the importance of participation and access to environmental information. This principle of participation has inspired other agreements, such as the Convention on Access Environmental Matters, that is, The Aarhus Convention of 1998.

Another important principle is the “Polluter Pays” principle, which imposes a duty to the polluter or bears the expense and costs of minimizing or controlling the pollutant that is generated. Another hand, the provisions of UN Framework Convention on Climate change of 1992 are a clear reflection of the Principle of “common but differentiated responsibilities” of states, for example by imposing certain obligations that apply only to industrialised countries, among other principles (Dias, 2000; Van der Bank and Van der Bank 2014:53).

### **NGO’s for Protection of the Environment.**

NGO’s involved in environmental governance are highly diverse, including local, national, regional and international entities with different objectives like environmental protection, poverty alleviation, animal warfare, children issues and sustainable development. NGOs are playing an important role in framing the environmental policy, rallying public support for environmental conservation and protection of endangered species. In India, 31 lakh NGOs are registered under the Societies Registration Act. It is more than double the number of schools (Anand 2015). Often NGOs address environmental and development issue arise because of lack of scientific and technical expertise. This make the cooperation of NGO , government and industry difficult.

In addition to international and national legal bodies and institutions, much non-governmental organisation for the protection of the environment has been created. At the international level, some of the best known are Green Peace, Friends of the Earth. Many others have been formed in numerous countries, as it has appointed with other issues of public ethics, such as human rights and anti-corruption. The NGO’s for the protection of the environment have contributed to greatly to increasing global awareness about the issue on which they focus, and to bringing pressure for the adoption of international agreements as well as national laws, institutions and public policies for the protection of the environment.

### **Indian Perspective**

In India, a state of natural inequity has been developed by many human-centric activities such as the industrialisation, urbanisation and the large-scale exploitation of natural resources damaging the environment led to many serious repercussions on a large scale including Global warming, drought, flood, environmental refugees and migration, health issue, ozone depletion etc. such as urbanisation to accommodate a vast population, and industrialisation to meet their necessities. At the same time, a lack of strong legislative measures worsens the situation.

India witnessed to a large superstructure, mega-dams and large industrial units which have the potential to oust millions of people in one stroke without taking into account their social, economic and cultural aspects of life. A large number of people became the direct victim of mega project forced to migrate, loss of cultural identity, their land, employment and forced to live in the degraded environment. The government’s attitude towards this issue is negative. This is the reason that India witnessed different kinds of resistance at regular intervals like Narmada Bachao Andolan, Anti-Tehri Dam movement, Silent Valley project, Bhopal Gas disaster, Plachimada Controversy, and the recent Koodankulam Nuclear Plant Controversy.

The Indian judiciary played a good job to put the issue of environmental degradation in the framework of fundamental rights to provide remedies to the victim of environmental harm. The Indian judiciary considered sustainable development as the basic criterion of striking a balance between the environment and development. The Indian constitution is one of the very few Constitutions in the world that responds to the problem of environment. By the 42nd constitutional amendments happened in



1976 and judicial interpretation down the years, the law of constitution developed environmental jurisprudence. The broad meaning given to the right to life guaranteed under Article 21 of Indian Constitution in the case of Maneka Gandhi (1978) enables the court to accommodate various rights within the ambit of the right to life. Rural Litigation and Entitlement Kendra V. State of U.P. (1985) is one of the earliest cases where the court dealt with issues relating to the environment and ecological balance. In Subhash Kumar (1991) case, 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. In N. D. Jayal v. Union of India (2004), the Supreme Court has declared that 'the adherence to sustainable development is a sine qua non for maintenance of symbiotic balance between the right to development and development'. The judiciary has played a vibrant role in the development of environment jurisprudence especially by interpreting the constitutional provisions and national laws in terms of international environmental law and international human rights law through the tool of Public Interest Litigation and the liberalisation of the rule of locus standi. The Indian scholars have the opinion that government withdrawal from the public sectors is also a reason for the violation of human rights.

### **Alternatives**

Kothari and Patel (2006), gives six alternatives.

- a. Resistance
- b. Revival
- c. Reconstruction
- d. Redefinition
- e. Reorientation
- f. Restitution

Resistance to development projects and process those are destructive in nature. Every time such resistance takes place, it challenges the development process. There arises a question of sustainable development. The revival of environment-related traditions can be seen in different parts of India. Beej Bachao Andolan (save the seeds Movement) is an example for this. While the revival of traditional practices and beliefs is the clear new trend, even more, interesting and powerful is the ability of communities and citizens to innovate, especially when changing conditions require adaptations. This is where reconstruction comes in. It is a process of combining modern and traditional knowledge through participatory planning. A lot of redefining concepts is needed. The term development has a different meaning in different places. It is being redefined as the holistic expansion of options available to people for improving their intellectual, cultural, material and other well-being. The concept of personal well-being itself needs redefinition. Finally one needs a major reorientation of the in itself i.e. changes in the attitude, in the way human being looks the environment. Why should we fall prey to a system in which intellectuals are considered to a section of higher status than those who are labouring outside on the streets? Possibly, the biggest change needed is that of decentralising the system of decision making. In 1993, the Government of India brought a revolutionary amendment through 73rd and 74th Amendment, which gave Village Panchayath and Gram Sabhas more rights to conduct their own affairs.

### **Suggestions**

Today, many domestic legal orders consist of the methods to preserve the environment and the importance of the relationship between environment and human rights is indisputably high in international law. However, given the opposition voiced in some quarters to the inclusion of environmental consideration within a human rights framework, different avenues towards environmental protection have been devised in an attempt to progressively build up a complete attention of the relevant issues. In human rights law, the first step has been to progressively reinterpret rights formulated before the 'ecological era' as some monitoring and supervisory human rights bodies have already undertaken. Second, procedural rights embodied in the two UN human rights Covenants and informed by developments in international environmental instruments can be used on their own in some circumstances and finally, a full right environment allows environmental considerations to be looked at in their own right without reference to other human rights and to take into account the global dimension of the problems. These replacements should be seen as complementary rather than incompatible as they all tend towards the same goal. A right to environment represents, in theory, the ultimate goal to attain in view of the special attention paid to internationally accepted human rights, but practical considerations may dictate concentration on the 'partial' solutions that have the significant advantage of allowing for some measure of protection as of today. It must, however, be stated that the realization of what is sought through the recognition of a right to the environment will never fully come about unless it is embraced in a broader strategy. The taut separation between the different branches of international law is not suitable for positive interactions between environmental and human rights law. At the international level, it is clear that the most important part of the realization of a right to the environment has to be carried out by the operational agencies. The task of the Human Rights Centre should give further awareness of the existence of the link between the two fields and set up standards whereas such agencies should attempt to incorporate these principles into their everyday work (Cullet 1995:39). This prompts that in order



to carry out environmental protection in an independent manner; a number of issues are linked to development-related concerns.

### Conclusion

Since 1992, right to a healthy environment was upgraded into the status of fundamental rights within the meaning of a right to life under Article 21 of Constitution of India. But this is in the records only. The rights of citizens are always belied in several aspects. Present environmental issues need new approaches. The linking of human rights to environmental needs is recognition that conservation will not be productive without human development. A wide range of policies is required at both national and international level. Such approach projects the demand for new governance and accountability.

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