



Environmental rights as third generation human rights: An analytical study

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Abstract

Melting glaciers, rising of sea levels, and changing weather patterns traceable to climate change increasingly affect day to day life of people all over the world. Obviously when the environment disturbs, humans disturb. Recent example is outbreak of Corona virus. The current crisis is not the real warning but it's simply an alarm bell of what is coming. Climate change progressively interferes with fulfilment of fundamental rights as well as internationally recognized human rights including right to life which is most important fundamental right. In order to achieve the human rights, the importance of the environment is widely accepted at the international level. This paper scrutinizes the various ways that the environment is visualized in international human rights law and analyses the approach that a right to healthy environment is emerging. It recognized some of the issues which would need to be defeat before the grant of this right, including those which draw sequence of ecology and earth jurisprudence and the nexus between human rights and right to healthy environment in international is far from simple or straight forward.

Keywords: Environmental rights, third generation human rights, climate change, human rights, right to life, healthy environment, international human rights law, environmental protection, Earth Jurisprudence, ecological rights

Introduction

The capacity of Human Being to transform its surrounding, if used wisely and according to nature, can definitely bring to all communities the opportunity to enhance the quality of life. Heedlessly and wrongly applied or un equationally applied, the same power can do incalculable harm to human beings as well as environment. Environment is generator: creation of life form is because of environment. Sun, moon, sea, earth, desert, hot cold forests, they together made an environment that is fit for our existence. We need to protect our environment to live a life which must be healthy and without violating our basic right to live in a healthy environment. We need to take care of our lands, water resources, forests and atmosphere. It is necessary to ensure balance between these resources and living creature to meet our needs.

Everyone likes to live in the healthy environment which is their fundamental right and includes right to live in a healthy environment. The links between human rights, health and environmental protection were apparent at least from the first international conference on the human environment, held in Stockholm in 1972. Indeed, health has seemed to be the subject that bridges the two fields of environmental protection and human rights. At the Stockholm concluding session, the participants proclaimed that:

Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of Mans environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself [1].

Even Principle 1 of the Stockholm Declaration established a foundation for linking human rights, health, and environmental protection, declaring that 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. In June 1992, the United Nations Conference on Environment and Development, popularly known as Earth Summit, took place in Rio. More than 170 leaders of countries participated in the Conference and committed their countries to environmentally sustainable development [2]. The Rio Declaration stated:

“Environmental protection shall constitute an integral part of the development process and cannot be considered apart from it”. The Declaration also provide for the right of access to environmental information and of public participation in environmental decision making. In 2002, the World Summit on Sustainable Development merely acknowledged the position that there exists a possible relationship between environment and human rights. In addition, the U.N. Human Rights Commission adopted several resolutions linking human rights and the environment, such as Res. 2005/60 entitled Human Rights and the environment as part of Sustainable Development. The resolution called on States “to take all necessary measures to protect the legitimate exercise of everyone’s human’s rights when promoting environmental protection and sustainable development and reaffirmed, in this context, that everyone has right, individually and in association with others, to participate in peaceful activities against violations of Human Rights and Fundamental Rights. The Human Rights that are directly affected by the state of environment consist but are not

limited to the policy: the right to life, the right to an adequate standard of living and the right to health^[3].

Human Rights: Overview

Based on International agreements, Human rights are freely signed and ratified, thereby taking up the duty to protect, respect and attain the rights provided by human right treaties. Human Rights is the idea that people should have rights just because they are human beings^[4]. These rights are seen as universal, which they are meant for everyone, no matter what their race, religion, ethnicity, nationality, age, sex, political beliefs, intelligence, disability, sexual orientation, or gender identity. A Human Right is therefore a moral right held unconditionally and unalterably by all and only human beings. Human Beings are often said to belong to persons already, prior to and independently of legislative enactment^[5].

Evidently, human rights are innate to man and cannot and should not be denied him. Deprivation of human rights, especially when done knowingly, is to reduce the very essence of Human nature and existence.

Human rights are relevant at all the development stages but experience different response from different countries. The realization of right to healthy life depends upon the available resources^[6].

