

Environmental Laws and Governance: Issues & Challenges

Sub-theme: Human rights vis-à-vis environment

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Abstract: *The humanitarian rights as concerned with the alarming need for a reform in the society so that this increasing degradation of the environment to a single digit can possibly be achieved. The various countries of the world from the times of the first Stockholm declaration and ever since are trying hard to achieve the goal of a clean & safe environment and making it as a part of the right to life whereas, in some countries it is rigidly followed as a part of the fundamental right of every citizen. The various declaration and the conferences are the evidence of the concern of the global leaders about the polluted environment, which the future generation are going to bear as a by-product of our deeds today. The coming together is the stepping stone towards the day when possibly the environment would be just like the way it was before the large-scale industrialisation and the never stopping littering of the human being everywhere. The Indian aspect on the human rights leading to the protection of the environment, explained very well with the help of the various fundamental duties and the directive principles of the state policy for the society. The state should enforce such duties for its citizens as the sole enjoyment of the environment is by them so, it becomes their respective job to protect and preserve the same. Few well established civil bodies in the purview of the human rights take the protection of the environment to the edge of the unmatched debates that are required in this heat of the moment when the world is falling apart. Moreover, together achieve the goal of a carbon-free world where there would be a surplus supply of fresh air for the future generation as well as present world.*

1. Human rights vis-à-vis environment

At the time of the humble beginning of our very own planet earth, the scenario was completely different from what we see around in today's world. When there was no human intervention or even the existence of the human race was, not there it was then the planet held its real definition and it served its purpose with ease. While some creatures were still there but we have not found a single piece of evidence that they ever contributed to the degradation of the environment or the planet earth that we as the human beings are doing right now. Moreover, during this time the purity of the oxygen released by the plants was more clean & pure than it can ever be on the planet. Then the human race stepped down on the planet earth making it a bizarre place to live for any species and what torture the planet has gone through after that till now is a no secret. In addition, it is well known and said by many thinkers' years ago that planet will have to suffer some serious consequences if the degradation kept on and not controlled within the safer time period. Moreover, who can forget the worldwide destruction of the environment & surroundings of the planet in the name of development by widely implementing industrialization, urbanization and the never-ending race for the weapons of mass destructions? The 21st century provides every single type of latest gadget to make you lazy by saving your time in every aspect of the life but what it does not provide is the basic requirement, which is necessary for the existence of human race that is clean air, clean water and clean soil.

2. Definition

The term environment has been derived from a latin word "environme" meaning surroundings. Also, defined as the biophysical environment is the biotic and abiotic surrounding of an organism, or population, and includes particularly the factors that have an influence in their survival, development and evolution. The naked term environment can refer to different concepts, but it is often used as a short form for the biophysical

environment. Whereas the expression "the environment" is often used to refer to the global environment, usually as referred to humanity, the number of biophysical environments is countless, given that it is always possible to consider an additional living organism that has its own environment. In basic words the term environment means the surroundings in which we live which consists of both living as well as no-living things such as human beings, land, water, air and all the other things around which influence us.

The clean environment is essential and is required for the growth of the every individual in every aspect and every corner of the world. The environment is the creator of the life form it is because of the environment sun, moon, sea, earth, forests, deserts, etc., make together environment that is fit for our survival. We need to protect our environment if we want to live a life that is free from any kind of harmful external agents. For the better environment, all its components should be protected and the surrounding should be cleaned and be kept in a proper manner. We need to take good care of our land, water sources, forests and atmosphere, it is also necessary to ensure that the water bodies as well as the soil be kept out of the harmful chemical abuse such as high amount of nitrogen and sulphur.

If living creature went [1] on to understand that what it means to be in environment so that the required amount of care be taken in a prescribed manner. [2]

3. The Protection of the environment

From the very beginning of the 20th century the planet has suffered a large amount of toxic abuse though the so called agenda of developing countries under the shed of development and industrialization. Whereas coming towards the mid of the century the planet has witnessed two devastating world war which has taken this race of degrading the environment to whole new level which includes degradation of the air, water and the soil. Even

before the world wars, the countries as a part of the weapons race participated in the development of the weapons of mass destruction, which includes both chemical and non-chemical weapons. Moreover, who can forget the dropping of atomic bombs at Hiroshima and Nagasaki, which consumed millions of life's as well as the degradation of the environment to another level of toxicity. However, it was the first conference regarding the protection of the environment held at Stockholm in the year of 1972 and it was the first stepping-stone towards the protection of the environment among the masses and global leaders. Two approaches that are being followed, the first one is voluntary environment agreement and the second is international environmental agreement. In industrial countries voluntary environment agreement often provide a platform for the companies to be recognized as to move beyond the minimum regulatory standard, the support and the development for the best environmental options.

