

Human Rights Vis-À-Vis Justice Sytem in Present Era

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Abstract

Life in the present era has come to a place where the overt species, well known to be the human beings, need to understand the depth of the above quoted line. Environment is a generator, life of every living creature, is a creation of the environment the mother earth provides. Therefore, the first basic question to be answered in depth is whether the environment is an actual issue of the human rights? To put forth a clear answer to this, the world is still grappling by its own.

Human rights are clearly those rights one inherits by the virtue of being born as a human. Environment conservation and human rights therefore are interrelated, interlinked and mutually receptive of each other as the objective of both these terminologies is the complete well-being of humanity. The human race proceeds when the first thing from the food cycle connects the final thing of the said chain in the manner prescribed by nature. The subject being dealt with is not newly discovered but prior to 1950, the environment received a little attention of the nations as transboundary problems but such challenges were viewed as local or to some extend religious problems.

It later on developed through the intervention of United Nation, the Stockholm Declaration so on and so forth and still continues to show a graph of uncertainty, in certain aspects. The prerequisite for the enjoyment of a fundamental right is said to be livable and a non-hazardous environment. The connection to be established between these two is a matter of extensive study, thereof.

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Introduction

Objective

The Principle 2, Stockholm Declaration, 1972 states;

The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

The current day increasing tirade against environmental pollution and eco-imbalances proved a growing consciousness about ecology. Extensive discussions are conducted worldwide in all forms of media on the subjects such as global warming, climate change, pollution levels, degrading environment. These discussions point to the global dangers posed by the warmth caused to the mother earth. Large number of discussions takes place on the question of resource limitations as well. The purpose of this paper is to provide some education about how environment and human rights interconnected and must be considered equally in every aspect. This would include providing some background to such issues, identification of some of the recent and future risks involved, the possible monetary and other impacts of these risks, and the efforts being made or the efforts required, to minimize these risks.

One of the basic questions to be answered is the question as to why is the term environment even interlinked with the human rights? Therefore, the objective of the paper would be to answer such questions with the help of current legal scenario, previous judicial and socio-legal decisions and the personal suggestions as to safety of the environment and the human rights that one can implement, maybe in the likely future.

Research Methodology

Methodology is the strategy that the researcher adopts to choose and use certain theories and methods to describe and explain the research subject in a systematic manner.

The purpose of the methodology chapter is to outline the philosophical frame of reference as well as the methods of analysis and interpretation, and position this research contribution.

The research methodology here, is qualitative and is based on secondary data, collected from over the internet from trusted sites and domains and some information from a man's best friend i.e., books, which provided this research with facts and figures about the environment, its reports and published documents and the primary data collected from the general public by putting forth an informal interview to those who had grievances with the climate of Delhi, specifically and the people who are trying their level best to make the environment worst.

The central question is to establish an appropriate nexus between human rights and the environment the humans live in.

Socio Legal Analysis

Humanright is the idea that people should have rights *just because* they are human beings. These rights are seen as *universal*, which means they are meant for everyone, no matter what their race, religion, ethnicity, nationality, age, sex, political beliefs (or any other kind of beliefs), intelligence, disability, sexual orientation, or gender identity.

The condition of human rightin reality in India is a complex one due to the following manmade reasons;

1. Country's population
2. Poverty
3. Urbanisation
4. Industrialisation
5. Tremendous diversity
6. Its status as a developing country
7. A sovereign, secular, democratic, republic, and its history as a former colonial territory,

For the last five decades, we have witnessed a world movement to preserve and protect the environment, of which man is one of the components.

The first International Conference on Human Environment was held in 1972 in the Stockholm and since then it takes place after every 10 years.

The constitution of India provides for Fundamental rights, which include the freedom of religion. Clauses also provide for Freedom of Speech, as well as the separation of executive and judiciary and freedom of movement confined to the country's boundary and abroad.

Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two seemingly distinct spheres interact, it is to be expected that there are different views on how to approach 'human rights and the environment'.

