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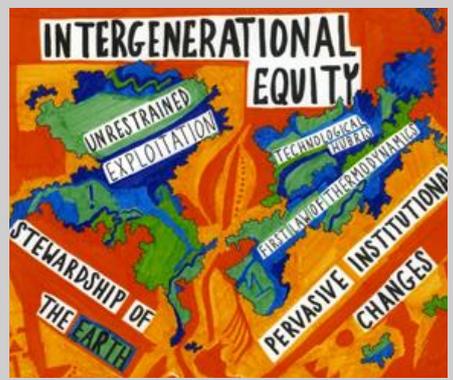
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INTER-GENERATIONAL EQUITY: THE MUCH NEEDED STEP TOWARDS SUSTAINABLE DEVELOPMENT

INTRODUCTION

Human race is the most extant species in this universe. This species has held together the entire universe by interrelating itself to the natural world. Initially this race was entirely dependent on the environment that surrounded it. But with changing times, advancing technology, the present generation has replaced the interrelation between different species with the dominance of its own. More than ever before, the generation living today has the ability to alter the destiny of humankind by changing the basic environmental conditions under which life takes place. By polluting air, water and soil, recourses on which our species have been relying since the dawn of mankind, this generation is slowly but surely eliminating the chance of the present and future generations to access the same natural assets, the resources that we have had at our disposal since the dawn of this civilisation.

Intergenerational equity deals with the problem of the inter-relationship between different generations (the past, present and future), and establishes a framework to ensure that equality and justice is maintained between them. At its most basic level, a principle of intergenerational equity is defined as a principle that promotes equitable relationships between generations. It is based on the notion that justice between generations requires equity between generations.

There are three principles that form the basis of intergenerational equity. First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "conservation of options." Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "conservation of quality." Third, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access."

HISTORICAL BACKGROUND

The concept of intergenerational equity was first raised in the famous Stockholm Conference of 1972. The conference dealt with basic overview of the concept. Post the Stockholm conference, the concept of Intergenerational Equity formed a part of every environmental meet and was often the most debated topic. Several conferences and declarations such as the Rio Declaration of 1992 or the Kyoto Protocol raised the issue of Intergenerational Equity. The concept evolved in such conferences from a basic idea to a full-fledged plan of action for environment protection. The Report of the World Commission on Environment and Development, 1987 which grounds the concept of sustainable

development in intergenerational terms: "Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs." Such a conception of intergenerational equity links human rights and development to achieve a human-centred approach.

The theory of intergenerational equity has a deep basis in international law. The United Nations Charter, the Preamble to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and many other human rights documents reveal a fundamental belief in the dignity of all members of human society and in an equality of rights that extends in time as well as space. Indeed, if we were to license the present generation to exploit our natural and cultural resources at the expense of the well-being of future generations, that would call for gross injustice and violation of one of the Basic Human Rights.

INTER- RELATIONSHIP

The theory of intergenerational equity depicts two relations in the environmental context. The first is the human relationship with the natural system of which humans are a part. The second is the inter-relationship with other generations. The theory of intergenerational equity states that we, the human species, hold the natural environment of our planet in common with other species, the natural environment, and with past, present and future generations. The members of the present generation are both trustees, responsible for the integrity of our planet, and beneficiaries, with the right to use and benefit from it for ourselves. The theory of intergenerational equity states that all generations have an equal place in relation to the natural system, and that there is no basis for preferring past, present or future generations in relation to the system. This approach of Intergenerational Equity furthers the concept of sustainable development by showing no bias to the present generation or disregard to the generations to come.

Therefore this notion establishes a kind of partnership between all generations. The purpose of this partnership is to realize and protect the welfare and well-being of every generation in relation not only to the planet as a whole but also among themselves. In order to maintain the integrity, proper care of the life support systems of the planet i.e. of all the species, the ecological processes and the environmental conditions is necessary for a healthy human environment.

The concept of intergenerational equity not only recognizes the right of each generation to use the Earth's resources for its own benefit but also to constrain the present generation's use of the Earth's resources. The principles of Intergenerational Equity provides for guidance and not dictation on how each generation should manage its resources. These principles are intended to achieve a reasonably secure and flexible natural resource base for future generations, which they can use for their own needs and preferences.

