

Human Rights and the Environment

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by

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United Nations Commission on Human Rights in its various resolutions taken in the years 1993–1994–1995 emphasises “that the promotion of the environmentally healthy world contributes to the protection of the human right to life and health of everyone”. It called upon all the member States to act “in accordance with their common but differentiated responsibilities and respective capabilities”.

Principle No. 1 of the RIO Declaration on Environment and Development states:

“Human beings are at the centre of concerns for sustainable development and they are entitled to healthy and productive life in harmony with nature.”

The RIO Declaration of Environment and Development amongst other contain the following important principles:

Principle 15—In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16—National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 25—Peace, development and environmental protection are interdependent and indivisible.



Page: 2

Principle 26—States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

These are few well—recognised principles for strict observance by environmentalist and courts to protect “human right to healthy environment”. These principles are described pithily as four P's principles.

Polluter Pays, Precautionary Principle, Public Trust and Public Participation.

The problems of environment are no longer being viewed exclusively from the angle of the pollution affecting the industrialised countries but seen rather as a worldwide hazard threatening the planet and the whole of the mankind, as well as future generations. There is now a universal awareness of the wide spread, serious and complex character of environmental problems, which call for adequate action at the national, regional and international levels.

In the recommendations of the Sub-Commission set up by UN Commission on Human Rights, global character of environmental problems have been realised and addressed for solution by all the member countries. The realisation of the global character of environmental problem is attested by the progress made in understanding the phenomena that create hazards for the planet, threaten the living conditions of human beings and impair their fundamental rights. These phenomena concern not only the natural environment (the pollution of water, air and atmosphere, seas, oceans

and rivers; depletion of ozone layer, climatic changes) and natural resources (desertification, deforestation, soil-erosion, disappearance of certain species, deterioration of flora and fauna, exhaustion of non-renewable resources, etc.), but also populations and human settlements, (housing, town-planning demography, etc.) and the rights of human being (the human environment, living, working and health conditions, conditions for the exercise and enjoyment of human rights).

By means of global approach to these phenomena that takes in their multidimensional aspects, including their human aspects, it is now possible to move from environment law to environmental rights, proclaimed by 1972 Stockholm Declaration, which states in its Principle I:

Man has a 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.



Page: 3


At the regional and universal level, recognition of the right to satisfactory environment as a human right is reflected both in the related normative developments and in "environmental" concern that informs the activities of the human rights bodies. Although only a few instruments of the binding legal character have established a direct link between environment and human rights, the regional and international human rights bodies are developing a practice whereby the procedural bases for enforcing the right to a satisfactory environment are becoming more firmly established and the validity of complaints of human rights violations based on ecological consideration is being recognised.

It is being realised all over the world that ecological factors do hinder the enjoyment of human rights. The European Court of Human Rights have in certain cases legitimated restrictions on the use of private property in the public interest based on concern for need to preserve the environment. Many human rights are suited to being applied from an ecological prospective whether those rights are political, civil, social, economic or cultural and whether they are exercised individually or collectively.

Indian judiciary in the beginning took recourse to Directive Principles under Article 48-A and Fundamental Duties Article 51-A(g) of the Constitution to impose obligations and duties on the States and citizens to work for preservation of environment. After global awareness for preservation of healthy environment and the common resolve of various countries of the world to work in cooperation for preserving environment, the High Courts and the Supreme Courts of India by interpretation of Article 21 of the Constitution in a wide manner, as it ought to be, held right to healthy environment to be human right. The Supreme Court of India after decision in *Doon Valley case*¹ ((1985) 2 SCC 431 : 1989 Supp (1) SCC 504) in the subsequent case *Subhash Kumar v. State of Bihar*² ((1991) 1 SCC 598 : A.I.R. 1991 SC 420) held that "right to life is a fundamental right under Article 21 of the Constitution and it includes right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers the quality of life, a citizen has right to have recourse to Article 32 of the Constitution for restraining the pollution of water or air which may be detrimental to the quality of life".

Thus, interpreting constitutional provisions from case to case the Indian judiciary has developed environmental jurisprudence in tune with Universal Declaration of

Human Rights, the RIO Declaration on Environment and other recommendations of the United Nations Human Rights Commission. In its initial years the Supreme Court viewed "Protection of Environment" merely as achievable goal as contained in the Directives Principles of State Policy and Fundamental Duties of

 Page: 4

citizens, but gradually, reading it into Article 21 as part of "right to life," the court has treated it to be an enforceable human right.

Environmental damage has direct effects on the enjoyment of a series of human rights such as right to life, to health, to a satisfactory standard of living, to sufficient food, to housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one's personality, to security of person and family, to development and peace.

There is thus a close link between the right to satisfactory environment and right to development. Ecological rights do recognise that right to satisfactory environment cannot be dissociated from the problems bound up with development both nationally and internationally.

