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# THE RIGHT TO A HEALTHY ENVIRONMENT AS A COLLECTIVE RIGHT

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Digvijay Bhuyan, OP Jindal Global University

## ABSTRACT

We humans usually love to see nature and express our affection towards its beauty. We travel millions of kilometres in our lifetime to see nature. But, we fail to realise that we are destroying nature and the environment around us every day by our unsustainable actions. As a result, many communities suffer, and since it is not yet a human right to have a healthy environment accepted globally, it is not possible for them to complain and take proper actions. In this paper, I will focus on the topic, 'The Right to a Healthy Environment as a Collective Right.' To give better evidence to this issue, we will look at some real-life examples and case studies. Finally, we will also look at two special reports on human rights and the environment by John H Knox.

## **Introduction**

In this section, we will look at what is the meaning of human rights, collective rights and healthy environment?

What is the meaning of human rights? Human rights are the rights which are fundamental to all human beings. It does not differ to anyone on the basis of colour, ethnicity, language, nationality, race, religion, sex or any other form of status. There are many forms of human rights, the main ones are the right to life and liberty, the freedom of speech and expression, the right to education and work, and many more such rights. Everyone in this planet should have the freedom to practice these rights without facing any hurdles or discrimination. The International Human Rights Law states that every government in the world has the obligation to allow and protect its citizens to practice these rights without facing any problem. The United Nations (UN) had created a body for the promotion of human rights law where every nation has to abide by its rules and regulations and this is seen as a major achievement for the UN. The UN created a document known as the Universal Declaration of Human Rights on December 1948 in the city of Paris in France which was drafted by members from all the parts of the world. The UDHR is seen as a milestone. The International Covenant on Economic, Social and Cultural (ICESC) became a part of the UDHR and came into force in 1976 and the International Covenant on Civil and Political Rights (ICCPR) and its First Protocol also came into force in 1976.

What are collective rights? Collective rights emerged as individual rights do not address the protection of indigenous communities who usually acts collectively or as a group. The members of these communities usually work together and individual rights are not favourable to their way of life. One example of collective rights is the right to own land as a community.

Finally, we come to the question, what is healthy environment? Healthy environment is the surrounding which is free from any issue or problem. In the present world, climate change is a hurdle for the concept of healthy environment.

Environment degradation is one of the most dangerous issue or problem faced by the humans in the present times and due this they are in fact suffering. People in most parts of the world do not have access to safe and clean air and drinking water. The production of pollution is increasing day by day and it is affecting the nature as well as the health of the human beings.

In most cases, the rich and the powerful manage to safeguard themselves but the poor and the weak face the consequences as they do not have the proper resources to save themselves. Ensuring a safe and healthy environment should be one of the primary aims of humans so that they can survive and thrive in a positive way. Each country has different viewpoints on this issue and as a result, most of them do not believe that a healthy environment should be a collective human right that all people should enjoy.

### **Some Examples of Environmental Disasters**

In this section, we will list some examples of human made disasters which affected the environment in the decade of the 1980s.

The 1984 Union Carbide disaster in Bhopal, India which severely affected the environment along with people of the nearby village who suffered deformity, lung problems, skin problems, etc. Until today, babies born to mothers who suffered during this tragedy have inborn health issues. (Taylor, 2014)

Some other real life examples of such disasters are the Chernobyl nuclear energy accident of 1986 in present day Ukraine that killed more than 40 people. (World Nuclear Association, 2019), the toxic chemical spill from the Basel Chemical plant and in 1989, the Exxon Valdez oil spill in Prince William Sound, Alaska. Not only human made disasters affect the environment but also wars. For example: During the Second World War, due to continuous bombings and fighting by the then weapons and technologies of mass destruction (nuclear bombs dropped in Hiroshima and Nagasaki in Japan) many cities and lands (forests and agricultural lands) were destroyed tremendously. Due to the dropping of the nuclear bombs in Japan, not only the people but the environment in that regions still face consequences (health issues for humans and nature-wise, it is difficult to grow plants even after seven decades as the soil became poisonous).