INTERGENERATIONAL EQUITY AND EXHAUSTIVE RESOURCES

The main objective of the concept of intergenerational equity is to increase the time-horizons of development decision-making in order to take into account the interests of future generations. According to the concept of intergenerational equity, it is

believed that the amount of capital a generation has at its disposal is decisive for its development. A development is called sustainable only when it leaves the capital stock unchanged to the least. Now, the problem arises when it is presumed that generations are spread out in time and actual exchange takes place in only one direction and that all members are identical. All this is based on the assumption that each generation can legitimately demand from its ancestors and should legitimately leave it to its descendants. Thus this is only a straightforward assumption of intergenerational equity. All these general principles are again based on the assumption that there is constant population, technology and no scarce resources rather abundant resources.

Now what actually needs to be kept in mind while applying this concept is the Decisions regarding war and peace, economic policy, the relative prosperity of different regions and social groups, transportation, health, education, the demographics and the composition of future generations. All these affect the lives and fortunes of the present generation and by default that of the future generations. This opens the possibility that all decisions deserve to be scrutinized from the point of view of their impact on future generations. The possibility that intergenerational equity may place limits on our actions is an important new area of research on sustainable development. But such constraints must be applied narrowly, however, so that concern for future generations does not become a blunt instrument to thwart proposals for change. The purpose must be only to protect against long-term environment damage, such as toxic groundwater pollution, radioactive pollution of the oceans, soil degradation, etc., whose effects are difficult or impossible to reverse unless there are extremely compelling reasons to do so beyond profitability. Thus the question arises whether the present generations have a moral obligation to preserve the environment for future generations, a legal duty in this regard?

CONCLUSION

When attempting to concretize our obligations towards the future generation, in order to translate them into legally binding rules, numerous questions of definition arise. To whom exactly are we referring when we talk about future generations; it is single individuals or a whole collective? What precisely do we need to safeguard in order to sufficiently take their interests into consideration? Which principles should direct the measures that we take today? These are some of the questions that the legal framework of intergenerational equity sets forth. Intergenerational rights bear similarity to the field of international human rights since both fields are targeted towards protecting the well being of human beings. But rather than being aimed at single individuals intergenerational rights focuses on a larger collective, which is necessary for the framework to remain possible to operationalize.

Ample theories distributive, reciprocity-based, and respect based establishes that future generations have legal as well as moral rights to protection from environmental threats and harms, especially such as are embodied in climate change. A haunting question remains, however: whether the present world order will attend to the important work of enacting and enforcing laws to build a fair ecological legacy or turn an blind eye to the same?

TRIVIA

- 2010 – 2015 is celebrated as Water for Life Decade by the United Nations
- As per UNEP, assuming consumption to be constant, we would require three planets by 2050 to sustain our way of living
- This year’s theme for World Ocean Day is “Healthy Oceans, Healthy Planet” which was celebrated on 8 June.
- 11 July annually is celebrated as World Population Day in light of the Un decision 89/46 of 1989 to solve issues relating to rising population

DAYS OF MONTH

- World Environment Day - 5 June 2015
- UN World Day to Combat Desertification and Drought – 17 June
- National Tree Day – 26 July
- International Tiger Day – 29 July

DID YOU KNOW?

On 5 June 1972, the Stockholm Conference on Human Environment was held in Sweden.



SPRAWLING URBAN AREAS AND THE INEVITABLE NATURAL DISASTERS

URBANIZATION AND DISASTERS

Urbanization is a global phenomenon and massive urbanization throughout the world has always been regarded as a matter of esteem and growth. The towering buildings of the mega cities of the world have created a fantasy in everyone’s mind without realizing its flip side. The total urban population has increased through 1951 to 2011 from a paltry 2.8% to 17%. Growing population, increased capital influx and the ever growing desire for luxury has resulted in careless construction that the world has seen in the last half a century. Extensive concretization and playing with the natural environment has caused millions to lose their lives.

According to data from United Nations Human Settlements Program based on the population estimate of 2010 there are 20 mega cities in the world and all are exposed to natural hazards ranging from geological to meteorological and climatic events. South Asian countries also seem to be very much affected by the same. The issue remains as to why have the earthquakes and floods have caused immense damage to the cities in the Indian subcontinent.

ILLUSTRATIONS

Off late there have been numerous natural calamities which reveal faulty government planning, poor execution and human contribution to the same. For example, the floods in Kedarnath and damaged henceforth cause are directly attributed to negligence in issuing permits to builders and increasing blockade due pilgrimage and tourism.

Similarly, the floods in Kashmir were exaggerated by rapid deforestation and encroachment upon the areas surrounding the water bodies especially the lakes. Same was the case with the devastating earthquake in Nepal where faulty construction was the prime reason behind the massive destruction caused.