The unfortunate fate of the human race is that with the increasing number of the population with time there is a subsequent increase in the problems related to the environment, which is degrading every minute and every second. The concern soon would be raised by the environment itself as most of the humanity is busy buying stuff for making their houses better while forgetting that the real ecosystem are outside these four walls. The protection of the environment is as necessary as the making of world forums for making policies, which are said to be responsible for the protection while it does not at all. The plastic ever produces are still present on the planet earth as they take almost 500 years to decompose, the consequences whereas are very severe the plastic thrown by us somehow comes back to us. The plastic has almost polluted every single resource from which we get our daily needs, for example, the plastic in the sea somehow goes into the stomach of the fishes, which are later on consumed by the human beings. Moreover, the soil in which the food is being sown and made to final harvesting have the effect of this plastic which will further lead to the disease such as cancer which has nothing to take but our life completely.

The carbon planet needs some serious steps in order to covert it from the carbon-induced planet to the usual blue planet of life. The plantation is the very first habit every individual needs to learn the more the number of trees will be there the more will be the level of oxygen on the planet earth for the human beings. The planet does not need protection from the outer world bodies or the aliens; rather it needs protection from its own habitants, as they are responsible for its degrading condition until today. In addition, the control over electricity, carbon emission, garbage management, saving water, saving soil and the quality of air, needs to be taken seriously if we are considering them as a right under the constitution. [3]

4. Human rights as a part of protection of environment

“Let's break down the artificial barriers that have so long separated the human rights. Environmental and development communities. We face common threats, but there are common solutions.”

The above is the statement given by Kumi Naidoo who is the executive director, Greenpeace International an environment organization who raised the point of human rights to the clean environment at different times along with the other environment organization. The human rights at first were not included in the list of a right under constitution but major countries have adopted the right to clean environment as a fundamental right. Human rights after the Stockholm and the Rio declaration as a requirement to be adopted as fundamental right in every country as it is the sole necessities of life of every individual were highlighted.

The Stockholm declaration's first principle states, “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, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

Another Rio declaration states, “Human beings are at the centre of concerns for sustainable development. They are entitled to healthy and productive life in harmony with nature.”

Both the declaration lacks the establishing of a clear connection between the human rights and the environment protection. But, it is the result of these declarations that the most of countries have recognized the right to a clean environment as a fundamental right similar to the right to life and some other rights. In addition, the united nation have appointed a number of officers to regulate and promote the protection of environment with regard to the human rights. So that it can be made clear as to what the conditions are at the ground level, regarding the policies concerned with the protection of the environment around the world based on deep research.

The concept of the protection of the environment can be achieved if every individual adopts the right to a clean environment as a duty and not as an obligation. The three R's needs to be taken into consideration by every person of the world such as Reduce, Reuse and Recycle. The first one is Reduce, which suggests that reduction of the plastic waste, amount of paper, amount of electricity, the water and the petrol consumption in order to help the carbon planet achieve its old state.

The reduction solely depends upon the question that do we really need the thing in that much amount, or we are just wasting it for no necessary reason second in this world. The second R that is Reuse which talks about the things that can be used over & over than just once. The structure of reuse covers all the small things that are around us in the day-to-day life for the betterment of the planet, which will eventually lead to the reduction for the degradation of environment by us. The third R that is Recycle defines itself as the most useful tool for the protection of the environment, it has been never this much easy than ever. The process of recycle is truly dedicated to the recycling of the things that we do not need any more around us and can be used to make any other useful object. The every product is nowadays made with the purpose of recycling and making the use of its every part. So, that nothing should be left behind that would

eventually lead to the degradation of the environment and making it place of complete waste.

Role of Non-governments Organization in Protecting Human Environment

A variety of associations or institutions around the globe devote their labors in defending human rights and finishing human rights exploitations. The Non-Governmental Organizations' (NGOs) is functioning each and every moment to file the wrongs took place upon female, kids and the working class peoples and by the dynamic agitation they recall the regime to maintain their swear in a realistic form. Basically an NGO is non-revenue building, non-aggressive, structured bunch of citizens linked with public wellbeing purposes who are not looking for government office though they habitually endeavor to pressure those are in power. They are working for those who are less influential and less privileged in a social order. They are demanding to change the rules to abolish communal and political bias on the cause of sex, groups, customs, race and beliefs. They are helping at diverse stages i.e., local, national and global through consciousness making and sending the message. The human rights activist plays significant job encouraging the rule of law, by ongoing their hard works to lay down principles to make sure that no rights are dishonored by both the state and non-state actors.