Environmental Right: Substantive and Procedural

Environmental rights are both substantive and procedural. They provide right to healthy environment as well as ensure the public access for environmental decision taking and to review the environmental decisions. A healthy environment is a basic right of human and is a nature's gift. Environment is a concept and if used in this sense, it could include virtually anything and everything. Environment includes water, air and land and the inter – relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro – organism and property^[7]. The Encyclopedia Britannica defines Environment, as “The entire range of external influence acting as an organism, forces of nature surrounding an individual”. The concept of environmental rights is still evolving and its jurisprudence is still vague, lacking certainty in its definition, theoretical and conceptual framework that notwithstanding, attempts have been made to define them. According to Shelton, environmental refers to the reformation and expansion of existing human rights and duties in the context of environmental protection...these environmental rights will be closely aligned with the concepts of political participation and informed consent^[8]. Ataputtu describes the term in distinction with the right to a healthy environment. According to her, environmental rights denote procedural rights that are found in international rights instruments and are being applied to seek redress for environmental issues. The right to a healthy environment on the other hand denotes the identification of a separate, independent human right, not dependent on the existing protected rights recognized in the international covenants^[9]. so, it's clear that right to live in a healthy environment is basic/fundamental right.

In the essence, environmental rights refer to the rights to participate actively in environmental issues. Article 10 of the Rio Declaration aptly captures the essence of environmental rights thus:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided^[10].

Evaluation of Policies and Programs on Health and the Environment:

Most human rights treaties were drafted and adopted before environmental protection became a matter of international concern. As a result, there are few references to environmental matters in international human rights instruments, although the rights to life and to health are certainly included and some formulations of the latter right refer to environmental issues. The International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966), guarantees the right to safe and healthy working conditions (Art. 7 b) and the right of children and young persons to be free from work harmful to their health (Art. 10-3). The right to health contained in article 12 of the Covenant expressly calls on states parties to take steps for the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.

The Convention on the Rights of the Child (New York, November 20, 1989) refers to aspects of environmental protection in respect to the child's right to health. Article 24 provides that States Parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. (Art. 24(2)(c). Information and education is to be provided to all segments of society on hygiene and environmental sanitation. (Art. 24(2)(e).

I LO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Geneva, June 27, 1989) contains numerous references to the lands, resources, and environment of indigenous peoples (e.g, art 2,6,7,15). Part II of the Convention addresses land issues, including the rights of the peoples concerned to the natural resources pertaining to their lands. Further, governments are to ensure adequate health services are available or provide resources to indigenous groups so that they may enjoy the highest attainable standard of physical and mental health. (Art. 25(1)). Article 30 requires that governments make known to the peoples concerned their rights and duties.

Two regional human rights treaties contain specific provisions on the right to environment. The approach of each differs, with the African Charter linking the environment to development, while the American Convention Protocol speaks of a healthy environment^[11].

The African Charter on Human and Peoples Rights, (Banjul June 26, 1991) contains both a right to health and a right to environment. Article 16 of the African Charter guarantees to every individual the right to enjoy the best attainable state of physical and mental health while Article 24 states that All peoples shall have the right to a general satisfactory

environment favorable to their development. The distinction between an individual and a Peoples right is not made clear. The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, ^[12] also contains both a right to health and a right to environment, drafted in more detail than in other human rights instruments. Article 10 provides

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
 - a. Primary health care, that is, essential health care made available to all individuals and families in the community;
 - b. Extension of the benefits of health services to all individuals subject to the States jurisdiction;
 - c. Universal immunization against the principal infectious diseases; (d) Prevention and treatment of endemic, occupational and other diseases;
 - d. Education of the population on the prevention and treatment of health problems, and
 - e. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Article 11 is entitled: *Right to a healthy environment. It*

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation and improvement of the environment.

Impact of Covid 19 on basic Human Rights

The deadly Corona virus pandemic not only grows across the globe, threatening lives and upending the world economy, but it also had a profound impact on environment and basic Human Right. It has been observed that Coronavirus pandemic has affected many Human Rights and its protection adversely ^[13]. Firstly, the Right to Health is affected. During pandemic, there has been an increase in suicide and depression cases. Limited health facilities, health workers and medical petitioners were put at health risk due to shortage of PPE kits. Secondly, Right to Life has been also affected due to in availability of proper and health food. Migrants were mistreated as there was no proper arrangements for their transportation to their native areas. Right with regard to a decent burial was also denied and violated as dead bodies were left unattended for days and burnt with kerosene. Freedom of Religion was affected due to closure of religious places. Besides these, most important right i.e Right to Education has been affected because a new mode of online education was started but some could not afford the same. so, keeping in mind all these basic rights, the Government should take proper measures to compensate those whose basic rights were violated during pandemic and United Nation should devise and frame proper policies to deal with these kinds of pandemic in future.