### **Relationship between Environment and Human Rights**

We do not usually realise but environment has direct impact on human rights. A person cannot enjoy his or her civil, cultural, economic, political and social rights in a toxic or unhealthy environment such as the right to life, the right to health, the right to water, the right to food, the right to development, the right to proper housing and shelter, etc. Human rights

entitle each individual to prevent environmental degradation by taking proper actions through the following rights and freedoms, the right to participate in decision making, freedom of speech, expression and association, and access to justice and political freedom, access to information, development, economic security and physical health.

According to Professor Dinah Shelton, human rights and environmental protection are different but they are overlapping and has similar societal values. Both human rights and environment share similar core interests and objectives but not all human rights violations are linked to environmental degradation. Environmental issues cannot be addressed effectively within the human rights framework and vice versa. As a result, there is potential conflicts between both the fields but sometimes need each other to achieve their common objectives.

### **History of the Right to a Healthy Environment**

The concept of International Environmental Law emerged in the late 1960s and since then has expanded over time as new issues emerged in the world. Today, International Environmental Law regulates the depletion of the ozone layer, marine life, clean and safe water in water bodies, fisheries and biodiversity; untreated disposal of hazardous wastes; increase in species endangerment and many other topics which are concern for the international community.

Article 11 of the ICESCR states that countries must develop programmes to improve the methods of conservation, distribution and production of food and measure to achieve the most efficient way of the utilization of natural resources. Article 12 states that proper steps should be taken to improve all aspects of the environmental and industrial hygiene.

In the 1960s and 1970s, the link between environmental protection and human rights started to be realised. Several different approaches have been taken by the international instruments to link environment with human rights such as Environmental Health for Human Health, Rights Based Approach to Environmental Protection and Rights to a Healthy Environment.

1. Environmental Health for Human Health: There are some steps taken by the international community to address the topic, environmental health for human health. Some of these steps are listed as the following: Principle 1 of the 1972 Stockholm

Declaration states 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 and he or she bears the responsibility to improve and protect the environment for the present and the future generations.” The 1989 Convention on the Rights of the Child; The Additional Protocol to the American Convention on Human Rights; and the 1990 UN General Assembly resolution stated the link between environment and human rights by saying that “all individuals have the right to live in an environment which is proper for their health and well-being.”

2. Rights Based Approach to Environmental Protection: The following are steps taken by the international community to address this section. Principle 10 of the 1992 Rio Declaration on Environment and Development states that environmental issues are best to take care of in the relevant levels. Other steps taken are ILO Convention No. 169 which is concerned with indigenous and tribal people living in independent countries; the 1991 Protocol on Environmental Protection on the Conservation of Antarctic Fauna and Flora; the 1992 Framework Convention on Climate Change; and Articles 13 and 15 of the Convention on Biological Diversity.
3. Right to a Healthy Environment: Principle 1 of the 1994 UN Draft Declaration of Principles on Human Rights and Environment states that human rights, ecologically sound environment, peace and sustainable development are indivisible and interdependent. Article 29 of the UN Declaration on the Rights of Indigenous Peoples states that the indigenous people have the right to conserve and protect the environment without facing any issues or problems.

### **Reports of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (Mapping Report) by John H Knox**

In this section of the paper, I will focus on two reports (2013 and 2016) created by John H Knox who is a special rapporteur on environmental issues and human rights. Most of the contents between both the reports are same but only differ in some specific issues. Hence, I will highlight in this section only the most important points of the reports.

#### **Mapping Report 2013**

The UN Human Rights Council appointed an expert (John H Knox) to study the human

rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment. The expert mapped the human rights obligations in three levels, international level, regional level and national level. Now, we will look at the steps taken in every level.

