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The need of the hour is to adopt a rights-based approach to environmental protection that places the people harmed by environmental degradation at its centre



(/contributors/21544/Abhinav Mehrotra and Dr. Biswanath Gupta) By **Abhinav Mehrotra and Dr.**

Biswanath Gupta (/contributors/21544/Abhinav Mehrotra and Dr. Biswanath Gupta) | Jun 23, 2022



National Human Rights Commission

India's National Human Rights Commission issued an advisory on May 18, 2022, to all states, union territories and the central government to prevent, minimize and mitigate the impact of environmental pollution and degradation on human rights. The panel is headed by Justice Arun Mishra, a former judge of the Supreme Court. These rights include the right to life, health, food, water and sanitation.

While issuing this advisory, the Commission observed that despite having one of the best statutory and policy frameworks for environment protection, the entire country is experiencing degradation of air and water quality and ecological imbalance. Seen in this light, there arises the need to understand the relationship between environmental protection and human rights as well as the international human rights law position, the steps taken by the judiciary and legislature, and the possible way forward.

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In simple terms, the close connection between human rights and environmental protection can be understood from the dependence of individual rights like life, health, food, water and housing on the existence of a safe and healthy environment which the NHRC also emphasizes. Similarly, the concept of sustainable development integrates this relationship by highlighting the economic, social and environmental sides. It states that the development carried out must not only meet the needs of the present but also not compromise the ability of future generations to meet their own needs.

Environment and human rights

From an international human rights law perspective, although the universal human rights treaties do not refer to the specific right to a safe and healthy environment, they all recognize the intrinsic link between the environment and the realization of human rights. Further, the relationship is mostly understood from the principle of protection, respect and remedy. But there exists no explicit right to environmental quality in either of the human rights instruments like UDHR, ICCPR and ICESCR. Only an indirect reference is made on the issue of the environment concerning hygiene under Article 7 of the ICESCR.

According to the principle of protection, respect and remedy, the protection needs to be guaranteed against the abuses resulting from the activities of commercial nature or transnational corporations like the case of the Bhopal gas tragedy where a chemical accident took place in 1984 at the Union Carbide pesticide plant. It is considered one of the worst industrial disasters. The principle of respect ensures that the corporations comply with the norms through due diligence.

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Our constitution through the 42nd amendment introduced article 48A as part of the Directive Principle which reads as: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” At the same time, there exists Article 51-A (g) which bestows a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Victims of degradation

There continues to be an absence of laws and mechanisms that address individual human rights abuses caused by environmental degradation which also goes against India’s commitment undertaken under the Principle 10 of the Rio Declaration on Environment and Development. This emphasizes the need for effective access to administrative and judicial proceedings including redress and remedy. This principle assumes greater significance especially given the fact that people harmed by environmental degradation are often ethnic minority groups and indigenous peoples who are marginalized within their own countries and effectively excluded from political participation or redress under national laws.

The need of the hour is to adopt a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center that resonates with the broad meaning given to the right to life under Article 21 as held in the Menaka Gandhi case in 1978 and ensures that Article 21 includes right of enjoyment of pollution-free water and air for full enjoyment of life as held under the Subhash Kumar case (1991).

At the international level, there is a need for a declaration or protocol on the right to a decent environment that has extra-territorial application to counter transboundary pollution and global climate change.

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