

Call for Compensation

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The recent disaster in Uttarakhand has revealed the need for compensation. India lacks a firm policy and methodology in this regard and ensuring the legal rights of the affected people.



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By Abhinav Mehrotra and Dr Biswanath Gupta

The sinking of Joshimath town in Uttarakhand has once again raised the debate of achieving harmony between development and environmental safety. Though environmental disaster is a part of civilisation, paying compensation has been a central issue for the last decade or so. In this context, the role of early warning, mitigation and adaptation mechanisms, along with the need to inspire trust in the residents of the region, must be undertaken by ensuring their legal rights. In this case, it is the right to compensation.

Under the Constitution, environmental protection is included in Part IV which deals with the Directive Principles of State Policy that are considered fundamental in the governance of the country, but are not enforceable before a court of law. Article 48A of the Constitution has guidelines for the State to protect and improve the environment and safeguard the forests and wildlife of the country.

At the same time, under Article 51A (g), the duty of citizens has been prescribed to protect and improve the natural environment, including forests, lakes, rivers, wildlife, etc. Despite such provisions, violations of fundamental rights like the right to life and personal liberty under Article 21 continue as seen with the sinking of houses in Joshimath and people losing lives or being subjected to degrading environmental conditions.

So even as there is a link between the environment and human rights, there is an urgent need to include the affected population in decision-making concerning the environment.

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. Similarly, the concept of sustainable development highlights 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 needs.

The relationship is mostly understood from the principle of protection, respect and remedy. According to this principle, protection needs to be guaranteed against the abuses resulting from the activities of commercial nature or transnational corporations. The principle of respect ensures that corporations comply with the norms through due diligence. As for remedy, under Principle 10 of the Rio Declaration on Environment and Development, there is an emphasis on the need for effective access to administrative and judicial proceedings, including redress. This principle assumes greater significance given the fact that people harmed by environmental degradation are often ethnic minority groups and indigenous people who are marginalised within their own countries and effectively excluded from political participation or redress under national laws.

Take the case of Joshimath residents who have suffered historical exploitation and deprivation. There is a need for their participation in policy deliberations by demanding continuous engagement and accountability of those actors making weak human rights commitments such as the state and central governments, NTPC, etc. This demand traces its origin from the lack of recognition by the state of the genuine problems faced by them such as access to primary services like education and health and lack of opportunities for employment. Thus, there is a need for ensuring their well-being and welfare. This includes the right to a clean and healthy environment and good public health. For this, social justice, equality, protection and local development are needed along with the removal of livelihood insecurity and economic and social oppression.

A similar incident took place in Chamoli district of Uttarakhand on February 7, 2021. The disaster occurred in the upper catchment of the Rishi Ganga river, a tributary of the Alaknanda, which led to a sudden rise in the water level which destroyed the Rishiganga hydropower project as well as the Tapovan Vishnugad hydropower project. The gravity of the Chamoli disaster is linked to the absence of necessary monitoring, early warning systems and disaster management system.

Interestingly, compensation for big scale environment disasters is yet to develop. The polluter pays principle or environmental impact management is probably not equipped to deal with such large-scale disasters. A disaster like Joshimath requires detailed analysis for compensation. Most of the locals complain about lack of governmental support. The government, due to a lack of policy, has limited options to serve the people.

The Central Pollution Control Board (CPCB) has written about the policy instrument for large-scale disasters. The report noted that though many countries have implemented environmental compensation systems based on the polluter pay principle, these policies have had limited results.

Therefore, there is a need for specific principles to deal with such incidents. The National Green Tribunal has in various judgments raised the point of compensation. The Board, along with NGT, governmental and local bodies, has tried to develop a methodology for paying compensation for such damage. An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing compensation to be levied on concerned industry, authorities, individuals, etc. for the protection of the environment.

Along with this, it has suggested an Environmental Compensation Fund. The overall objective is to develop a sense of responsibility towards the environment and to make defaulters realise their mistakes by imposing compensation, which will be utilised for protection/restoration.

Looking to the West, the Safety Regions Act of the Netherlands seeks to achieve an efficient and high-quality organisation of fire services, medical assistance and crisis management under one regional management board. The overarching aim of the Act is to structure the vulnerable regions similar to how police regions are marked. Besides an adequate disaster management system, there is a need to raise awareness and resilience by empowering society to handle the crisis by mitigating the impact of extreme weather events.

A cultural, economic, social and educational mechanism is necessary to save the environment as well as a compensation mechanism so that the right to life and personal liberty under Article 21 of the Constitution go hand in hand.

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