

Environment Protection: Legal and Human Rights Perspective

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Abstract

All living beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights. Degradation of environment is therefore a violation of human rights. Of late but the world has amplified its alertness on the relationship between environmental degradation and human rights abuses. The Preamble of the United Nations Conference on the Human Environment stated that “Man, is both creature and moulder of his environment, which gives him physical sustenance....” Man, while moving on the path of development has turned from changer to transformer and now destroyer of the environment. Thus, we can say that human beings (we) are violating the legal and human rights of each other. International Conventions, Municipal law have been enacted for the protection of environment and recognition of rights to the environment. This paper is intended to describe the interlink between environment protection and legal human rights approaches by analyzing instruments, initiatives taken by different international organizations, government, and environmental and human rights bodies and how far this legal and human right approach can be helpful in providing better protection to the global environment.

Keywords: *Environment Protection, Legal Rights and Human Rights, Sustainable development*

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INTRODUCTION

Why should we talk about environment protection from the legal and human rights perspective? There are several possible answers. Socio-economic development of man depends on the environment and this development influences the environment. A legal and human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the environment in general. It may help us to procure higher standards of environmental quality, based on the obligation of states to take measures to control pollution affecting health and private life. Above all it helps to promote the rule of law in this context: governments become directly accountable for their failure to regulate and control environmental nuisances, including those caused by corporations, and for facilitating access to justice and enforcing environmental

laws and judicial decisions. Lastly, the movement towards “sustainable development” which is considered to be the need of present and future generation seems to be attainable by interfusing environmental law with legal and human rights [1].

LEGAL AND HUMAN RIGHTS PERSPECTIVE

The relationship between human rights and the environment was first recognized by the UN General Assembly in the late 1960s [2]. In 1972, the direct relationship between the environment and the right to life was recognized by the United Nations Conference on the Human Environment.(UNCED) [3] The Preamble stated that “Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. . . . Both aspects of man’s environment, the natural and the manmade, are

essential to his well-being and to the enjoyment of basic human rights –even the right to life itself.” Principle 1 of the Stockholm Declaration established a further foundation for linking human rights and environmental protection, declaring that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.” In 1982 the World Charter for Nature acknowledged that “Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.” In 1992, the United Nations Conference on Environment and Development (also known as the Earth Summit) stated that “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” The Declaration also provided for the right of access to environmental information and of public participation in environmental decision making. In 2002, the World Summit on Sustainable Development merely acknowledged the position that there exists a possible relationship between environment and human rights [4].

Most human right treaties were drafted and adopted before environmental protection became a matter of international concern. As a result, there are few references to environmental matters in international human rights instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 12 expressly calls on state parties to take steps for “the improvement of all aspects of environmental and industrial hygiene”. The Convention on the Rights of the Child refers to aspects of environmental protection in respect to the child’s right to health. Article 24 provides that states parties shall take appropriate measures to combat disease and malnutrition “through the provision adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries contains numerous references to the lands, resources and environment of indigenous peoples.

The preambles of European Community directives often state their aim as being “to protect human health and the environment” [5]

Principle 1 of Rio Declaration proclaims that human beings “are entitled to a healthy and productive life in harmony with nature” and provides that states should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that inter alia, are found to be harmful to human health.

It is apt to mention here that though the regional human rights instruments recognized the right to a healthy environment and the states’ obligation to protect to preserve and improve the environment, it does not allow individual to file a petition in case the state is not fulfilling its obligations. Environmental harm can only be alleged by showing that it can cause severe human rights violations.

In regard to the right to a healthy environment the role of regional human rights institutions and domestic courts is quite commendable. The right to a quality environment has been given content by regional human rights tribunals and national courts through the incorporation of environmental jurisprudence, law, principles and standards. Such bodies increasingly utilize environmental standards to adjudicate human rights claims related to the environment and to judge whether or not states have complied with their legal obligations [6].