1. International Level: A) The Universal Declaration of Human Rights. B) Principle 1 of the 1972 Stockholm Declaration which states that every individual has the fundamental right or freedom of adequate condition of life in a quality environment. C) Principle 1 of the 1992 Rio Declaration states that human beings are the primary concern of sustainable development. They have the right to have a healthy and productive life in harmony with the nature.
2. Regional Level: It is seen that almost every country from a particular region and regional environment mentions about environment in their charters and constitutions. A) African Charter: healthy environment. B) ASEAN Declaration: Safe, clean and sustainable environment. C) San Salvador Protocol: healthy environment. D) Arab Charter: satisfactory environment. This shows that countries are concerned about the environment and they wish for a safe and healthy environment but when it comes to taking actions, they usually fail to address properly. Sometimes individuals, institutions and organizations which are not related to any government acts as advocates of link between the environment and human rights. There are also regional tribunals which focus on these issues such as the European Court of Human Rights (ECtHR) in Strasbourg, France and the Inter-American Court of Human Rights in San Jose, Costa Rica.
3. National Level: A little more than 100 countries have included the right to a healthy environment in their national constitutions. But, it is yet to be realised in a global level.

States have obligations under the human rights law to protect the environment and take necessary steps against harms. There are three obligations mentioned in the mapping reports, procedural obligations, substantive obligations and additional obligation towards those in particular vulnerable situations.

1. Procedural obligations: States have the obligations to provide environmental information, facilitate its participation in environmental decision making, provide access to remedies and states must protect the rights of speech and association for each individual.

2. Substantive obligations: States have obligations to adopt and implement proper legal frameworks to protect against environmental harm, regulate private actors to protect against environmental harm and look at the issue of transboundary environmental harm (States have duties to protect against harm from non-state actors).
3. Obligations towards vulnerable groups: States have the obligation to protect indigenous groups as they are mostly the ones who suffer from the issue of environmental degradation. An example is illegal gold mining in the Amazon which is leading to devastating affects towards the native indigenous communities.

### **Mapping Report 2016**

As already mentioned earlier, the Mapping Reports of 2013 and 2016 by John H Knox does not have much differences as the international community did not take much steps and actions regarding the environment within these years. It is divided into parts like the 2013 report. Like the 2013 report, I will focus on the important points of this report. In the section of the relationship between climate change and human rights, the report talks about the following: The Male Declaration of 2007 is the first inter-governmental statement to recognise that climate change and human rights have immediate implications. In March 2008, the Human Rights Council adopted resolution 7/23 which states that climate change has immediate threat to people but did not specifically state that it has direct effect on human rights. States should be obliged to take action. In 2009, in the United Nations Framework Convention on Climate Change (UNFCCC) session, 20 mandate holders issued a joint statement on the relationship between climate change and human rights. Since 2010, four resolutions have been adopted where it has been found that climate change affects the vulnerable societies. There was a climate change panel discussion among the leaders of the island States as they fear the rising sea level due to climate change might ultimately submerge them. In 2014, 27 UNFCCC mandate holders urged everyone to start urgent mitigation and adaptation measure to prevent further harm to the environment so that they can protect, promote and fulfil human rights for all. Again in 2015, the 27 UNFCCC mandate holders met and discussed about the issue of the increase of 2 degrees Celsius in average global temperature. This report states that the Paris Agreement is worth celebrating as this is the first time that the countries met and discussed only on issues of environment and how to tackle the problems.

On the section of effects of climate change in the enjoyment of human rights, Knox talks about Mary Robinson who was the former president of Ireland as well as the Office of the United Nations High Commissioner for Human Rights (OHCHR) who has said that climate change is the greatest threat to human rights. The report also states that climate change threatens the existence of small and vulnerable countries and climate change also affects the lives of not only humans but other life forms and organisms.

## **Conclusion**

I will divide the conclusion into two parts, first, the conclusion of the reports and then the final conclusion of the paper.

In the concluding section of the report, Knox tries to give some recommendations along with concluding remarks on issues focused in the reports. First, human rights and the environment are interdependent. Second, states must take additional steps to protect those who are most vulnerable. Third, the recognition of the right to a healthy environment exists in national and regional level till today, but not yet in global level. Fourth, we generally do not care much about environmental rights but when we connect it with human right, we tend to start looking at it from a different angle.

According to many experts from the environment field, the world has taken a very bad path and its end result does not look too positive. As a result, the time has come to take immediate and necessary steps to tackle this problem so that we in the present as well as the future generations can survive. In my opinion, it is not too late and it is best if we can look at the environment not from an individual perspective but collectively and taking actions from this point of view can produce better results. Every individual has the right to enjoy the environment and it should be the case that only the prosperous enjoy and the vulnerable suffer.

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