The first approach is one where environmental protection is said to be as a possible means of satisfying and fulfilling human rights standards.

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Here, environmental law is conceptualized as ‘providing protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood, majorly aims at practicing sustainable development as well.’ Here, the destination is fulfilling human rights, through the path of environmental law.

The second approach places states that ‘the legal protection of human rights is an effective way to achieve the ends of conservation and environmental protection.’ The second approach therefore highlights the presently existing human rights as a route to environmental protection. The focus is on the existing human right. In this context, there exists a raging debate on whether one should recognize an actual and independent right to a satisfactory environment as a legally enforceable right.

This would obviously shift the emphasis onto the environment and away from the human rights. These are the subtle distinctions between the two ways in which this approach can be taken.

A third approach to the question of ‘human rights and the environment’ is to deny the existence of any formal connection between the two at all. According to this approach, there is no requirement for an ‘environmental human right.’ The argument goes that, since the Stockholm Conference in 1972, international environmental law has developed to such extents that even the domestic environments of states has been internationalized.

In light of the breadth of environmental law and policy, and the manner in which it intrudes into every aspect of environmental protection in an international sense and notwithstanding the concept of state sovereignty, it is argued that it is unnecessary to have a separate human right to a decent environment.

There has been a simultaneous increase in ‘legal claims for both human rights and environmental goods,’ which is a clear reflection of the link between ‘human’ and the ‘environment’ and the dependence of human life on the environment.

Currently, human health is the bridge between human rights and environmental protection, being a primary objective of both areas of regulation. Human rights are majorly existing in order to promote and protect human well-being, to permit the complete development of each person and the maximization of the person’s goals and interests, individually and in community with others. This cannot occur without basic conditions of health, which the state is to promote and protect.

Environment Protection under Constitution & Environmental Laws

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There is no per say definition given on environment & environmental protection in the Indian Constitution, but, there have been many provisions included within the purview of the Indian Constitution with respect to environmental protection through the 42nd amendment 1976. Where Article 48-A “the State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. Further, a new provision Article 51-A in the form of “Fundamental Duties” was also incorporated by the 42nd Amendment. According to the sub-clause (g) of Art.51-A, “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. The definitions on environment are included from Sec 2 of Environment Protection Act 1986. ‘Environment Protection & Ancient India’ deals with status of environment and environment protection since ancient to the present time and with the importance of environment. It is really an ironic fact to believe the creator of the world, i.e. God, created both, the environment and the homo sapiens, with the belief that the man would conserve and preserve the nature which enables them to survive on the planet Earth which is the nature of the law. But to the contrary of the nature of law, what environment provides is the basic survival kit, which includes oxygen, food and water and as a reward of which these inhuman sapiens are writing a thesis on a 1000 more ways to destroy the environment and the planet as whole.



Indian Constitution is one of the most progressive Constitutions the world which guarantees equal rights for men and women and which also guarantees to the protection of social, economic and political justice to all citizens. Indian population which is more than 1 billion which need to control and maintain peace and security in the society for this purpose the

rights of criminals, victim's juvenile which described by the human right as basic right of human being. These criminal laws should be amended as per the Human Right to protect the rights of human being as per article 368 of the Indian Constitution.

In 2011 the United Nations Human Rights Council (UNHRC) initiated a study of the relationship between human rights and the environment. This led in March 2012 to the appointment of an independent expert who was asked to make recommendations on human rights obligations relating to the enjoyment of a 'safe, clean, healthy and sustainable environment'.

