



Has the Environment Successfully Been Added into the Global Human Rights Regime?

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Abstract: In the present times, environmental degradation is one of the biggest issues facing humankind; living in a safe and clean environment is every person's fundamental right. This essay examines the historical evolution of efforts taken to incorporate environmental protection into the global human rights regime. The essay highlights the plight of climate refugees who lack official status, the disproportionate impact on indigenous communities, and the linkages between environmental degradation, climate change, and socioeconomic conditions. It argues that addressing these challenges holistically and inclusively and integrating environmental protection into the human rights regime is imperative to safeguard the fundamental principles of dignity and equality for all.

Index Terms – environmental protection, human rights, UN, climate change

I. INTRODUCTION

In the year 2021, approximately 43,000 people died in Somalia due to excessive droughts (UNICEF, 2023). At the same time, more than two hundred thousand Somalians have also been displaced from their land due to severe flash floods (British Red Cross, 2023). In 2020, Australia experienced its worst-ever wildfire destroying 10 million hectares of land and killing almost 28 people (Oxfam International, n.d). Almost 6.7 million premature deaths take place annually due to air pollution (World Health Organisation, 2023) Drinking water of more than 1.8 billion people is polluted with faeces. And, almost five lakh deaths are caused annually due to diarrhoea induced by consuming unsafe water (World Health Organisation, n.d). This is the current plight of people all over the world. And all these are caused by various forms of environmental degradation.

In Uganda, almost 81% of the population does not have access to something as basic as safe drinking water (Water.org, n.d) and 33 children almost die every day due to this (UNICEF, 2022) Delhi experienced more than 54,000 premature deaths in 2020 and the capital has also seen a severe increase in asthma, cancer, and strokes (Arora, 2021) This is due to extensive air pollution there. In fact, in November 2016, air pollution crossed the acceptable level and visibility became extremely low and this event has been dubbed the 'Great Smog of Delhi' and the air was considered equivalent to smoking 50 cigarettes a day (Basu, 2018). When something as fundamental to life as breathing and drinking water turns poisonous, it affects the fundamental rights of people to live and to have a healthy life.

This can only be combated when the environment in which we live is mandated to be clean and healthy in order to secure the rights of humans and other living beings. There have been various acts and programmes that have taken place to make sure environmental degradation is mitigated. The extent to which this has been successful and to what extent has environment been successfully added into the human rights framework is what this essay will look at.

Historical Evaluation of Positive Actions

Environmental awareness has long existed even during the times of the Indus Valley Civilization when fearing soil erosion, practises like crop rotation, waste management, etc., were practised. Philosophers like Plato have lamented the withering away of a healthy environment. In fact, Hippocrates' book 'Air, Water, and Places' is the earliest known European work on human ecology (Weyler, 2018) This shows that thoughts on environmentalism have always existed throughout history yet, only as recently as October 2021,

was 'access to a healthy and sustainable environment' was declared a human right by the United Nations Human Rights Council (UNHRC). Even for such a fundamental right, 4 countries abstained from voting (European Parliament, 2021).

Though awareness has sparsely existed throughout time, various incidents that occurred some years before the 1970s triggered the conversation on the environment and human rights. More than 100 children were killed in Wales when a waste pile of a coal mine collapsed in 1966. A massive oil spill in Santa Barbara killed about 3500 seabirds. More than 2000 people died due to mercury poisoning in Japan (Chasek, pg: 1-2, 2020) About 8000 people died due to heavy smog in London, also known as 'Great Killer Fog', in 1952 (Mainwaring, 2022).

All these incidents coupled with studies that showed the negative impacts of chemicals on humans and the environment culminated in the United Nations Conference on Human Environment in 1972.

The Stockholm Conference gave birth to the Stockholm Declaration which was the first agreed set of principles, the basis on which research on human-environment was to take place. The Stockholm Action Plan gave 109 recommendations for governments on measures to combat environmental degradation globally. In 1972, the London Convention also took place which dealt with marine pollution (Chasek, 2020). Following this, in order to monitor environmental issues and respond timely to environmental challenges, in 1972, the United Nations Environment Programme was formulated in Kenya. On 5th June 1973, to raise awareness about the seriousness of the issues faced, World Environment Day was celebrated for the first time, under the theme 'Only One Earth'. (UNEP, 2022). In 1979, various states signed a convention on 'Long-Range Transboundary Air Pollution', to reduce the presence of chemicals like sulphur and nitrogen oxide that causes acid rains. This became the world's first convention on air pollution that was legally binding (UNECE Sustainable Development Goals, 2015). Following this in 1980, the World Conservation Strategy was launched which was the first to define what sustainable development is – 'the needs of today shouldn't compromise the needs of the future generations' (UNEP, 2022). This idea forms the basis of various activities of the UNEP and other environmental protective activities.