VULNERABILITY OF THE INFORMAL SETTLEMENTS

The issue of rapid urbanization needs address. And what is important to understand is the condition where people live as 18% of all urban housing is non-permanent commonly known as slums which are the most vulnerable to natural calamities. As they are located in environmentally vulnerable areas like ravines, hills, marshes, riverbanks and floodplains. Informal settlements and their residents have become increasingly susceptible to natural disasters. These informal settlements carry physical vulnerabilities due to their location or construction practices. Mumbai has one of the world’s largest slum areas and according to the 1991 census 60% of the registered buildings are informal masonry and non- engineered. The government of Maharashtra even recognized the vulnerability of these structures.

CONCLUSION

Hence, it is true that wrath of nature cannot be avoided. Nevertheless, its effect can be minimized. As it is said, prevention is better than cure. Prior experience reveals that it is the government whose myopic vision of development that has contributed significantly to damage during a natural disaster. Thus, the question of constitutional importance thus, arises from the aforesaid study is whether the government liable for damage caused due to its improper planning? And whether negligent town planning by the Authorities tantamount to violation of fundamental right especially right to life?

HUMAN RIGHTS NEWS...

THE QUEST FOR JUSTICE CONTINUES IN TRIPURA'S DAWN OF HOPE

Tripura's revocation of the AFSPA is certainly a positive move from a human rights perspective. But it leaves unaddressed the issue of justice for those whose lives were torn apart by the excesses under the Act.

After 18 long years, the government of Tripura has finally decided to withdraw the Armed Forces (Special Powers) Act, 1958 (AFSPA). This draconian piece of law was introduced in the state on 16 February 1997 as a 'temporary measure'. AFSPA is fully operational in areas under 26 police stations and partially in areas under four police stations, out of the 74 police stations and 36 outposts of Tripura.

The withdrawal of AFSPA from North East India is long overdue. Tripura, however, has set the precedent now and this may be a ray of hope for crusaders such as Irom Sharmila, who has been on a hunger strike over the last 15 years, demanding the repeal of the Act in her home state of Manipur.

GRAFT IS A VIOLATION OF HUMAN RIGHTS: HC

The Chhattisgarh high court has described corruption as a human rights violation saying it falls in the category of economic obstacles in the realisation of all human rights. Denying regular bail to state government officer arrested under the provisions of Prevention of Corruption Act, a single bench of Justice Sanjay K Agrawal said in its verdict on Friday - a copy of which was made available on Tuesday - that corruption is "really a human rights violation, specially right to life, liberty, equality and non-discrimination and it is an economic obstacle to the realisation of all human rights". The judge cited several Supreme Court judgments to point out that economic offences are a class apart and need to be visited with a different approach in the matter of bail.

HUMAN RIGHTS BODY CALLS FOR AN END TO IMPOSITION OF DEATH PENALTY BY MAJORITY VIEW OF THE JUDGES

Human rights body, the Asian Centre for Human Rights (ACHR) in its report, "India: Death despite dissenting judgements", called for an end to imposition of death penalty by majority view of the judges of the High Courts and the Supreme Court of India.

"The ratio of differences of opinion among the judges whether somebody convicted for offences punishable with death should die or live in most cases in India is 2:1. When this difference of opinion is also between acquittal and death sentence, imposition of death penalty by majority opinion becomes legally untenable and morally unconscionable," stated Suhas Chakma, Coordinator of the National Campaign for Abolition of Death Penalty in India. In India, the "differences of opinion at the level of High Court" is recognised as a ground for commutation of death

sentences under the broad guidelines on consideration of mercy pleas adopted by the Ministry of Home Affairs (MHA), Government of India

However, the MHA regularly flouts its own guidelines including on 'the differences of opinion at the level of High Court' while advising the President of India for rejection of mercy pleas, AHRC in a press release. With the aim to reduce imposition of death penalty, Asian Centre for Human Rights called for an end to imposition of death penalty without unanimity of the judges in all stages of the proceedings of a case and further urged the President of India to automatically grant mercy if there are differences of opinion at any stage of the proceedings, and not only at the level of the High Court.

HC DIRECTS STRICT IMPLEMENTATION OF LAW ON MANUAL SCAVENGING

The Gujarat High Court disposed of a suo motu public interest litigation (PIL) with regard to manual scavenging after directing the state government to strictly implement the law and take "all necessary steps" to abolish the practice. While disposing of the PIL, the High Court bench of acting Chief Justice V M Sahai and Justice R P Dohalaria directed the state government to take "all necessary steps" to eradicate manual scavenging. The bench also directed the government to strictly implement the law to abolish the practice.

