

Complexities of Conflicts: Human Rights Or Environmental Law?

Padmakshi Sharma¹, Sara Kirlapalkar²&RekhaAnand³

Abstract

The interrelation between human rights and the dereliction of environment has, in the recent years, been a subject of arduous debate. It has been identified that a decent environment is a precondition for a life of dignity as human rights cannot be exercised without a safe and healthy environment. However, despite the interdependence of human rights and environmental rights, there often exists a conflict between the two, due to the simple fact that the right to an adequate environment, by its very nature, is one of the rights colliding with basic human rights.

This paper focuses on the conflicts between both these subjects through an in-depth analysis of various examples and case laws. The researchers try to elaborate on how there will always be situations where environmental goals and the rights of different individuals or groups may clash. Instituting wildlife reserves, or regulating polluting activities, or monitoring resource extraction, for instance, may mar the use or value of property, impede economic development, or curb the rights of indigenous people to make traditional use of such natural resources. This debate between human rights and environmental laws has created panic due to the uncertainties of predicted changes as countries usually find it difficult to develop the national economy and protect the livelihood and interests of its people along with safeguarding its ecological environment. The researchers, hence, through this paper, emphasize on the urgent need for balancing the two and greening the human rights in order to address the environmental issues from a human rights perspective and eliminate the panic hence created.

¹Padmakshi Sharma, 2nd Year BA LLB (Honours), Symbiosis Law School, Pune, Symbiosis International (Deemed University).

²Sara Kirlapalkar, 2nd Year BBA LLB (Honours), Symbiosis Law School, Pune, Symbiosis International (Deemed University).

³Rekha Anand, 2nd Year BA LLB (Honours), Symbiosis Law School, Pune, Symbiosis International (Deemed University).

Introduction

The evolution of the mankind and the prompt increase in the dependence of human beings on science and technology has, undoubtedly caused a major setback to the environment. Human being's capacity to transform and palliate the world around him, if used in a wise manner, keeping in mind the ways of nature, can be a boon to the entire planet. But it has been noticed that the recent trends of development are far from being eco-friendly. Rather, mounting evidence can be found throwing light at the erroneous and heedless ways of humans causing irreversible damage to the environment. Hence, it is extremely important for us to recognize our dependence upon the environment and the ecological system and respect it. Fortunately, environmental rights are now being recognized as an intrinsic part of human rights as they cannot be fully secured in an unsafe, degrading environment. A healthy environment is a prerequisite for leading a life of dignity and well-being which is the very essence of human rights. As much as environmental laws are important, they can sometimes clash with certain human rights and cause damage to various sects of individuals. It often becomes difficult for the jurists and law makers to draw the line between the two and balance them in a manner where no harm is done to either the people or the environment. But how are the policy makers to combat such clashes?

Objective

The objective of this paper is to reaffirm both environmental rights as well as human rights as equally essential by concentrating on the interconnection of both these subjects. Whenever there is an issue concerned with both environmental as well as human right facets, it becomes perceptibly difficult for the policy makers and the public at large to deal with it because environmental laws, despite being intrinsic for the achievement of human rights often end up creating conflicts. The fundamental objective of this paper is to analyze how wrong-headed "green" policies fashioned to fulfill the greed of a certain group of people, when used in isolation from human rights can cause irreparable damage to generations of people. The researchers, through this paper, aim to discuss the nature of various human right issues and feasibility of environmental laws affecting them.

Research Methodology

This paper consists of examination of three kinds of data: academic data, data regarding the conceptual framework of the problem and case-law data. Hence, the research can be considered as doctrinal and analytical in nature. The researchers have adopted a traditional methodology by confronting the findings of case studies to socio-legal theoretical framework

in order to come up with solutions and recommendations. Thus, for this purpose, various books, journals, articles and research papers regarding environmental law and human right issues have been referred to. Along with that, assistance has also been taken by numerous e-journals, reports and web sources. All relevant information included in the paper comes from pertinent secondary legal sources.

