

HUMAN RIGHTS ENVIRONMENT AND DEVELOPMENT IN SOUTH ASIA

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I. INTRODUCTION

The fundamental importance of the issue of Human Rights and the environment to any society is deeply appreciated today. Indeed one of the main challenges before mankind today is the preservation of the environment and ensuring the protection of human rights. It assumes critical importance in South Asian countries where the issue is intricately linked to complex socio-political and economic factors. The legal infrastructure for the protection of these rights is still in a developmental phase. There is an urgent need to foster awareness in this area and to formulate and implement policies which are consistent with globally achieved standards while addressing the local realities.

II. HUMAN RIGHTS

The issue of human survival brings a lot of attention to the debate as human life and environment cannot be separated. Technology and human activity have been the biggest donors in bringing about the change in the natural environs and in making some areas unfit for human survival for both present and future generations.

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The so-called developmental projects, which should have brought prosperity with them, have in fact brought violations of Human Rights and environmental degradation. The glaring examples of India, Burma, Nigeria, and Guyana have made it indisputable that serious environmental harms impact human rights and that Human Rights violations lead to degradation of Human Rights.¹ There is growing consensus that environmental problems are no longer limited to pollution but envelope. As the Special Rapporteur has noted, "a world wide hazard threatening the planet and the whole of man kind, as well as future generations."² There is also consensus that the conservation of the environment serves the common good of mankind.

The area of Human Rights Environment and Development has received a lot of attention by the United Nations and which also has helped in generating a response towards this crucial issue around the planet. It is true that when the United Nations embarked on the glorious journey of Human Rights which can be traced back to 1945, time when the United Nations Charter was drafted, the environment and its preservation was not an issue at all. Neither international nor regional or even at the national level. This is also apparent by the fact that both the United Nations Charter, as well as declaration have not precisely addressed the connection between human rights and environment. It has been, about thirty years or so that the scholars have started addressing the issue. It is, however, true that the time and happenings around the world have stressed upon all to address this issue of environment and its relation with life. It is only since then that the Human Rights norms have been used in addressing the issues pertaining to environment and moving towards a common platform where it could be agreed that the Human Rights and environment are interrelated and safeguarding; one leads to the protection of the other.

In 1968, the United Nations General Assembly recognized the connection between worth of human environment and the enjoyment of basic Human Rights. It is also important to mention here that since 1968, there has been a remarkable increase in declarations and statements in determining the basic link between Human Rights and the environment.

Environment, development, and Human Rights interrelationship has been stipulated by several international legal human rights stipulating that there are legal relationships between the three. The Stockholm Declaration on Environment and Development is perhaps among the pioneering documents that provide the importance of environment and sustainable development. Human Rights, environment and development are now more and more acknowledged as different aspects of the same basic concern. The experiences from all over

1. Statement of the International Peoples Tribunal on Human Rights and Environment Sustainable Development in the Context of Globalization, (June 23 – 27 1997), New York.

2. Fatima Zohra Ksentini, Second Progress Report, July 26, 1993, at 35, E/CN.4 Sub. 2/1993/7.

the world have shown that development which does not take appropriate measures in its quest and ignores Human Rights and environment incurs huge losses. The international community also has recognized Human Rights as a broad concept that encompasses a range of economic and social rights, including the right to development and the right of all human beings to a healthy and productive environment.”

There is a consensus that the conservation of environment serves the common good for mankind. A scholar has written “in reality, the apparent conflict between humanity and intrinsic value of the environment does not exist because it is impossible to separate the interest of mankind from the protection of the environment.” She has further added that, “humans are interlinked and interdependent participants with duties to protect and conserve all elements of nature, whether or not they have known benefits or current economic utility. The anthropocentric purpose should be distinguished from utilitarianism.”³

The environmental problems directly impact on human welfare, since the degradation of environment diminishes the quality of life. Globalization has affected all spheres of human life, as pointed out in the Statement of International Peoples Tribunal on Human Rights and Environment, “Inhumane wrongs constituting grave human rights violations and environmental devastation are justified in terms of expediency and necessity for development and the need for business as usual. Life itself has devalued and even more so has the future of our globe.”⁴

It is important to discuss the land mark judgment given by a Pakistani Supreme Court in *Ms. Shela Zia and Others v. Wapda*.⁵ In this case, four citizens protested to Wapda against the construction of a grid station in the green belt of a residential locality in Islamabad, the capital of Pakistan. In this judgment, which has been cited both nationally and internationally, the Supreme Court held that the right to a clear environment is a fundamental right of all the citizens of Pakistan covered by the “right to life” and the “right to dignity” provided under Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan of 1973. This landmark judgment prevented the establishment of a high voltage grid station in a residential area of Islamabad on the ground that it might adversely affect the health of the residents of the area and as the Judgement directed:

[W]hile planning and deciding to construct the grid station WAPDA and the Government Department acted in a routine manner without

3. *Human Rights, Environmental Rights and the Right to Environment*. 28 STAN. J. INT’L L. 103.