By the 1980s, talks and research on climate change had begun which led to the Toronto Conference on the Changing Atmosphere in 1988 which stated that the uncontrolled damage humans have made to the atmosphere would be the greatest catastrophe, only behind a nuclear war (Campbell, 2013) Following this, an important summit was convened in 1992 at Rio de Janeiro and this summit, also dubbed as the 'Rio Summit', gave birth to United Nations Framework Convention on Climate Change (UNFCCC) and to 'Agenda 21' which is a global plan of action for sustainable development and growth (United Nations Sustainable Development Goals, 2022)

In 1997, the Kyoto Protocol was set up which came into effect in 2005. This came out with legally binding principles to control emissions for industrialised countries, also setting a precedent for international climate change conventions and agreements. But due to various limiting factors, like ignoring various emitters, ignoring developing countries, low participation in later stages, etc., limited the scope of the Protocol (Rosen, 2015) Later, in 2012, the mandate of Special Rapporteur on Human Rights and the Environment comes into place which examines human right obligation to have a safe and healthy environment (United Nations Human Rights Office of the High Commissioner, no date).

In 2001, the Aarhus Convention was formed and is the only internationally binding treaty that gives the public the right to participate and make decisions with regard to environmental justice (United Nations Economic Commission For Europe, 2014). By doing so, it was made sure that environmental protection remains a priority in political agendas and was widely accepted as a great stride in environmental justice (Dellinger, pg.313-314, 2012) However, this proves to be ineffective in states that do not abide by the Western idea of public participation. Also, public participation means decisions might be taken based on majoritarianism rather than justice, as both are at conflict many a time.

In 2015, the Paris Agreement was formulated and is a landmark judgement because it states that addressing climate change must take human rights into account. This is the first international agreement that directly links climate change and environmental protection to human rights (Knox, 2020) By relating climate change to the fundamental rights of humans, this summit elevated the seriousness and urgency of environmental protection.

Recently, in 2021, the United Nations General Assembly declared that everyone in the world has a right to a healthy and safe environment. This resolution is not legally binding but calls on its member states to ensure that everyone has access to a clean, safe, and healthy environment (UN Environment Programme, 2022). This is being dubbed as a historic judgement but whether this has any serious implications is yet to be seen.

Human rights-based climate change litigation is also proving to be an effective concept as just between 2015 and 2020, 40 cases violating climate-based restrictions were brought to national and international courts. By making governments and corporations obliged to reduce greenhouse gas emissions, this litigation is essentially making governments and companies accountable for climate change (Guruparan and Moynihan, 2021).

Gaps in addressing issues

One serious lapse in addressing environmental problems from a human rights perspective is the lack of recognition of climate-induced migrants or refugees. The definition of a refugee only includes people who fear persecution for 'reasons of race, religion, nationality, membership of a particular social group or political opinion' (United Nations, Article 1, 1951) Thereby, this does not include people who are forced to flee their homes due to climate changes destroying their livelihoods. The justification given for this by the UN is that most people who flee due to climate problems are only displaced within the country and thus they cannot be given the status of a 'refugee' (Siegfried, 2023) But, across many years intra-country climate-induced migration has taken place as well.

Bangladesh, a country that has been facing severe environmental problems, coupled with lead exposure (IBRD, 2024) has seen more than 1000 of its people migrate to the neighbouring states in India (Batra, 2022) In November 2020, when four hurricanes hit Central American regions like Honduras, Guatemala, and El Salvador, the people were forced to flee their land and take shelter in the United States. This saw a displacement of about 1.5 million people (Bermeo and Speck, 2022) Kiribati, an island nation, is facing increasing challenges in the prospect of submerging underwater in the near future due to rising sea levels. So, more than 23,000 people have migrated to places like Fiji, Queensland, etc. Anote Tong, the President of Kiribati has even bought land in Fiji to relocate his nation (Hermann and Kempf, 2017) So, when such is the condition of people migrating to another country to escape climate/environment-induced disasters, it is quite imperative for international bodies to officially acknowledge the term 'climate refugee'. Giving these people the status of refugee increases their chance to get into more countries to find a safe space as 149 countries are bound by UNHCR's 1951 Convention which states that refugees should not be sent back to the land of persecution (UNHCR, 2017) Although they have not been given official recognition, international bodies like the European Union have certainly raised concerns over the issue. In the 'European Green Deal' initiative, the EU has expressed great concerns about climate change and has claimed that climate refugees will increase to 1 billion by 2050 (Apap and Harju, pg.10, 2023).

Then come the indigenous people who face an unfair disadvantage when it comes to environmental degradation. Indigenous people place much more importance to natural resources and lands which are being increasingly threatened by climate change. Their ecosystem which is essential for their livelihood and survival is now unstable. Worse of all, they lack proper infrastructure that bars them from accessing easy escape routes and ways if and when threatened by climatic/environmental calamity (Environmental Protection Agency, n.d) This leaves them quite vulnerable. But there exists another dilemma here. Since climate change has forced people to adopt the strategy of adaptation, which asks for more buildings and infrastructure to be built to ensure the safety of the people, there comes another problem with it – this, according to Rebecca Tsosie (2007) will prove to be 'genocidal' for the indigenous community. The way they live their life, their sustainable practises, and their livelihood are very different from the life of the modernised world. Because of this, forcing the construction of buildings and other infrastructure to 'save' them could end up destroying them and their way of life. And, the construction of large hydropower and various biomass projects to reduce emissions have displaced many indigenous people from their land leading to loss of water, food, and even livelihood. An example of this is the Belo Monte Dam construction in Brazil which ended up disrupting local ecosystems and also displaced the indigenous groups present there (Roht-Arriaza, 2010) Apart from this, climate change can also be unfairly overburdening on their health. As water temperature rises due to global warming, chances of algal bloom¹ increase, which pollutes even their drinking water sources, and consuming fish might also get dangerous (Environmental Protection Agency, no date)