Right to Environment as a Human Right

The main purpose of United Nations, among others, is to promote the universal respect of and observance of Human Rights and Fundamental Freedoms for all. Now human rights enjoy universal recognition and cry for protection and implementation. The enjoyment of basic human rights like right to life ^[14] ss dependent upon man's environment, both natural and man-made, says the preamble of United Nations Conference on the Human Environment ^[15]. Principal 1 of the Declaration lays down that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality permits a life of dignity and well being

Referring to Art.35(3) and Art.55(1) and (2) of 1977 Additional Protocol to Geneva Convention on Humanitarian Laws of Warfare of 1949, Judge Nagendra Singh says:

“it would be correct to state that the right to environment in so far as it relates directly to human existence and human survival is of the same category and potency as the right to life and peace.” ^[16]

Article 1 of the Legal Principles for Environmental Protection and Sustainable Development ^[17], “All human beings have the fundamental right to an environment adequate for their health and wellbeing”. The adoption of the resolution ^[18] on the need to ensure a healthy environment for the well-being of individuals by the General Assembly without vote also supports this view. In the Nuclear Test Case, ^[19] News Zealand pleaded that the action of France violated the right of all members of the international community to the preservation from unjustified artificial radioactive contamination of the terrestrial, marine and aerial environment and in particular of the environment of the region in which the tests are conducted. Besides this, Municipal courts of various countries have recognized the right of the environment as fundamental right including India where the right of the people to live in healthy environment has been recognized by the Supreme Court in various cases. For example, the Supreme Court in Subash Kumar v. State of Bihar ^[20] held that the right to life enshrined in Art.21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. Thus, the right to environment is considered not merely as a political or moral but as an enforceable human right ^[21].

Evolution and Scope of the Human Right to a Healthy Environment

The first step towards the evolution of the human right to a healthy environment started in India with its participation at the UNCED, Stockholm Conference at Stockholm in 1972. Addressing the UNCED India's then Prime Minister Mrs. Indira Gandhi stressed upon the fact that ‘modern man must be able to establish an unbroken link with nature and with life’, “He must again learn to invoke the energy of growing things and to recognize as the ancients in India centuries ago, that one can take from the earth and the atmosphere only so much as one puts back to them. In their hymn to Earth, the sages of the Atharva Veda chanted:

What of thee I dig out,

Let that quickly grow over,

Let me not hit thy vitals or thy heart” ^[22]

As an aftermath of the Stockholm Conference the Indian Parliament introduced the 42nd amendment whereby Articles 48A and 51A(g) were added to the constitution in 1976. India was one of the few countries that has provided constitutional safeguards to preservation of the environment. The Amendment also expanded the list of concurrent powers in the Constitution transferring Forest and Protection of Wildlife and Birds from state to the Concurrent list. The Parliament using its power under Article 253 and Entry 13 of the Union List further enacted the Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986 to implement the nation's international obligations as well as decisions made at an international conference or association ^[23]. The Directive Principles of State Policy and Fundamental Duties under parts IV and IVA of the Constitution respectively, provide that the State and the citizen of India have an obligation towards the protection of environment and its improvement. Art 48A says that the State shall endeavor to protect and improve the environment and to safeguard the forests and the wildlife of the country, has directly intervened to cast an obligatory duty on the State to endeavor to protect and improve the environment. To make it effective few insertions are made in the legislative lists enshrined in the 7th schedule of the constitution. Similarly, Art 51A(g) enjoins that, 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. Therefore, the concern for Environment protection is vivid in the Directive Principles of State policy and the Fundamental duties of the Indian constitution. It is no denying fact that clean environment forms a base for the cardinal principle, right to live. Art 21 of the Fundamental rights, Art 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenants on Civil and Political rights (ICCPR) enshrine the Right to live. Unfortunately, the progress of evolution of the human right to a healthy environment from the nascent seed to a sapling despite the introduction of Articles 48A and 51A took about the 15 years. Violations of the statute by industries, abuses in granting of licenses by State leading to unregulated degradation of environment just because of failure on the part of the government agencies to effectively enforce the law. Ill effects of harming the environment were boomeranging on the people whose health and wellbeing was at risk. These factors led the affected people, many environmentalists, non-governmental organizations to seek remedy from the courts. In India, to solve the disputes and to provide relief to the injured parties, the constitutional provisions and the interpretation of the inviolable fundamental rights, especially the right to life of human being was relied upon by the court and interpreted and expanded for resolution of these disputes, upholding the human right to a healthy environment ^[24].