The Human Dimensions of Environmental Law

Human rights and environmental rights have both taken tremendously vital places in the law governing the society today. But a question that arises is what constitutes a decent environment? Whether credence should be given to human usage of natural resources or to protection of nature, to industrial development which would in turn also create job opportunities or to air and water quality, to energy consumption or to the protection of ozone? And whether this conflict of interest can be sorted out by placing both environmental and human rights on the same footing? If so, how can that be achieved?

The detrimental state of environment is not a secret to anyone and hence framing of laws and policies in order to save the environment is of extreme significance. However, sometimes the government can knowingly, for the benefit of a certain class of people, or even unknowingly, frame wrong-headed environmental policies which end up endangering lives and livelihoods of millions.

An appropriate example of this would be the infamous worldwide ban of the pesticide, DDT (dichlorodiphenyltrichloroethane). The usage of DDT rose in the 1940s when it was used to almost eradicate malaria from US and Europe by applying it on the walls of homes and in the mosquito-breeding pools. However, this cheap and easily available insecticide was banned after Rachel Carson published a book called 'Silent Spring' in the year 1962. In the book, Carson, without providing any proof, alleged that DDT was leading to the extinction of several species of birds. This caused the media to get involved and due to immense political pressure, by 1972, the U.S. government not only banned it in their own country but also pressurized other countries to ban it by threatening to sojourn financial aid to the countries which failed to uphold the ban. Countries like Zimbabwe placed a ban on DDT out of the fear that their tobacco industry would suffer a setback if the international market refused to accept their product. The scientists who attempted to back DDT up were branded as corporate shills. Later, Carson's study of DDT was found to be severely defective.

After the disappearance of DDT from the market, malaria reappeared in many countries. On the other hand, countries such as Madagascar, which used DDT, had a decrease in malaria

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cases upto 90%.⁴ In fact, even today, DDT continues to be the most-effective pesticide in killing mosquitoes carrying malaria.⁵ However, due to its ban, mankind suffered a great loss as according to the WHO, there “were an estimated 247 million malaria cases among 3.3 billion people at risk in 2006, causing nearly a million deaths, mostly of children under 5 years.” Unfortunately, this war against DDT, instead of protecting the environment only caused harm to the world’s poor.

Such prioritization of environmental goals over reducing poverty and supporting livelihood of millions is rather unsuitable as it curbs the right to development which in turn curbs other human rights as the Declaration on the Right to Development clearly mentions that, “[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.”

Another example of this would be the rationale behind the judgment in the Tuna-Dolphin⁶ case, which, on introspection can be considered to be heavily lopsided. This case was brought by Mexico and some other nations against U.S. Although the panel report was not adopted, since Mexico and U.S. settled the issue out of the court, this case was highly sensationalized due to the questions it posed which highlighted the conflicts between human and environmental rights. In this case, the demand for “dolphin-safe tuna” emerged due to the rise in fatalities of dolphins in the Eastern Tropical Pacific (ETP). In the said region, the school of tuna swam below the school of dolphins and hence while catching tuna, fisherman would also accidentally catch dolphins sometimes which could be manually freed.

The U.S. reacted to this by banning any tuna imports which did not comply with the domestic standards of the U.S. This had serious implications on the billion-dollar tuna market of Mexico which was one of the biggest sellers of tuna in the U.S. as these standards were only applicable to the ETP region and all other regions continued to use whatever methods they so deemed fit from prior times. Due to this discrepancy, a chain of Mexican fishermen and other ancillary businesses associated with it, whose livelihood depended on tuna suffered great losses and were rendered unemployed. It has been proven that there is no sure way to catch tuna without harming other marine life and by narrowly focusing on “dolphin-safe” tuna, U.S. was not only endangering the livelihood of plenty of fishermen but also the life of the

⁴M. Murru, *Malaria and DDT: Myths and Facts*, 2 (2) HEALTH POLICY AND DEVELOPMENT 112,112-121(2004).

⁵*Ibid.*

⁶Mexico v. United State, (1991) 30 ILM 1594.

entire marine ecosystem as fishermen started disregarding all other aquatic lifeforms such as sharks, sea turtles, etc. in order to catch “dolphin-free” tuna.