4. *supra* note 1, at 6.

5. PLD 1994 SC 693. (Also stated in the Case summary prepared by Hassan & Hassan Advocates, Lahore, Pakistan).

taking into consideration the latest research and planning in the field nor any thought seems to have been given to hazards it may cause to human health. In these circumstances, before passing any final order, with the consent of both the parties we appoint NESPAK as Commissioner to examine and study the scheme planning, device, and technique employed by WAPDA and report whether there is any likelihood of any hazard or adverse effect on health of the residents of the locality. NESPAK may also suggest variation in the plan for minimizing the alleged danger . . . The supreme Court also directed the WAPDA in its pertinent parts as WAPDA is further directed that in future prior to installing or constructing any grid station and/or transmission line, they would issue public notice in newspaper, radio and television inviting objections and to finalize the plan after considering the objections, this procedure shall be adopted and continued by WAPDA till such time the Government constitutes any commission or authority as suggested above.

It is, however, true that environmental problems often spark Human Rights abuses as well, especially where outside forces are give priority over the local communities. The so-called development projects do not bring any economic benefit to the local communities. The amount of wealth involved in these mega-projects have brought the environmental activists under a direct threat, either by the government or by its tacit approval. A famous and a very well known example relates to Chico Mendes, the leading organizer for rubber tappers in Brazil, who was murdered by ranchers with close ties with the government, and his crime was his efforts to gain protection for rubber tapper reserves. In Nigeria, Ken Saro Wiwa and his other activist friends are raising voice against the environmental concerns in their Ogoni lands. In India, Medha Paktar and other environmental activists have been arrested time and again and subjected to beatings. Their crime is to raise voice against the Narmada Dam and efforts to protect their homes for being flooded.⁶

A. *Yadana Gas Pipeline Project*

A Yadana Gas Pipe Line Project and off shore drilling project is a joint venture between the State Law and Order Restoration Council (SLORC, the Burmese military regime); several multinationals corporations; and its petroleum company, the Mayanmar Oil and Gas Enterprise (MOGE).

6. David Hunter, James Salzman and David Zaelke, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY*, p. 1306, New York, (NY Foundation Press 1998).

B. *Unsustainable Development Practices*

Use of intimidation and coercion and force in implementing the project. Complete lack of transparency and participation in the implementation of the project. Lack of accountability regarding the environmental impacts of the project. Absence of environment impact assessment.

C. *Human Rights and Environmental Impacts*

The project has adverse environmental impacts on local communities and ecosystems both onshore and offshore. Dumping and drilling wastes and toxic muds have polluted water and endangered marine life. Deforestation has affected climate, watersheds, and the livelihood of people dependent on dry rice cultivation. There are water shortages and flooding in the rainy season which affects food production. Gas emissions from offshore drilling is very substantial (equal that from 7,000 cars each driving fifty miles a day). There is the disturbance of animal habitats, and problems with landslides and earthquakes that make the pipeline hazardous.

Coercion, violence, forced labor, confiscation of property, and sexual abuse of women has characterized the implementation of the project. Villagers have lost both homes and jobs. There has been instances of torture and killings associated with the project, and victims have no redress given the absence of a functioning judiciary.⁷

D. *The Dabhol Power Project More Commonly Known as the Enron Power Project*

As a part of the Indian government's efforts in liberalizing the economy, the Enron Corporation was asked by the Maharashtra state government to build what would be the worlds largest electricity generating plant costing around \$3 billion. The operating company would be Dabhol Power Corporation, a joint venture of three United States companies: The Enron Corporation, General Electric, and the Bechtel Corporation.⁸

7. Summary profile prepared by the author of Case submitted by Burmese Farmers of the Tenasserim region before the International Peoples Tribunal on Human Rights And Environment, New York (June 22 - 23, 1997).

8. Human Rights Watch, *The Enron Corporation Corporate Complicity in Human Rights Violations at 2 [hereinafter Enron]* (1999).

E. *Fresh Water*

The project's circulation of water, as per Enron's estimate, will be 8,338 liters of fresh water per minute. As a result of which, and at the expense of the villagers, the water supplies were diverted to the project.