In 2003, a city-based NGO Lok Adhikar Manch filed a PIL seeking a direction from the High Court to stop manual scavenging. The PIL claimed that manual scavenging is still practised in the state. Meanwhile, when that PIL was pending, the Gujarat High Court took cognisance of a newspaper report in 2008 and filed a suo motu PIL regarding the same issue and merged it with an earlier one. In its reply to the Gujarat High Court in August 2014, the state government had stated that manual scavenging was absent in the state since the Abolition of Manual Scavenging Act of 1993 is already in place.

AROUND THE GLOBE...

IRELAND PASSES HISTORIC TRANSGENDER RIGHTS BILL

Irish lawmakers voted in favour of a bill to allow transgender people to legally change their gender without medical or state intervention. "This is a historic moment for the trans community in Ireland," said Sara R. Phillips, chairperson of the Transgender Equality Network Ireland. In a statement after lawmakers approved the Gender Recognition Bill. "Today is the first day we will be seen as who we truly are." The legislation, which will be signed into law by the president shortly, contains a number of other innovative features, including permitting the recognition of a person's gender of choice based on self-determination, making Ireland only the fourth country in the world to adopt this progressive approach.

U.S. SUPREME COURT UPHOLDS SAME-SEX MARRIAGE

The U.S. Supreme Court on June 26 made a historic ruling granting same-sex couples the right to legally marry in any state. With a 5-4 ruling in *Obergefell v. Hodges*, the highest court in the country ruled conservative state bans on gay marriage as being unconstitutional. In what may prove the most important civil rights case in a generation, five of the nine justices determined that the right to marriage equally was enshrined under the equal protection clause of the 14th Amendment. “They ask for equal dignity in the eyes of the law,” wrote Justice Anthony Kennedy who cast the deciding vote. “The Constitution grants them that right.”

NEW LAW A BREAKTHROUGH FOR DOMESTIC WORKERS IN KUWAIT

Kuwaiti legislators’ adoption of a new law giving domestic workers enforceable labour rights on June 24 is a major breakthrough that should lead the other Gulf countries to take similar action. Migrant domestic workers in Kuwait constitute nearly a third of the country’s entire workforce yet are excluded from the main labour law that protects other workers’ right. The law passed by Kuwait’s National Assembly is the country’s first regulating the labour rights of domestic workers. The domestic workers law provides for a maximum 12-hour working day with unspecified “hours of rest” and also requires the employers to provide medical treatment in case of sickness.

While this move is a major step towards improving labour condition, the Human Rights Watch points out that the new law falls short by failing to set out enforcement mechanisms, such as labour inspections. To ensure that the new law is effective, Kuwaiti authorities should raise awareness about it among domestic workers and employers, Human Rights Watch said.

RUSSIA: INDEPENDENT GROUP TARGETED OVER CRIMEA

Russian authorities blocked the website of a consumer protection group that had called Crimea an “occupied territory”,

said Human Rights Watch. This action and other harassment of the group violate the right to freedom of expression.

Russia’s Office of the Prosecutor General stated that on June 22 it had ordered the federal media and communications oversight agency, Roskomnadzor, to block access to the website of a Russian non-governmental organization that published a memo for Russian tourists travelling to Crimea because it undermined Russia’s territorial integrity in violation of anti-extremism legislation. “This is a particularly chilling example of Russia’s anti-extremism legislation abused by the government to stifle independent criticism,” said Hugh Williamson, Europe and Central Asia Director at Human Rights Watch.

U.S.: DRUG DEPORTATIONS TEARING FAMILIES APART

Thousands of families in the United States have been torn apart in recent years by detention and deportation for drug offenses, according to a Human Rights Watch report released on June 16.

The 93-page report “A Price Too High: US Families Torn Apart by Deportations for Drug Offenses” documents how the US regularly places legal residents and other immigrants with strong ties to US families into deportation proceedings for drug offenses. Deportations after conviction for drug possession in particular have spiked, increasing by 43 percent from 2007 to 2012 according to US government data obtained by Human Rights Watch through a Freedom of Information Act request. For more than 34,000 deported non-citizens, the most serious conviction was for marijuana possession.