Judicial Activism: Protection of environmental Right:

The role of Indian Judiciary in protecting Right to Healthy Environment can be seen in various landmark judgments by The Supreme Court. Lots of cases are there where the legislative and executive authorities have failed to carry out their obligations under Indian Constitution and Judiciary

offer judicial activism. Article 32 and 226 of Constitution are effective measures of judicial activism which allow citizen to approach the court for their environmental rights. Initially the judiciary relied upon Articles 48A and 51A of the Constitution to provide remedy but hardly anything could be done as these were non-self-executing principles and obligates State as well as Citizen to protect and improve the environment. As this did not provide any relief the judiciary looked to the fundamental rights chapter. In Dehradun quarrying cast the Supreme Court had only referred to the right to life and healthy environment under Art 21 ^[34]. The Court also accepted that its decision would cause the quarries to be closed but it is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment. Similarly, in Subhash Kumar v. State of Bihar ^[25] the Supreme Court held that, "right to live is a fundamental right under Art. 21 of the Constitution and it includes right of enjoyment of pollution free water, air for full enjoyment of life. If anything endangers or impairs that quality of life, in derogation of laws, a citizen has a right to have recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life." ^[26] Even the High Court follow the path set by the

Supreme Court. The High Court of Kerala in Attakoya Thangal v. Union of India ^[27] went a further step and clarified the position saying that, "Right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet water and the right to free air are the attributes of the right to life ^[28]. These are the basic elements which sustain life itself. The case dealt with management of groundwater and the petitioners were seeking relief for protection of freshwater resources on the Lakshadweep Islands against the government scheme to pump out groundwater. The scheme entailed pumping of groundwater which would cause saline intrusions in the fresh water table which in turn would endanger the potable water supply to the Islands. In this case the Court prohibited the implementation of the scheme until it was reviewed by the Union Ministry of Environment and Ministry of Science and Technology.

In various other cases such as in L. K. Koolwal v. State of Rajasathan ^[29], T. Damodhar Rao v. Special Officer Municipal Corporation, Hyderabad ^[30], the decision by High Courts reflecting the increasing environmentalist stance. The Court held that maintenance of health, preservation of sanitation and environment falls within the purview of Article 21. Sanitation adverse sly affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked. In the decisions it was observed that the right to life under Art 21 must also include environmental right. It was held by the High Court that, "environmental law has succeeded in unshackling man's right to life and liberty from the clutches of Common law theory of individual ownership... it would be reasonable to hold that enjoyment of life and its attainment and fulfillment guaranteed by Art 21 of the Constitution embraces protection and preservation of nature's gifts without which life cannot be enjoyed. The slow poisoning of the atmosphere by polluted atmosphere can also be regarded as violating the right under Art 21 ^[31]. The holistic approach of judiciary towards environment

protection and right to life can be seen from the decision of the Apex Court in *Municipal Council Ratlam v. Vardichand* and the *Olga Tellis v. Bombay Municipal Corporation* cases [32, 35]. In *Virender Gaur v. State of Haryana* [33, 36] the Supreme Court emphasized that “enjoyment of life including human dignity encompasses within its ambit the protection and preservation, ecological balance free from pollution of air, water, sanitation, without which life cannot be enjoyed.

In elaborating the scope of the right to life the court therefore laid down the foundations of providing a rough matrix upon which the right to environment was to emerge from by having isolated, identified and acknowledged specific principles and environmental doctrines. In this process building and recognition of the emerging human right to a healthy environment often the court has justified the application of new principles by virtue of interpreting a legislative enactment or deriving its sources and validity from either ancient vedic, mythological purans or principles of bhudha and more often times through legal international obligations.

Conclusion

As we know that human rights and environmental rights are intertwined, therefore a safe, sustainable and healthy environment reinforce the human rights. In order to tackle various environmental issues, Government must protect, businesses must respect and humans must exercise the environmental rights. Even where there is a guaranteed right to environment, it still must be balanced against other rights should there be a conflict. In a few instances, a specific priority may be established by law. The Constitution of India, provides for the right to life including right to live in an environment free from contamination. The Constitution invests the State as well as Citizen with responsibility for ensuring the enjoyment of this right and for establishing by law such restrictions on other rights and freedoms as are necessary to protect the environment. The link between human rights, environment protection including right to live in healthy environment and role of Judiciary are today well established I international as well as national laws.

We can conclude with a set of concepts of Human Rights and Environmental rights and Protection and their provisions under Indian and International laws and after finding their linkage between both and their prevailing conditions in India and a thorough study of Judicial Activism on environmental protection and human rights that there is a close connection between the two.

Environmental rights are not abstract, remote or irrelevant concept, but they are measurable, prominent and functional. Everyone should be able to understand and identify them and their effect. Further attention to the links and to the potential conflicts between the goals of the three subjects' areas will be of benefit to all concerned. One cannot deal with them separately and that environment is not subordinate to the more recognized inviolable fundamental human rights.

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