

Environmental Rights and Human Rights

Deepender Kumar*

*[*Deepender Kumar is a Doctoral Research Scholar in South Asian Division, School of International Studies, Jawaharlal Nehru University, New Delhi, India.]*

[At the international level, the movement for environmental rights is slowly gaining momentum with increasing awareness of people about the links between environmental protection and human survival. In international fora too the demand for recognising environmental right as a human right is also gaining in strength day by day. However, such demands are primarily made by the international civil society spreading across states. States and governments discussing about them in international fora are divided over the issue even if they very well realise the importance of such demands. The developing and the underdeveloped world would like the developed world to honour international consensus on the issue of environment which has come up in the shape of Kyoto protocol, yet at the domestic level they would choose to overlook the issue because the issue of environmental protection tends to be perceived as an obstacle to development which guides state policies and actions. The present paper seeks to argue the importance of environmental right and puts forward the reasons why it so basic a right to be regarded as a human right. It makes a case for early recognition of environmental right as a human right and considers this as a fundamental principle that should guide developmental policies of the states. Editorial Board]

After decolonisation and national sovereignty, the key political issues of the 20th century, will community sovereignty become the biggest political issue of the 21st?"

Anil Aggarwal

Human rights emerged as one of the most significant issues in international politics after the Second World War. After the war clear international consensus emerged that the protection of human rights was no longer the sole concern of individual states, but that of the whole international community. This laid the foundation of the Universal Declaration of Human Rights that was formally adopted in 1948. Since then three generations of human rights have emerged namely, Civil and Political Rights, Economic, Social and Cultural Rights and Right to development and good 'Environment'.

The demand for environmental rights came up with the emergence of the environmental movement in the 1960s and with the growth of Green Parties in various European countries, these demands raised popular awareness about and concern for environmental issues at the international level. By 1990s a world-wide popular movement for preservation of environment began and it inevitably found its echoes at the international level in multi-national fora like UN. Moreover, the increasing awareness about the potential hazards that accompany degradation of the environment led to demands for recognizing environmental protection as a high priority area

for immediate and urgent international intervention, where international cooperation was most necessary. Such growing global consciousness also raised concerns at the local levels and as a result, constitutions in many countries were amended to incorporate these concerns. At present some 60 nations have constitutions or legislation intended to ensure this right[1]. Against this backdrop, it is not surprising at the moment to find people talking about recognizing Environmental right as a basic and fundamental human right.

“South Africa’s Constitution was the first country in the world to include environmental rights and consider it as a basic human right. Briefly, the Constitution states that: “Everyone has the right to an environment that is not harmful to their health or well-being”. [2] It has been followed by legislative recognition of the right in a number of countries. Indian government through 42nd amendment of the constitution in 1976, inserted Art 51A that delineated ten fundamental duties for every citizen of India. One of the provisions states, “to protect and improve the natural environment including forests, lakes, rivers and wild-life and to have compassion for living creatures”. [3] In order to make the government responsive towards the issue of protection of environment, Supreme Court has been engaged very actively in interpreting the Art.21 that provides “Right to Life”. In recent days it has been found that quite a wide spectrum of issues have been allied to this basic right, i.e., right to life, like Right to pollution- free environment, fresh water and so on. The Article has undergone profound transformation over the past more than four decades through positive and progressive judicial interpretations.

Clean environment as an essential/fundamental right of human beings has found a place in some regional treaties as well. “Art. 24 of the African Charter on Human and People’s Rights (1981) expressly provides that “all people have the right to a general satisfactory environment, favour-able to their development”. Art.11 of the Protocol of San Salvador to the American Convention on Human Rights grant individual human right “to live in a healthy environment. [4] Article 11 of the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights* (San Salvador, November 17, 1988), is entitled: “Right to a healthy environment.” It states:

(i) Everyone shall have the right to live in a healthy environment and to have access to basic public services, &

(ii) The States Parties shall promote the protection, preservation and improvement of the environment. [5]

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Universal Declaration of Human Rights (UDHR) charter that was formulated in 1948 was primarily meant to ensure that the people enjoy their basic rights and should be in a position to appeal against their violations. The history shows that leaders of many countries were forced to step down when the issue of violation of human rights gained international attention— like the Milosevic case in Yugoslavia and a number of leaders of African countries, who are facing trial for such violation. But unfortunately, those who clamour for human rights seldom have paid

attention to the need for environmental protection. It basically reflects that the human rights that we are talking nowadays are mainly political and social rights and environmental rights are yet to be considered at par with these rights.

However, this is not to deny that the Universal Declaration of Human Rights implicitly talked about it in Article 3, which states that “everyone has the right to life, liberty and security of person”[6] . It is also believed that right to environment has essentially emanated from the right to life, which is the core of all fundamental human rights.[7]

The basic question that arises today is what is Environmental human rights and what all should encompass it? According to International Institute of Environment Development, IIED it encompasses three main areas:

- (i) The right to a clean and safe environment
- (ii) the right to act to protect the environment, and
- (iii) the right to information, to access to justice, and to participate in environmental decision-making.

