

## Environmental Problems and Human Rights

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Received June 24, 2017

Accepted July 29, 2017

### ABSTRACT

*Human rights are universal, but not universally protected or respected. Environmental protection is first ascertained as a universal concern which warrants consideration within a human rights context. Further, some implementation mechanisms such as procedural rights developed at the same time in environmental and human rights instruments or the judicial appraisal of environmental protection in the context of enforceable human rights are highlighted. Poor governance provides the environment in which human rights abuses occur either through direct State abuse or through the State's inability to provide protection against the abuses of others. Poor governance put a country in high risk group in violation of environmental rights of human beings.*

**Key words:** Human Rights, Environmental Protection, Poor Governance and High Risk Group etc.

### Introduction

Human Rights and fundamental freedoms help the people to develop our intrinsic qualities, intelligence, talents and conscience to meet their material and spiritual needs. Without the recognition of the right to education, realization of the right to development of every human being and nation is not possible. Article 26 of the Universal Declaration of the Human Rights (1948)<sup>1</sup> clearly states that 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, social or religious groups and shall further the activities of the United Nations for the maintenance of peace. Historically, education is an instrument of development and an important factor for social change. In this view, Human Rights education is an integral part of the right to education. The knowledge of the rights and freedoms, of oneself as much as of the others, is considered as a fundamental tool to guarantee the respect of all human rights for each and every person. The rapid acceleration of science and technology provides the power to transform the environment in countless ways and on an unprecedented scale. Humanity's capacity to transform its surroundings, if used wisely and with respect to the ways of nature, can bring to all communities the opportunity to enhance the quality of life. Wrongly or heedlessly applied, or applied in inequitable ways, the same power can do incalculable harm to human beings and their environment. This incalculable harm is categorized as (i) Dangerous levels of pollution in water, air, earth and living beings (ii) Destruction and depletion of irreplaceable life forms and natural resources (iii) Major and undesirable disturbances in the earth's climate and protective layers (iv) Gross deficiencies, harmful to physical, mental and social

health, in the living and working environments of humans, especially in cities and industrial complexes. Natural resources are the base of survival and livelihoods. Their material and economic sustenance largely depends on these. In India alone, around 70% of the population directly depends on land-based occupations, forests, wetlands and marine habitats, for basic subsistence requirements with regard to water, food, fuel, housing, fodder and medicine as also for ecological livelihoods & cultural sustenance<sup>2</sup>. This shows that there is a close interdependence of humans and their environment; it is not surprising that the culture of societies is so greatly influenced by their environment. People seek inspiration, knowledge, spirituality and aesthetics within their natural surroundings. In the growing cities of the industrialising world, millions of residents of all classes are now prone to lung and skin diseases, water-borne illnesses, and congenital abnormalities from toxics in their food and water, some of which may have originated hundreds of kilometers away. The ozone layer protecting the earth from harmful solar radiation, is being punctured and depleted by industrial emissions from industrial countries, causing abnormalities in wildlife and skin cancer amongst humans. Ironically, fair-skinned people are more prone to this effect and climate change brought about by global warming, is already causing changes in weather patterns, threatening to submerge vast tracts of low-lying coastal areas and islands, and beginning to cause havoc to agricultural systems.

Life, livelihoods, culture and society, are fundamental aspects of human existence, hence their maintenance and enhancement is a fundamental human right. Destruction of environment and thereby of the natural resources, is therefore, a violation or leads to the

violation of human rights directly by undermining the above aspects of human existence, or indirectly by leading to other violations of human rights, for example through social disruption, conflicts and even war. First time that governments recognised such principles at an international level was at the United Nations Conference on the Human Environment, Stockholm 1972. This Conference considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. The traditional economy of the indigenous peoples rested on their concept of and relationship with nature. For most such communities, land, water and forest belong to Mother Earth; human beings enjoy only common rights over them, nobody can own them; they ought not to be bought and sold, appropriated or otherwise privatised. Land, therefore, is an important ingredient of the indigenous peoples' identity not only for its economic usage but also for its spiritual and emotional quality. The present crisis of the indigenous peoples consists precisely in the weakening and damaging of the ultimate base of their sustenance, namely land. The environmental conditions have deteriorated and worsened all over the country due to a variety of aggravating factors. The overall situation is certainly a matter of grave concern, more specially because it is affecting adversely the quality of life of the people and eroding the very foundations of the national economy and national security. As mentioned earlier, the worst affected are the poorer sections of society. The situation is compounded by slack and inadequate enforcement of laws and legislations. In this scenario, the importance of strengthening the constitutional safeguards for environment protection and nature conservation cannot be underscored.