Precedents and Judicial Pronouncements

Article 21 of the constitution of India provides for the right to life and personal liberty, it states "No person shall be deprived of his life or personal liberty except according to procedure established by law." This article imposes a duty on the state to protect the life and liberty of the people. The concept of the right to life has been broadened through the judicial pronouncements. While resolving cases relating to the environment, the judiciary considered the right to clean or the good environment as fundamental to life and upheld as a fundamental right. The India Judicial system has played a vital role in interpretation of Article 21 of the Indian Constitution. The scope of Article 21 of the Constitution has been considerably expanded and is reasonably wide enough for interpretation, by the Indian Supreme Court, for instance, the right of life is also to mean the right to enjoy and live a civilized life and it also includes the right to clean and wholesome environment. Following are some important precedents set by the apex court of India in the above said regard:

In *Subhash Kumar v. State Of Bihar*,² 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.' Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

In *M.C. Mehta v. Union Of India (Vehicular Pollution Case)*,³ a matter regarding the vehicular pollution in Delhi city, it was held to be the duty of the Government to see that the air did not become contaminated due to vehicular pollution. The Apex court again confirmed the right to a healthy environment as a basic human right and stated that the right to clean

²1991 AIR 420, 1991 SCR (1) 5.

³1991 SCR (1) 866, 1991 SCC (2) 353.

airalso stemmed from Art 21 which referred to Right to life. This case has served to be a major landmark because of which lead-free petrol supply was introduced in Delhi. There was a complete phasing out old commercial vehicles more than 5 years old as directed by the courts.

In this very recent case of *T.N. GodavarmanThirumulpad v. Union of India*⁴that is concerning conservation of forests, Justice Y.K. Sabharwal, held that considering the compulsions of the States and the depletion of forest, legislative measures have shifted the responsibility from States to the Centre. Moreover, any threat to the ecology can lead to the violation of the right of enjoyment of healthy life guaranteed under Art 21, which is required to be protected. The Constitution enjoins upon this Court a duty to protect the environment.

In *Murli S. Deora v. Union of India*,⁵it was pointed out by the Court that: *“Since, Article 21 of the Constitution guarantees that none should be deprived of their life, then why should a non-smoker become the victim of the whole process? It was contended that smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. So, till the statutory provision is made and implemented by the legislative enactment, it was held that it would be in the interest of the citizens to prohibit smoking in public places and the person not indulging in smoking cannot be compelled to passive smoking on account of the acts of the smokers.”*

Possible Solutions or Outcomes

For some solutions to merge and even be productive and effective the people all over the world really need to understand the basic concept of their livelihood is the nature as the paper aims at the transformation of at least a few readers, from least bothered to maybe a little concerned.

1. Bringing up the environmental matters and concerns to the society at large, especially agro-related business and other micro and small-scale businesses. It becomes really crucial that the entire nation is able to comprehend the issues and is well informed and educated of the repercussions of air and water pollution, results of run-off of agricultural pesticides, etc., the government, here, can use its connections to reach out to the masses, private companies can prowl through mass media, also NGOs can set forth some instances of victorious environmental initiatives from the foreign lands.
2. Government ministries such Environment, Forest, and Climate change; Micro, Small, and Medium Industries; and Rural Development etc., should at first draw up a

⁴(1997) 2 SCC 267.

⁵AIR 2002 SC 40: (2001) 8 SCC 765.

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streamlined and coordinated plan in order to address the most crucial environmental issues faced by the country at large and have a word with key industrial leaders for their inputs in monitoring and controlling the so identified issues.

3. In addition, the various ministries must ask for assistance from large companies that indulge in good practices in managing air and water pollution to transfer their knowledge to the Small and Medium Enterprises.
4. Through brainstorming sessions and discussions with the executives of large Indian firms and NGOs, setting up certain goals that need to be achieved in the areas of air and water pollution, would lead to a better environment.
5. Enquiry for assistance from the industrial sectors as well as NGOs on technologies, management practices, and funding support to introduce already tried and tested practices in managing the environment that ends in reduction of pollutants.
6. Offer incentives to large or small-scale industries or even individual firms that would like to try proven innovative technologies in reducing Green House Gases and other pollutants but, especially when these initiatives require major investment to install these technologies;
7. Offer incentives to large firms that would volunteer to assist the Small and Medium Enterprises in lowering their carbon footprint; It is thereby believed, that the above series of steps certainly have the potential of steering the country towards a healthier and safer environment.