According to an interview mentioned in the Human Rights Watch report on Enron by Professor Pawar he explained:

[W]here there is water, there is prosperity. Farmers desperately need water. Had they [the government] provided water, the entire region would have become prosperous. People are angry about this. For thirty years, people have demanded water without any success. Now people are not amused to see water shipped to Enron.⁹

In 1996 through 1997, the company arranged for the water supply to the inhabitants be brought in tankers, which by itself shows how intense the problem would be as the scarcity in the fresh water supply was due to the diversion of the fresh water. The DPC, in order to compensate for the water shortage, dug wells in villages. Later, the water supply scheme was announced in Dabhol Samvad. Despite the fact that there was an urgent need for the supply of fresh drinking water to the villages around the project, in the summer of 1996, there was no solid commitment by the company to bring back the water to the original levels; but, the only commitment they had was the supply of water through the tankers and the wells to the villages. It is unfortunate to mention here that the company noted that the water level in the area will have a direct bearing on the success of the program. According to a local leader who was in opposition of the project said that "the villages had 300,000 liters of water daily before the project. Enron's program only provides 40,000 liters of water a day and have been unable to fulfil the request to provide 100,000 liters of water a day. This shows that the condition of the villagers is even worse than in 1994.

It is sad to state here that the situation of villagers in the village Valdur is worse because of the project. The existing problem is combined by the sewage contamination of potable water. The waste from the restrooms built by the company, in 1995, for the site workers was discharged into the water supply of the local villages. According to the villagers, the water supply is far below the requirement of the village and is thus inadequate.

An interview which was recorded by the Human Rights Watch who was studying the issue is mentioned here. He says:

9. *Id.*

Villagers used to have drinking water twenty-four hours a day. Since the Enron project started, they only have one hour of water every day. In contrast, Enron has its own pipeline and wastes water regularly. For two months in June and July [1997], there was no drinking water. Villagers would have to go to the river, but now untreated sewage is dumped into the river and the water is un-potable.¹⁰

F. *Contamination of Salt Water:*

The other issue related to the water, and particularly to the fishing villages, is the discharge of the hot water into the bodies of water. The water is first used to cool the Dabhol power plant. According to the minutes of the meeting between government officers and Enron dated March 12, Enron pointed out that seawater cooling required. Water requirement for the plant will be around 2,500 gallons per minute (13.5 million liters per day).

It is important to mention here that once the water is circulated through the plant, it will be discharged into the sea, which at that point is higher in temperature. This water, which is expected to increase the water temperature, may cause pollution and it might have toxic effluents which will kill fish and prawns. This would result in absolute destruction of the source of earning of the fisher people.

In an interview of Vithal Padyal conducted by Human Rights Watch, he says that:

The [Dabhol Power] project has benefits and losses. As and when they start discharging hot water into the sea, the whole community will be at a loss. Even today, drinking water tastes different due to contaminants and sewage. The only benefit of the project is that, at the moment, it generates some income opportunity for our sons. But, opposition to the project is justified. So far, all our earlier generations sustained themselves on the sea. When the fisheries are destroyed by hot water discharge, what are next generations going to do for their livelihood.¹¹

G. *Human Rights Violations:*

The protests against the Dabhol Power project started in 1994, the time the construction began at the site in Ratangiri. The protestors included politicians, fisher people, local farmers, shopkeepers, and other inhabitants of the area. It is, however, pertinent to mention here that the protestors were always peaceful and never advocated violence, whereas the police were abusive.

10. *Id.*

11. *Id.*

According to the Human rights Watch Report, "About 1,500-2,000 protestors had marched from Guhagar village to the site of the Dabhol Power Project." The protests largely consisted of shouting slogans and chants in front of the company gates. The police response was out of all proportion: protesters were beaten during a lathi charge, tear-gassed, and then arrested. Ms. Snehal Vaidya, head of the village council at Anjanvel, described the protest to an AIPRF fact-finding team led by retired Bombay High Court Justice S.M. Daud:

At 9:30 in the morning as we started out in a morcha (protest march), shouting slogans against Enron, MNC's [multinational corporations], and the Alliance Government, the police tried to surround us and obstruct our progress. However, due to our massive numbers they were unsuccessful and we reached the site of the main demonstrations. Here, however there was a huge police force deployed and even as we were peacefully shouting slogans, they began pushing and obstructing us . . . Suddenly, without warning, began a brutal lathi charge. Many of the constables were armed with freshly cut branches of trees, others with lathis, with which they indiscriminately beat up all those who had gathered.¹²

The protests against the project were inclusive of activists, members of organizations, and villagers who have been subjected to short term detentions, time and again, and abuse in the custody of the Police. No wonder those arrested were arrested under the Laws of preventive detention. But the detention in these cases continued for several days and in violation of the law that requires the detainees to be produced before the magistrate within twenty-four hours as per the Indian Law.