As far as difference between human rights and environmental rights are concerned it is found that “human rights based approach is excessively individualistic and anthropocentric and does not properly reflect the intrinsic value of environment”⁸ . Environmental Rights and Human rights differ in the application of the rules of state responsibility and moreover, human rights petition system offers little help as they generally deal only with the past rather than the future.

In the backdrop of all these this paper discusses the various attempts made to interlink the both and discusses why there is an urgent demand for the environmental rights.

Attempts

Global community is in the process of acknowledging the interrelationship between human rights and environmental rights. It is understood that everything and anything that influences our environment directly influences our human condition, and a violation of our environment is a violation of our human rights.

The International Covenant on Economic, Social and Cultural Rights (1966) includes the right to health and the right of all peoples to manage their own natural resources. In 1968 the UN General Assembly passed a resolution identifying the relationship between the quality of the human environment and the enjoyment of basic rights[9] . The Stockholm Conference of 1972, Human Conference on Human and Environment proclaimed that man’s natural and man made environment are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself. It also stated that all individuals are entitled to live in an environment adequate for their health and well being. Principle 1 of the Stockholm declaration reads: “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”[10] .

Stockholm Conference led to the constitution of United Nation Environment Programme to look after the global environmental issues. UNEP, in its 1975 Environmental Programme stated that its intentions were to contribute towards the development and codification of a new body of international law to meet new requirements generated by environmental concerns and by the strategy based on the Declaration of Human right.[11]

In 1986, the United Nations General Assembly recognised the relationship between the quality of human environment and the enjoyment of basic human rights [UNGA resolution 2398 (XXII) 1986].[12] During World Conference on Environment and Development (WCED), it was stated, “All human beings have the fundamental right to environment and their health and well being”.

The natural disasters that occurred in late 80s made the global community give a fresh look to the issue and provided the impetus for catalysing the discourse at least in the intellectual circle. The increasing awareness of the damages incurred by natural disasters in the late 1980s led the Commission on Human Rights to adopt resolution 1990/41 on 6 March 1990 stating its awareness of increasing environmental problems and of the link between preservation of the environment and promotion of human rights. In 1991 Commission adopted resolution that recognised that all human individuals are entitled to live in an adequate environment for their health and well being[13] .

In 1992 the United Nation Conference on Environment and Development popularly known as Rio declaration emphasised among others the following two principles:

- (i) *Principle 1*— “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”.
- (ii) *Principle 10*— It links the issues in procedural terms, through the right of an individual to information concerning the environment that is held by public authorities[14] .

Furthermore, Agenda 21 that was finalized during conference also called for the fulfillment of basic needs, improved living standards for all, better protected and managed eco-systems and a safer, more prosperous future. The Preamble stated, “We accept a shared responsibility to protect and restore Earth and to allow wise and equitable use of resources so as to achieve an ecological balance and new social, economic and spiritual values”.

On 16 May 1994, an international group of experts on human rights and environmental protection convened at the United Nations in Geneva drafted the first-ever *declaration of principles on human rights and the environment*.[15] It described the environmental dimension of established human rights, such as the rights to life, health and culture. It also described the procedural rights, such as the right to participation, necessary for realization of the substantive rights. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the

environment, threaten life, health, livelihood, well being or sustainable development within, across or outside national boundaries.

UN in the mid 1990s created the position of Special Rapporteur on *Human Rights and Environment*, which worked under the supervision of Ms. Ksentini [16] and sought to reaffirm the linkages between human rights and environment. Her final report was presented on July 1994 in the Sub-Commission on Prevention of Discrimination of Minorities, Human Rights and the Environment, UN Commission on Human Rights. In the report she noted that environmental damage has direct effect on series of human rights— the right to life, to health and to satisfactory standard of living”.[17] The substantive elements of the report include the right to development, life and health, and it also has procedural aspects such as due process, public participation and access to effective national remedies.[18]

At the 57th Session of the Commission in 2001, she presented her report on the *Adverse Effects of the Illicit Movement of Dumping and Movement of Dangerous Products and Wastes on the Enjoyment of Human Rights*. In her report, she stated, “Human rights bodies must remain vigilant for human rights violations associated with the activities of multinational corporations, toxic wastes, and other environmental problems”[19] . In Resolution 2002/31, entitled “*The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,*” it was reaffirmed that “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a human right”[20] A healthy environment is prerequisite to physical and mental health.

Integrating human rights with sustainable human development a policy document brought out by United Nations Development Programme (UNDP) in January 1998 stated that “Rights to environmental protection. Rights to food, health, habitat and livelihood depend on environmental protection and the complementary relationships between promoting and protecting human rights and promoting and protecting environment”[21] .