Total 1,200 members from dissimilar NGOs were present at the time of San Francisco Conference in 1945 whose strong position formed the UN Charter and they mainly contributed to the language '*We the people of the United Nations*', and the particular terms of NGO '*Consultative status with ECOSOC [3. The United Nations Economic and Social Council]*'. The phrase NGO has linked with the UN Charter [4. Article 71] states '*The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.*' Thus, Article 71 of the UN Charter simply gives that NGOs will have consultative status with ECOSOC. Since they have gained gradually more function in the era of globalization, the ECOSOC espoused Resolution 1996/31, specify that which types of NGOs could achieve which kind of consultative status, the privileges and compulsions of NGOs in consultative status, measures for the removal or postponement of consultative status, the purposes of the ECOSOC Committee on NGOs, and the accountabilities of the UN Secretariat in nourishing the consultative bond. NGOs are treated to be the people's podium for the fight against indifferent and antagonistic forces of the regime. They are having different type of status i.e. general consultative; special consultative; the roster status with ECOSOC. Kofi Annan, Former UN Secretary General stated '*The 21st Century will be an era of NGOs*'. The world conference on human right was held in Vienna in Austria in 1993 by the declaration '*accepted the significant responsibility of Non-Government Organization in the encouragement of the entire human rights*'. [4]

Each and every human individual is allowed to enjoy certain fundamental human rights which are accessible to them without bias and that sort of human rights is secluded by the United Nations and its focused organizations. To defend human rights NGOs and human rights activists from harassment and litigation by the government and others, the UN espoused in 1998 a Declaration on Human Rights Defenders. The instrument includes importance of guidelines; although it is not legally, binding yet will assist to increase the scope of activities and help to develop the defense of human rights activists. Thus, the governments in accordance with Article 8 of the Declaration have to ensure Right to have effective access, on a non-discriminatory basis, to participate in the government and in the conduct of public affairs and the right to submit criticism and proposals for improving their functioning. Article 9 stated that everyone has the right to benefit from an effective remedy and to be protected in the event of violation of those rights; to this end everyone whose rights is allegedly violated has the right to complain before an independent, impartial and competent judicial authority established by law (including the right to a public hearing, due redress and compensation and enforcement). Similarly, the regime will carry out a quick and independent inquiry whenever there is rational ground to judge that an infringement of human rights has happened. Therefore, the future of human rights safeguard would depend upon on how the United Nations and its members make facilitating provisions for NGOs to formulate global human rights in realism.

In the Judgment of the Supreme Court of India in *A.P. Pollution Control Board vs. M.V. Nayudu*, the Court referred to the need for establishing Environmental Courts, which would have the benefit of expert advice from environmental scientists/technically qualified persons, as part of the judicial process, after an elaborate discussion of the views of jurists in various countries. In the subsequent follow-up judgment in *A.P. Pollution Control Board vs. M.V. Nayudu*, the Supreme Court, referred to the serious differences in the constitution of appellate authorities under plenary as well as delegated legislation and pointed out that except in one State where the appellate authority was manned by a retired High Court Judge, in other States they were manned only by bureaucrats. These appellate authorities were not having either judicial or environment back-up on the Bench. The needs for Environmental Courts were advocated in two earlier judgments also. One was *M.C. Mehta v. Union of India* where the Supreme Court said that in as much as environment cases involve assessment of scientific data; it was desirable to set up environment courts on a regional basis with a professional Judge and two experts, keeping in view the expertise required for such adjudication. There should be an appeal Court observed that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.

It is important to note here that the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It has to be noted that

since the year 2000, no Judicial Member has been appointed. So far as the National Environmental Tribunal Act, 1995 is concerned, the legislation has yet to be notified despite the expiry of eight years.

Tensions in the relationship between Human Rights and International Environment Laws

- HARM - Do HRs capture the HARM done to humans when the environment is degraded?
- LIABILITY – are the right parties held liable when we think of IEL in terms of HR interests? Are they held liable in the right ways?
- NON-RIGHTS VIOLATIONS - Can we talk about human+environmental impacts beyond rights discourse? What are the risks and advantages of doing so?
- HR\ENVIRONMENT CONFLICTS - What about circumstances in which rights interests and environmental interests clash? Can unsustainable environmental degradation be necessary for the securing of human rights?