JUDICIAL DECISIONS

In 1994, in the landmark case of *Lopez-Ostra v. Spain* [7], the European Court opened the door for the protection of human rights against nearly all sources of environmental pollution. In this case court held that Article 8 of the European Convention on Human Rights creates a positive duty of regulation and protection on the part of the state, so that state tolerance of environmentally noxious activities may constitute a breach. Again, in *Diego Cali & FigliSrl v. SEPG* [8], the European Court of Justice remarkably makes reference to Principle 3 of the Rio-Declaration and state that the prevention of pollution serves the interests of not only current, but also for future generation.

A lack of strong legislation worsens the situation of environment protection. It is quite pertinent to mention that the country which was self-sufficient in terms of natural resources now natural resources like water, air, forest, and biodiversity has come to the stage of threat. The Constitution of India is one of the very few Constitutions in the world that responds to the problem of environment. By the 42nd Constitutional amendment happened in 1976 and the judicial interpretation down the years the law of the constitution developed the environmental jurisprudence in India. The provisions were inserted into the Constitution that imposed responsibilities on both the state and citizens to protect the environment. The Indian judiciary has also considered sustainable development as a basic mantra of striking a balance between the environment and development through universal agendum [9]. The courts in general and the Supreme Court in particular tried its best to fulfill the aspirations related to the right to environment and to fill the gaps present in the environmental law. It also gave a liberal interpretation of the existing laws in the light of international human rights instruments to achieve the goal of human dignity by easy access to basic life support elements of life like pure water, clean air and healthy surroundings through the root of human rights law. Various landmark judgments on environmental protection were delivered by way of Public Interest Litigations.

In *Subash Kumar (1991) [10]* case, the court observed that right to life guaranteed by Article 21 include the right of enjoyment of pollution free water and air for full enjoyment of life. In the case of *Charan Lal Sahu v. Union of India [11]*, the Supreme Court of India interpreted the right to life guaranteed by Article 21 of the Indian Constitution to include the right to a wholesome environment. In *T. Damodhar Rao v. Municipal Corporation of Hyderabad [12]*, the High Court held that 'slow poisoning...caused by environmental pollution and spoliation should also be treated as amounting to violation of Article 21. The judiciary has played a vital role in the protection of environment by interpreting the national laws and constitutional provisions in

terms of international environmental law and international human rights law.

CONCLUSION

We may adopt any perspective for environment protection, but it is evident that failure to preserve healthy environment has a clear and even an increasing effect on the enjoyment of human rights. At some point we can argue that human rights law and environmental law should continue to develop as two independents but closely linked fields whilst 'borrowing' apposite concepts. For instance, in countries where a separate right to environment is not formulated in clear terms, the existing human rights provisions regarding right to life and human dignity can be invoked, on the basis that the right to decent life cannot be protected in the absence of its concomitant right to clean environment.

Articulating human rights with the environment creates a rights-based approach to environmental protection as it will be helpful in developing new strategies, policies to ensure respect for the rights of individuals and communities dependent on natural resources and will help in providing the remedies to the people harmed by environmental degradation. Taking a human rights approach to environmental protection is advantageous in that it reinforces the concept of mutual goals and the serious upshot each may have on the others. The link in terms of an incompatible tension between environmental prerogatives, human rights must be addressed for environment protection both at international level (by persuading developed countries versus the developing countries in international environmental negotiations), and at national level (by making environment protection subservient to developmental priorities).

It can also be concluded that the development of the society either in terms of technologies, trade, industries, etc. along with different environment concerns seems not to be opposing each other if the development is Sustainable development. It is the need of today's and future time. Sustainable development can be attainable by integrating human rights with environmental protection or

environmental law. Apart from this we should also understand that the issue of environment degradation and need for its protection is not a concern of any particular individuals or nation. It is a global issue as we all are affected by it. Such issue should not be recognized by any political boundary, so we all the citizens of the globe must come together to work for the creation of environment where environment does not need protection.

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3. *Id note 2*

4. Id note 3
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