It has been more than fifteen years and “dolphin-safe” tuna is still being used as an effective tool for corporate green-washing. In the Shrimp Turtle⁷ case, the U.S. banned all shrimp products from countries which did not use a Turtle Excluder Device (TED) to catch shrimp.⁸ This device was expensive for the fishermen of a lot of countries and hence, they were unable to follow the said guidelines set by the U.S. These countries included India, Malaysia, Thailand, Japan, Mexico, South Korea, etc. Fisheries played an important part for the national economies of all these countries and provided employment to a lot of people living in the coastal regions. Hence, these people suffered a major setback after this ban.

These examples are not just prevalent in the west but are also seen to have been increasing in India with the rise of environmental consciousness in the country. In 2009, a division bench in Calcutta High Court ordered that only four-stroke auto-rickshaws running on LPG shall be permitted to ply on the roads of the city. This jeopardized the future of more than 70,000 two-stroke autos which came under the direct threat of being scrapped. The owners of the newly-banned vehicles could not even upgrade to the expensive four-stroke autos as they found it extremely difficult to avail bank loans. This coupled with the lack of pumping stations providing LPG caused auto-rickshaws to dwindle to a large extent in Kolkata.

A similar situation arose in Goa due to the ban on the second largest employer in the state, the mining industry. This ban not only snatched away the right to livelihood from those directly involved in the mining industry but also severely affected the truck drivers who were a vital part of the industry. Around 200,000 people, directly and indirectly affected by the mining industry in Goa were rendered jobless overnight with no means of sustenance whatsoever. This also resulted in a 12% hit on the state’s GDP and hence was heavily criticized and labelled as an “economic and social disaster.”

Impact and Implications

The aforementioned examples show what wrong-headed environmentalism can lead to. Decades of beneficial work of the humankind can go to waste without actually benefitting the environment in the ways it has potential for. What it can also cause is socio-economic uncertainties which can alienate people from the cause of a safe and healthy environment. From the aforementioned analysis of examples, we can notice that there are

⁷India etc. v United States, WTO case Nos. 58 (and 61).

⁸Shaffer, Gregory, *The WTO Shrimp-Turtle Case (United States - Import Prohibition of Certain Shrimp and Shrimp Products)*, 93 AMERICAN JOURNAL OF INTERNATIONAL LAW 507, 507 (2010).

instances where environmental laws are being disproportionately used against innocent civilians who become victims of corporate green-washing.

From the perspective of human rights, such environmental laws, instead of becoming a solution to the problem become an added burden. The tension and conflicts between the feasibility of environmental laws and the application of them without disbalancing the way of life, is not caused by one country or one group, rather, it is a global phenomenon but sometimes the negligence of one nation can have a terrible effect on the people of another nation.

This paper emphasizes that by no means can an activity that degrades the quality of environment be defended. However, the methods that the respective bodies concerned take as a result can be irrational and haphazardly executed. Often, they impose strict measures without having the requisite resources or infrastructure to sustain them. This results in an array of economic instability to people during the said transition period. The philosophy that should be etched in this scenario is that sustainable development of the environment cannot be achieved without any sustainable development of the human populace in the process.

Greening of Human Rights: Solving Conflicts

The world is currently facing a case of extreme polarization of wealth and an utterly polluted earth coupled with uncertainties of changes as nations are finding it more and more difficult to develop the national economy and protect the livelihood and interests of its people along with safeguarding its ecological environment. Hence, it is time we moved away from the orthodox ways and focus on creating and maintaining harmony between human rights and environmental law as both are equally and irrefutably important. There has to exist unity amongst the opposites and this can be done by greening the existing human rights, not just by a nation or two but by the entire world and hence, a case of universality should be formed around the concept of environmentalism in harmony with human rights. This can only be possible with the understanding of the imperative connection that exists between environmental rights and human rights as approached in this paper.

The recognition of a distinct 'Right to Environment' in international law can help bring the human dimensions of environmental law in picture. Moreover, the ever-expanding ambit of environmental law should include human rights because man is an imperative part of the environment. These two fields of law are intrinsically connected and hence, should be treated as such. Other than that, the ecological matters should be decided in a more procedural and democratic manner as this will not only ensure the environmental protection of human rights

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but also curb down the conflicts between the two. But most importantly, a balance must be created between the two rights without which they can never co-exist together in harmony.