### **Causes of Environmental Problems**

Environmental problems in India arise from a number of proximate or surface causes. The economic growth has necessitated a corresponding expansion in energy availability for industrial, agriculture and domestic purposes. There has, till recently, been little regulation of the environmental impacts of such expansion. The level of environmental literacy is low, especially amongst decision makers, and there is a gross undervaluation of the economic and material values of the environment. The policies and programmes of the Central and State Governments have not incorporated environmental principles, with the result that many development projects have been conceived for short-term gains without considering their long-term ecological and social impacts. The growing human and animal populations are making increasing demands on natural resources resulting in the exploitation of resources in a unsustainable manner. The general indifference of the industrial sectors on aspects of

environmental safety and protection have led to the spread of avoidable air, water and soil pollution. The uncontrolled consumerism of the upper classes, which seem completely oblivious to the limits of resource use, has put serious pressure on natural resources. The poor and disprivileged classes of humans and the other non-human species unfortunately have to bear the main brunt of these environmental problems. Ironically, the problem is rooted deep in social, economic and political structures<sup>3</sup>. Inequities in the relations between people and countries have also allowed the imposition of unsustainable and destructive models of 'development'. The process of 'development' has been characterised by the massive expansion of energy and resource-intensive industrial and urban activity, and major projects like large dams, commercial forestry, mining and chemical-intensive agriculture<sup>4</sup>. The resource demand for the economic progress of a minority of people, has lead to the narrowing of the natural resource base for the survival of the economically poor and powerless. This has happened either by direct transfer of resources into cities and industrial complexes, or by the destruction of life-support systems for rural communities everywhere.

### **Legal and Constitutional Protection of Environment**

India has a large body of legislative measures relating to environmental issues. The backbones of these are relevant provisions in India's Constitution. The Constitution of India, 1950, did not include any specific provision relating to environment protection or nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualized by the framers of the Constitution. However, the past five decades have witnessed two major developments in this connection.

The first development took place when the Constitution (42-Amendment) Act, 1976, was adopted in the mid-seventies. Specific provisions relating to certain aspects of the environment, more specially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy – and List III – The Concurrent List of the Seventh Schedule of the Constitution. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country under the directive Principles of State Policy (Article 48A) of Part IV of the constitution as protection and improvement and safeguarding of forests and wild life. It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures Under Fundamental Duties (Article 51-A) of Part IV –A of the constitution

The second major development has been the jurisprudence arising from certain remarkable judicial pronouncements in recent years, more specially

relating to Article 21 of the Constitution dealing with 'the right to life'. In *Subhash Kumar vs. State of Bihar* (1991) 1 SCC 598, the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life. In *Vellore Citizens Welfare Forum vs. Union of India*, AIR 1996 SC 2715, the Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country.

### Further Steps for protection of Environment

However, a number of groups have also pointed out that the Constitution is deficient in that it does not explicitly provide for the citizen's right to a clean and safe environment. In a recent submission to the committee set up to review the Constitution, these groups have proposed a number of amendments to the Constitution, for ensuring environment protection and nature conservation<sup>5</sup>. These include the recognition and incorporation of Environmental Rights as separate and independent Fundamental Rights in the Constitution of India. These follow from the above-mentioned interpretation to the term 'Right to Life', as given by the Supreme Court. This could be further specified to include right to clean drinking water, and to a clean and pollution-free environment. Second one is the replacement, within the Directive Principles of State Policy, of the term 'forest' by the term 'life supporting natural ecosystems'. The reason for this suggestion is that the Courts and other authorities, including the forest departments, have been interpreting the term forest to mean land with trees. As a result, land without trees is not considered as a forest and there is a lack of interest in protecting other important ecosystems such as grasslands, deserts, marshes, mangrove, etc. With the better understanding of these diverse ecosystems and their importance to humankind there is a need to preserve them. Third one is the incorporation, within the Fundamental Duties, the responsibility of panchayats and municipalities to give due regard to ecological aspects and to protect the environment, including life supporting natural ecosystems such as forests, rivers and lakes, and wild life, in the preparation of plans for economic development and social justice.

### Conclusion

Human rights and environmental concerns have been matter of concern for all civilizations, as far as, human rights are concerned, the roots of the human rights and fundamental freedoms of individuals can be traced out from humanitarian traditions, the unclosing in all parts of the world and the historic pronouncements of philosophers, political leaders and statesman in different centuries, in general and twentieth century, in particular. It is submitted that human life is directly concerned with the environment. The right to a healthy environment is now found in a number of regional Human Rights instrument around the world. However, there is a absence of specific right to a safe and ecologically balanced environment. Nearly all global and regional human rights bodies have recognized and accepted that there is a close link between environmental protection and human rights. Right to healthy environment is also a human right. There is need to create awareness about the promotion and protection of human rights and healthy environment. This can be done through education. Strategies should be made for creating mass awareness. State can also play an important role in this direction. However, it is seen that legislative and judicial bodies have generally taken the lead in protecting Human Rights. Although, the right to a healthy and clean environment as envisaged under the existing constitutional environmental scheme is adequate in many respects, it's adequate and efficacy depends upon the conditional judicial co-operation. It is not appropriate to leave such an important and vital right to judicial vagaries. Therefore, it is imperative that this right finds an express mention in part III of the constitution.

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