Environmental Laws and Constitutional Provisions in India

It is interesting to note that natural resources had been stored virtually untouched in the Earth for millions of years. But since the start of the industrial revolution vast amounts of these resources had been exploited within a period of just a couple of hundreds of years at unimaginable rates, with all the waste from this exploitation going straight in the environment (air, water, land) and seriously damaging its natural processes. Although pollution had been known to exist for a very long time (at least since people started using fire thousands of years ago), it had seen the growth of truly global proportions only since the onset of the industrial revolution during the 19th century. [5]

The importance of Judiciary in a democratic setup for protection of life and personal rights can hardly be overestimated. India has a highly developed judicial system with the Supreme Court having plenary powers to make any order for doing complete justice in any cause or matter and a mandate in the Constitution, to all authorities, Civil and Judicial, in the territory of India to act in aid of the Supreme Court. The scope of Writ Jurisdiction of the High Courts is wider than traditionally understood and the judiciary is separate and independent of the executive to ensure impartiality in administration of justice.

In considering the role of the judiciary in environmental governance, two issues need to be considered. The first is the role the judiciary in the interpretation of environmental law and in law making and the second is the capability of jurists to effectively interpret the increasingly cross-linked issues brought to their attention.

Writs and PILs for Safeguarding the Environment

A writ petition can be filed to the Supreme Court under Art.32 and the High Court under Art.226, in the case of a violation of a fundamental right. Since the right to a wholesome environment has been recognized as implied fundamental rights, the writ petitions are often resorted to in

environment cases. Generally, the writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus (a writ to command action by a public authority when an authority is vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains, clean street and clear garbage (*Rampal v State of Rajasthan*) likewise, a state pollution control board may be compelled to take action against an industry discharging pollutants beyond the permissible level. The writs of certiorari and prohibition are issued when an authority acts in excess of jurisdiction, acts in violation of the rules of natural justice, acts under a law which is unconstitutional, commits an error apparent on the face of the record, etc. For instance, a writ of certiorari will lie against a municipal authority that considers a builder's applications and permits construction contrary to development rules e.g. wrongfully sanctions an office building in an area reserved for a garden. Similarly, against water pollution control board that wrongly permits an industry to discharge effluents beyond prescribed levels.

When a fundamental right, which includes right to wholesome environment is violated Art. 32 and 226 provide appropriate

In *E.Sampath Kumar v. Government of Tamil Nadu*, 1998, AIR 449

The party an individual was troubled by the excessive noise pollution and vibrations caused by electrical motors, diesel engines, and generator used by a Hotel. The high court held that an affected person could maintain a writ petition while rejecting the hotel owner's plea that a civil suit would be proper remedy.

Public interest litigation describes legal actions brought to protect or enforce rights enjoyed by members of the public or large parts of it. [6]

In a public interest case, the subject matter of litigation is typically a grievance against the violation of basic human rights of the poor and helpless or about or about the content or conduct of government policy this litigation is not strictly adversarial (in an adversarial procedure, each party produces his own evidence tested by cross-examination by other side) and in it a judge plays a large role in organising and shaping the litigation and in supervising the implementation of relief.

Since the 1980s public interest litigation (PIL) has altered both the litigation landscape and the role of the higher judiciary in India. Supreme Court and High Court judges were asked to deal with public grievances over flagrant human rights violations by the state or to vindicate the public policies embodied in statutes or constitutional provisions. This new type of judicial business is collectively called public interest litigation.

If all this continued, what the future would look like dark or smoky?

The carbon world or the carbon planet whatever we can refer it to, the concept defines that the world is moving towards a very dark direction, which holds nothing but some most harsh phases of this planet's history. The planet once known

as the blue planet of the Milky Way or the galaxy but we have taken it so far that the colour is still blue from the outer space but now mixed with a high number of toxic chemicals and wastes. Moreover, this toxic waste has spread all around the planet by the human beings and it will eventually lead to the extinction of the complete race one day for sure. The alarming rate at which the environmentalists are being killed has raised the concern that is it even so obsessing for some people to secure their personal gains while endangering the planet itself. Moreover, the recent year has witnessed the killings of reporters in various countries such as Malaysia, Nigeria, Russia and other parts of the world and authorities are taking no steps to stop all this mess.

If it continues like this then there will be just silent protests against the raising of the awareness regarding the protection of the environment and nobody will ever try to raise voice for the protection of the degrading planet, which is unfortunately our home. And why we referred the planet as carbon planet is because the amount of carbon that is being released by the industries, vehicles, units, and other things will lead to a day when there will be nothing but smoke on the planet earth. In addition, that will witness the remains of the human race below the large structures and buildings around the world. The future of this carbon planet and the future generation is in our hand and it will completely depending upon the approach, we will be following today. The generation would reap the fruit depending upon the kind of plant we are putting in today. And the question at that day would also remain the as to if all this continued, what the future would look like dark or smoky?

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