Another problem caused by climate change is desertification. Almost 60% of South African land is degraded and approximately 91% of the land is susceptible to desertification (UNEP, 1997). This is majorly attributed to the economic causes in the region, and climate change is largely being overlooked. But, climate change, which is causing severe droughts has also played a huge part in this process as it has been observed that whenever there have been drawn-out periods of drought, desertification has severely increased as well (South Africa Environment Outlook, no date) This is found to be having a significant impact on poverty induced by climate change. Even though many pieces of evidence prove the correlation between climate change and land degradation and despite South Africa signing many agreements with the UN to combat climate change, no significant measures have been taken or have yielded results to actively compensate or protect the lands (Osborne and Cleaver, 2021).

The above examples show how various forms of issues/disasters that emerge out of climate change and environmental degradation are not seen through the human rights perspective. The international bodies mostly see these as an economic problem or as the first example goes, the bodies lean towards majoritarianism and tend to ignore the minority who undertake cross-country migration.

Many countries have also given constitutional protection to having a healthy environment, and Portugal was the first to do this. By doing so, environmental protection is not seen as an entitlement but as a duty and priority. Making it a constitutional right also makes the government directly accountable to ensure that its citizens live in a healthy and safe environment and makes them actively involved in battling against climate change. In this context, it is also being argued that only substantive environment rights can make active changes like how Portugal, constitutionally guarantees its citizens the right to 'healthy and ecologically

¹ Rapid growth of microscopic algae in water bodies, that are harmful and might cause serious damage to liver and kidney.

balanced...environment' (Aragao, 2019) It also further makes the state accountable for fulfilling its duty in eight ways. Opposed to this, procedural environmental rights do not have the necessary might and power to actively bring about any change as it is argued that they do not guarantee to bring environmental change as such and only follow a pattern set by the Aarhus Convention (Erin Daly, 2012).

An interesting argument that arises while talking about intersecting environment and human rights is that the traditional way to look at human rights is from an individual point of view, focusing on individual rights or rights of a community. But environmental protection is a global movement, encompassing every person, irrespective of gender, race, etc. So, arguments say that it becomes difficult to integrate these two seamlessly due to a difference in their outlook (Roht-Arriaza, 2010) But, this argument can be seen in a different light too. The International human rights regime is all about dignity for all, equal worth for all, and securing equal rights to 'members of the same family' without any distinctions' (Munoz, 2017). So, seeing this all-pervasive problem of environmental protection from a global human rights perspective only gives the people a chance to truly adhere to the founding principles of the human rights regime of treating everyone as members of the same family.

Conclusion

It can be seen that right from the 1970s, efforts have been taken by the international community to undertake environmental protection. Albeit much later on, environmental crisis has been included under the framework of the human rights regime and has been done to a great extent. But, there still exists various gaps which urgently need to be met. These gaps also end up damaging the environmental cause further. The plight of millions currently affected by this issue underscores the recent historic move of the UN to declare environmental protection a right.

Strides like rights-based environment litigation and making a safe environment a constitutional right are definitely commendable, however, gaps do persist as climate migrants are still not given any official recognition, which has the potential of costing them their lives. The disproportionate effect on indigenous community needs to be addressed as well. The case of climate refugees highlights how the intermingling of human rights with environmental protection is not yet taken as seriously as it ought to be. At the same time, efforts to protect the environment must respect the rights and traditional way-of-living of indigenous peoples, rather than perpetuating further harm through unsustainable development projects.

By looking at the arguments on desertification, it is noted that climate change, more often than not, is intertwined with the socio-economic conditions of a region. Addressing these issues requires a holistic approach that considers the intermingling of environmental, social, and economic rights.

As climate-related disasters continue to displace millions, there is an urgent need for international bodies to adopt a more inclusive approach that recognizes the rights of all affected individuals.

To improve the link between environmental protection and human rights, first and foremost, the scope, nature, and content of environmental rights must be defined without any room for ambiguity, as this ambiguity will act as an access for triggering environmental degradation. Secondly, it is observed that human rights and the environment is quite under-theorised, leaving space for many gaps. So, more research has to be urgently undertaken in this field as the lack of a comprehensive framework undermines any efforts taken by institutions to formalise environmental rights.

In conclusion, while significant strides have been made to include the environment in the international human rights regime, much work still needs to be done. The problems posed by climate change and environmental degradation are multifaceted and thus require a global response. Only by adopting a human rights-based approach to environmental protection, can it be ensured that present and future generations have access to a clean, safe, and healthy environment.

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