The Aarhus Convention that was adopted in June 1998 and entered into force on 30 October 2001 is the first legally binding instrument for access to information, public participation in decision-making and justice in environmental matters Kofi Annan said that, “The Aarhus Convention is the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations. Its adoption was a remarkable step forward in the development of international law.....The firm commitment to [the Convention’s] principles of ... States in Eastern Europe and Central Asia ... clearly demonstrates that environmental rights are not a luxury reserved for rich countries... We must use next year’s World Summit on Sustainable Development to strengthen our commitment to environmental rights— not only in Europe but throughout the world.”[22]

The Aarhus Convention has long-reaching implications for citizen participation in environment protection. Not only does it require Parties to provide the prerequisites to citizen enforcement, such as access to information and timely participation in environmental decision-

making, the Convention also focuses specifically on access to justice in environmental matters empowering citizens and NGOs to assist in the enforcement of law.[23]

The World Summit on Sustainable Development held in Johannesburg, 2002 was another attempt to interlink the both. During the summit it was decided by consensus that the UNCHR and UNEP should work together to develop a draft Convention on these issues, in consultation with governments and civil society, which need not involve amending the UDHR. On other hand in similar vein the UNCHR reaffirmed that “human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature”. The Commission also called for a joint seminar with UNEP on human rights and the environment within the framework of Agenda 21.[24]

Most of our basic human rights are affected by environmental degradation. *The right to health* is affected by environmental contamination of natural resources such as water, air, and sound (noise pollution). *The right to property* is often directly violated by commercial intrusion into indigenous lands. Property values collapse with industrialization and pollution of residential neighbourhoods. *The right to equality* is of great concern to certain sectors of society (minority and certain ethnic groups, for example) who suffer a disproportionate burden of environmental contamination.

Constraints

The term ‘Environment’ encompasses many things, i.e., air, water, land, sound, bio-diversity, climate and even the natural surroundings of human and other life forms. The imprecise nature of the term makes it difficult to enforce it even if environmental right is given legal recognition.

Secondly as far as the issue of remedying people/society for violation of environmental rights is concerned, the links between environmental protection and development is so complex and complicated that it will be a task of tall order for a developing country to give recognition to environmental human rights because that will be a disincentive for development and potentially affect its developmental agenda— for example building dams, roads, and factories, which contribute to economic growth, have adverse impacts on the environment and legislations aimed at protection of environment will render such policies illegitimate. Example could be cited of Tehri dam project, located in the outer Himalaya in the Tehri Garwhal district of Uttranchal. Once the dam gets completed it will lead to “submergence of 4,200 hectares of the most fertile land in the Bhagidari and Bhilwana valleys” apart from adding to seismic pressures in the lower Himalayan region.[25] Consequently, any enforcement of human right will, undoubtedly, cause discomfiture to the administrators, leading to strong political resistance.[26]

Thirdly it is very possible that the countries whose survival is at stake due to the degradation of the environment primarily due to past activities of the present developed countries would demand compensation for the same once the environment rights receives the stature of human rights. As a result it would make mandatory for the developed countries to provide essential economic assistance, technology to developing countries.

The above stated constraints could be exemplified by the case of India. In spite of regular pressure from the Supreme Court, government of India has failed to translate the Art.51.A as a fundamental right. Failure on this front has in a way discouraged environmental movement in the country and lack of active state participation in this field has affected the pace of environmental awareness campaign. The state response to issues of environmental pollution has rather come by fits and starts as in the case of conversion of public transport system to Compressed Natural Gas(CNG) systems in New Delhi in the wake of active Judicial directive, which was of course the result of civil society pressures. But such examples have been rather too difficult to replicate in the face of the recalcitrance shown by the state. The civil society initiative could also be cited in the case of Tehri dam and Sardar Sarovar projects, even if the Judiciary (unlike in the CNG case) has approved of construction of the dams in this instance. However, the civil society movements for proper rehabilitation of the displaced population in the process deserve the attention of the state.

In this whole discourse it is seen that the differences among civil society supported environmental rights organisations advocating protection of environmental rights and governments as well as factions within civil society advocating development at any cost have affected the process of wider dissemination of knowledge about environment among people, in the absence of which the links between environmental rights and other sets of human rights (civil, social, economic, cultural etc.) remain rather under-explored in the eyes of the majority of people around the world. Many critics have thus argued that the movement for environmental right has remained thus the exclusive preserve of an elitist, informed minority. This has hampered the progress of the movement for recognition of environmental rights as human rights.

In fact, recognition of environmental right as a human right would lead to the evolution of new world order in which both developed and developing countries would be seen at equal level and both will be accountable to each other. The development would lead to ushering in the path of fifteen years old concept of sustainable development stated in the World Commission on Environment and Development of 1987 i.e., meet the needs of present without compromising the needs of future". It would help in translating the provision stated in various constitutions of countries regarding environment into practice.

Conclusion

In final analysis one could say that humanity must understand that anything and everything that influences our environment directly influences the human condition and chances of human survival, and violation of the right to healthy environment is a violation of human rights. In fact, protecting people against environmental degradation is one of the most important tasks confronting international community today.

Recognition of environmental rights as human rights would certainly inhibit states from unscrupulous and heedless exploitation of the natural resources that are leading to the degradation of environment and endangering the vital issue of human survival. It would also promote wider participation of local communities in development activities and provide greater public accountability.

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