According to the interview of Medha Patkar recorded by Human Rights Watch, who participated in this demonstration, she stated, "After an hour, the police told us to go. We knew we were going to be arrested, so we held hands. They pulled me by the hair. The police molested women, so they started yelling at the police which made the police more angry."¹³

In these mass arrests, the demonstrators were subject to physical beating by the canes, more commonly known as lathis or assaulted and in several cases inflicting severe injuries. The Police have used the tear gas upon peaceful demonstrators.

The State government of Maharashtra has not only misused the laws of preventive detention, but have also been involved in the suppression of the

12. S.M Daud, A.Gajbhiye, V. Karkhelikar, and Stephen Rego, "In the service of a Multinational: How the Indian State Deals with Popular Resistance to Enron," a fact-finding mission for the All Indian Peoples' Resistance Forum (AIPRF), April 1997, Bombay, p.13. Enron, *supra* note 8, at 60.

13. *Id.* at 63.

rights of freedom of expression and peaceful demonstration coupled with arbitrary arrests and beatings. The police have also failed to give attention to the complaints filed by the demonstrators against the perpetrators of attack on them and has hence failed to proceed against them. The human rights violated are the right to freedom of expression, peaceful assembly, protection against unjust arrest and detention, and police mistreatment.¹⁴

Another incident involved Patkar and some of her colleagues from the National Alliance of Peoples Movements (NAPM), and took place in the town of Mahad, near the Dabhol Power Project. Under the pretense of preventing damage to property and loss of life, police served Paktar with prohibitory orders under Section 144 of the Code of Criminal Procedure on May 29, 1997, and then surveilled, arrested, beat, and detained the activists on the eve of her departing for Raigad and Ratangiri districts with plans to lead a series of protests against the DPC project and other industrial projects. The incident merits detailed treatment. Due to its being subsequently investigated by the Indian governments National Human Rights Commission, it is usually well documented and provides a close look at the process driving the issuance of prohibitory and externment orders.

The National Human Rights Commission determined, moreover, that the order against Paktar under Section 144 of the Code of Criminal Procedure was "unjustified." The behavior of the government led the commission to comment:

The case of Ms. Medha Patkar deserves anxious attention, . . . as some basic human rights issues are involved. In a free and democratic set up, the Fundamental Rights of individuals cannot be allowed to be infringed upon without impunity. . . . State machinery should not be misused or ulterior aim and gains of the party in power, out to strangle the voices of dissent.¹⁵

Freedom of expression is protected under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and India is a party to it. Suppression of the right of peaceful assembly, as well as arbitrary and illegal arrests, as well as detentions, are prohibited under Article 21 of the ICCPR. It is also important to note that Article 9, as well as Article 9 (2), (3), (4), and (5) of the ICCPR were also violated as the demonstrators had the right to know about the reason behind their arrests. They also had the right to be produced before the judicial officer promptly. Victims of unlawful arrests have a right to compensation.

14. *Id.*

15. National Human Rights Commission of India, Inquiry Report - Alleged Human Rights Violation of Ms. Medha Patkar and Other activists, July, p. 17. Enron, *supra* note 8, at 67.

Article 3 of the United Nations Code of Conduct of Law Enforcement officials states that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The plain reading of this provision from the code makes it clear that the police beating of the demonstrators, protesting against the Dabhol, is in absolute contravention of the code.

H. *Indian Laws*

The Constitution of India safeguards the rights of freedom of speech, expression, peaceful assembly, association, and movement in its Article 19. The article addresses restrictions and the maintenance of public order, but makes it clear that in applying these restrictions the concept of reasonableness should be kept in mind.

Article 21 of the Indian Constitution provides the safeguards against arbitrary arrests or detention. The arrested person must be told the reasons for his arrest and should also be presented before the magistrate within twenty-four hours of his or her arrest; if not, then the detention is illegal. In a case where the police wants to detain a person for more than twenty-four hours, they need permission for the same by the magistrate.¹⁶

Globalization has brought about the realization to the effect that the environmental problems are also global in nature. This idea is further supported by the fact that globalization has brought about the changes on the Earth; and the changes are not for good, but for the worse as it is evident from the majority of cases that it has threatened the existence of human beings and has violated their basic human rights.

III. CONCLUSION

Let me conclude by stating that:

1. Development which degrades the environment also produces violations of human rights.
2. Development projects which condone the violation of human rights in the process of their implementation also tend to condone activities which degrade the environment.
3. Development projects which consciously aim at protection of the environment also end up promoting the realization of human rights.
4. Development projects which consciously seek to protect and promote the human rights of the poor also end up promoting the environment.

16. Enron, *supra* note 9, at 100-103.