The human Rights Watch suggests that the US Congress should undertake comprehensive reform to ensure that immigrants with criminal convictions, including drug offenses, are not subject to a “one-size-fits-all-policy”. Instead, immigration judges should be given the discretion to weigh evidence of rehabilitation, strong family ties and other positive factors against the seriousness of any convictions.



ADV. M.C. MEHTA

Mahesh Chandra Mehta, popularly known as M.C. Mehta, is Indian public interest lawyer who has contributed immensely towards the development of environmental jurisprudence in India. Born on 12 October 1946, M.C. Mehta pursued law from Jammu University and began practice as Supreme Court lawyer in 1983. Lawyer by profession and an environmentalist by choice, he made an untiring effort to bring their environmental issues in India before the Hon’ble Supreme Court. He pioneered legal activism in the field of environmental law. Amongst his innumerable cases, M.C. Mehta’s petition relating to Taj Trapezium, Ganga Pollution and plight of children in Sivakasi are noteworthy. The catena of cases and its corresponding judgments of the Supreme court are a must read for every law student. For his immense effort, he was awarded Romsay Magasaysay Award in 1997 for public services in Asia.

US SHRIMP TURTLE CASE

US Shrimp very finely elucidates how the World Trade Organisation (WTO) adjudicates upon the archetypal jarring of trade interests and environment concerns.



Facts:

The issue arose when US imposed prohibitions on countries importing shrimp by incidentally killing an (internationally recognized) endangered species of sea turtles and opined that the same was environmentally deleterious.

This was objected to by aggrieved traders and WTO members-India, Malaysia, Philippines and Thailand on grounds of restrictions to free trade violating article XI of GATT, 1994.

Issue Raised:

The developing countries raised an issue before the WTO Dispute Resolution Panel that whether prohibition on importation of shrimp is in contravention of Article XI of GATT, 1994?

Judgment:

The WTO Panel found the ban on shrimp importation inconsistent with GATT Article XI and unjustifiable within the scope of permissible measures under GATT Article XX.

Analysis:

The order of the WTO Panel has an far reaching effect on the international trade law along with the environmental effect as killing of endangered species of turtle even though incidentally is an issue of great environmental concern. Elucidating upon the issue at hand, WTO Panel examined Article XI of the GATT, 1994 which provided that:

"[n]o prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any Member..."

Moreover, Section 609 of the United States Endangered Species Act of 1973 requires all shrimp troll vessels to use approved Turtle Fector Devices (TEDs).

In effectuation of the said statute, shrimp harvested with commercial fishing technology was banned on 1st May, 1991, keeping in view the adverse effect it had on sea turtles.

The WTO Panel found the ban on shrimp importation inconsistent with GATT Article XI and unjustifiable within the scope of permissible measures under GATT Article XX.

One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than tariff measures and are more likely to distort free trade. When a trading partner uses tariffs to restrict imports, it is still possible to increase exports as long as foreign products become price competitive enough to overcome the barriers created by the tariff. When a trading partner uses quantitative restrictions, however, it is impossible to export in excess of the quota no matter how price competitive foreign products may be. Thus, quantitative restrictions are considered to have such a greater distortional effect on trade than tariffs that their prohibition is one of the fundamental principles of the GATT. However, the GATT provides exceptions to this fundamental principle. These exceptional rules permit the imposition of quantitative measures under limited conditions and only if they are taken on policy grounds justifiable under the GATT such as critical shortages of foodstuffs (Article XI:2) and balance of payment (Article XVIII:B).

Upon reference to the Appellate Body on 12th October, 1998, it was held that conservation of exhaustible natural resources was a valid exception to free trade rules under GATT Article XX (g) which provides for "conservation of exhaustible natural resources" covering living species as well. However the AB held the prohibition only provisionally justified as the preliminary breach of GATT Article XX was unjustifiably discriminatory between countries.

In support of its ruling, the AB added that although the application of the measure was prima facie arbitrary, the predominant concern was a legitimate environmental objective. After the revised guideline, Section 609 was held justified under Article XX. It was originally held arbitrary and unjustifiably discriminatory since the certification procedure was arbitrary as it was impermissible for WTO member to use an economic embargo to enforce a regulatory programme upon another member. but "the means were closely related to the ends ".

Conclusion:

Thus, while successfully admitting amicus curiae briefs from NGOs, the AB held that the prohibition under revised guidelines were flexible, transparent and even handed as it applied equally to US and other importing countries.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15th of every month and it can be mailed to us at casihhr@rgnul.ac.in.