Effective implementation of right to a satisfactory environment cannot be dissociated from the combined efforts to preserve the environment and ensure the right to development. Nor can it be achieved without resolute action to ensure the enjoyment of all human rights.

The right to a satisfactory environment is also a right to the prevention which gives a new dimension to the right to information, education and participation in decision making, the right to restitution, indemnification, compensation and rehabilitation of victims.


The right to a satisfactory environment is also a right to the "conservation" of nature for the benefits of future generations. This futuristic dimension restores to human rights their original purpose, as embodied in the Charter of the United Nations and the Universal Declaration of 1948.

A concerted effort of the Member countries would usher into a "New Public Order" of human rights which would set acceptable limitations on those rights in the general interest while entailing corresponding duties on the part, both of public authorities and of individuals, associations and other components of civil society.

INDIA'S EXPERIENCE

India is passing through a phase of recurring conflicts between need to protect environment and need to protect human rights.

The increasing global awareness of problems arising from damage to environment activated India to take programmes for conservation of environment in a big way on national scale. As a developing country, India has set targets to attain progress in the field of agriculture, science and technology. A multifaceted programme of conservation of environment and human development is India's agenda in the fore-front. In its over-zealous attempt in the directions of conservation of nature and human development, poor, weak or under

 Page: 5

privileged feel themselves marginalised. A brief review of a few ongoing development programmes would make the point good.

Increasing need of water for the agriculture and generation of electricity

To meet the ever increasing need to improve irrigation facilities and demand of electricity, large dams are being constructed with loan facilities extended by World Bank and other International and National funding agencies. On construction of big dams impact assessment on environment is done, may be, with technological assistance and to a great extent satisfactorily but impact of large dams on human rights is not given equal and serious consideration. Poor and small farmers surviving on natural resources available to them nearby their habitats have to sacrifice not only their properties but their entire life style. The work of displacement and resettlement is often times slow and ill-suited to the affected. Thus arises a tussle between competing claims of original habitants facing displacement and general public interest likely to be served by availability of improved irrigation facilities and supply of electricity. Such conflict of competing claims is resolved in favour of beneficiaries of the dam projects. In such developmental activities human rights issues of poor and marginalised recede in the background.

Migration of rural poor to urban area

The development activities in urban areas and the current agriculture policy to encourage technically improved farming compel rural poor and small farmers to migrate to urban areas only to make a living. In urban area, they search employment and sometimes get some work to earn a meal but have no place to live. They are then forced to squat on available open lands or raise huts and *juggis* for shelter with no option but to suffer insanitary living conditions harmful to their health and to the health of other urban dwellers. Planned development of cities for urban have conflicts with human rights of migrant have-nots. In urban areas migrant poor are left to lead a life of lesser mortals. India has not yet been able to find a satisfactory solution to this problem of continuous migration of rural poor to urban areas. Whatever government schemes at the national and State level are under implementation, have not been able to check rural migration or provide them healthy environment for living in urban areas, although all realise that migrant labour contributes largely to the development of urban areas which benefits the urban rich but not them.

Conservation of forests and animal life

In implementing planned programme for conservation of forests and animal life, human life often times, is a casualty. Dwellers in forest



area thrive on forest land and natural resources. The tribals are used to traditional method of shifting cultivation. With States periodically notifying specified areas as forest areas and increasing their limits as reserved forests, is pushing out forest dwellers from those areas. With such tragic event begins a never ending misery. The resettlement facilities and compensation provided is inadequate for them to lead a normal life as they were used to. The Central Legislation, which was brought into force to give them basic traditional rights in forests for their survival, was opposed by forest authorities as a serious threat to conservation of nature. They foresaw in it possibilities of its misuse or abuse by unscrupulous people in the name of forest dwellers. Protection of human life surviving on forest is no less important than conservation of forests and the protection of animal life. A balance between these two competing and equally important rights has not been struck. This should be a matter of serious concern of State and their authorities. Human Right to healthy environment and human right of marginalised poor should be viewed as interrelated and complementary

rather than conflicting. Disregard or apathy towards human rights of forest dwellers and small farmers is providing justification to violent activities and programmes of various so-called revolutionaries and reformers like Naxalites and other NGOs who resort to violence as a legitimate resistance to violation of human rights of poor and tribals. Sooner these issues are addressed and solved, better it would be for the protection both of forest and forest dwellers.

The right to healthy environment and right to dignified human life are not conflicting rights. It is possible to take care of both by reconciling and re-adjusting the demands of each.

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¹ *Rural Litigation and Entitlement Kendra v. State of U.P.*, (1985) 2 SCC 431 : AIR 1985 SC 652; and *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504 : AIR 1988 SC 2187.

² (1991) 1 SCC 598.

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