

**Religion as a panacea for Environmental Protection: A long overdue revisit of Rights, Duties and Law**

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**Introduction:**

An anecdote with its timeless beauty depicts accurately the dependence of humankind on Mother Earth and the nature of their relation. Justice O. Chinnappa Reddy in *Shri Sachidanand Pandey and Anr. v. The State of West Bengal and Others*<sup>2</sup> had quoted the same in paragraph two of his judgment and taking into account the beauty of the same, a very short part is reproduced. The backdrop of the story is in USA, circa 1854, when ‘the wise Indian Chief of Seattle’ retorted to ‘the great White Chief in Washington’ who wanted to buy their land, that *if one does not own natural features and entities, how can one buy it?*

If one takes a walk back in time, there is no doubt that one would come across the myriad debates and deliberations that have taken place to fathom, realise and curb the impact Mother Nature endures, as a result of the ‘developmental activities’ that are ever on the increase. It has held fort for quite a long time, ever changing. The time has exceeded for a remedy to pop up, just like that, almost like a magic potion, and present hope and succour, and translate itself to a much needed, much awaited, saviour for humankind as it is ever dependent on Mother Nature, without whom it has no future.

The first way out that comes across one’s mind, when one talks about a saviour, is obviously, law - a factor that has played a great role in bringing about some sort of a control over mankind over time; a factor that still plays a great role, if not the greatest to ensure that man’s activities are kept under control. It is built on a structure composed of a large number of component

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This article, as the name suggests is a revisit - more of an introspection which aims at putting across suggestions to use religion as a tool to foster environment protection. The first part of this article has been published by CEERA, NLSIU in 2013. Manjeri Subin Sunder Raj, *Fostering Environment Protection: Is Religion the Much-Awaited Panacea?* CEERA Newsletter 2013, p. 7.

<sup>2</sup>A.I.R.1987 S.C.1109

concepts. These are identified to be the *elements of law* and as a result are perched on a high pedestal.

### Meaning Demystified

The inimitable perception relating to ‘Rights’ and ‘Duties’ as parts of law also arises from the said ‘*elements of law*’<sup>3</sup>. These components, by its sheer presence tend to clarify the stand of law and the need for the same, as compared to the needs of the society in which it exists<sup>4</sup>. Their presence becomes an absolute necessity. The very spirit and vigour of law which helps such a system to command supremacy over the society and binds it materialises with these concepts. This in turn helps the very functioning of every legal system; ensuring that it works in a smooth and effective manner. Ever since there was the birth of ‘state’, the population looked upon it and saw it as a ‘provider of rights. What was envisaged by the whole populace, i.e., the governed, was that in return of them surrendering before the sovereign, the sovereign who would be the all-powerful, would provide the necessary ‘rights’ and adequate protection. The corresponding part of ‘Rights’ were the ‘Duties’ that were cast upon the populace and they are known as correlative of rights.<sup>5</sup> A legal duty is the legal condition of a person whom the law directs to do or not to do an act.<sup>6</sup> The act commanded or forbidden is known as the content of the duty.<sup>7</sup> It is the subject matter of the duty.<sup>8</sup> They apply regardless of whether or not one desires to do that which one has a duty to do. If a person has a duty to carry out an act he is

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<sup>3</sup>For more see, F Schmidt, The Four Elements of Law. The Cambridge Law Journal, 33(2), 1974, 246-259.accessed on 19/02/2017.

<sup>4</sup> Joseph W. Bingham, The Nature of Legal Rights and Duties, Michigan Law Review 12, no. 1 (1913): 1-26. Accessed 24/02/2017. For a sociological take see, Christopher N. J. Roberts, Human Rights and Sociological Duties", Sociological Forum 32, no. 1 (2017): 213-16, accessed on 19/02/2017.

<sup>5</sup>Ori J. Herstein, A Legal Right to do Legal Wrong, Oxford Journal of Legal Studies 34, no. 1 (2014): 21-45, accessed February 24, 2017. See also, John S Mackenzie, . Rights and Duties, International Journal of Ethics 6, no. 4 (1896): 425-41. See also, Abbye Atkinson, Borrowing Equality, Columbia Law Review 120, no. 6 (2017): 1403-470.

<sup>6</sup> Susan S. Silbey, The Availability of Law Redux: The Correlation of Rights and Duties, Law & Society Review 48, no. 2 (2014): 297-310. See also, Henry T. Terry, Legal Duties and Rights, 12 The Yale Law Journal 185 (1903), at p. 186, available at <http://www.jstor.org/stable/781938>, accessed on 19/02/2017.

<sup>7</sup> Jules L Coleman,. Legal Duty and Moral Argument, Social Theory and Practice 5, no. 3/4 (1980): 377-407, accessed on 19/02/2017; Henry T. Terry, The Correspondence of Duties and Rights, 25 The Yale Law Journal 171, at p. 172, available at <http://www.jstor.org/stable/786397>, accessed on 19/02/2017.

<sup>8</sup>Henry T. Terry, Duties. Rights and Wrongs, 10 American Bar Association Journal 123 (1924), available at <http://www.jstor.org/stable/25711521>, accessed on 19/02/2017.

supposed to do, even if he likes it or not, he has to do it because it is his duty.<sup>9</sup> Corresponding duties which are owed both to the sovereign as well as to the other people arise in response to the rights that we have which are given by the sovereign. Thereby the concept of duties has some sort of a relation to the concept of rights and they are correlative. But then, Austin had, said that all rights have correlative duties but not vice versa.

It is quite crucial that for a legal system to be effective and smooth functioning, a healthy bond should exist between the rights and duties that are prevalent in the society, both individually as well as collectively. Not being superior but to be able to exist together, symbiotically is what is needed. This in turn ensures the relation between members be healthy as well as foster better societal needs in general.

Human tendency is concerned more on rights and not on duties. Human, in general, are concerned about what they are eligible to and in very few circumstances do they think beyond the *right* aspect and cross over to the *duty* aspect. The time that one understands that duties too are an integral part of the system and they hold an equal, if not more importance as when compared to rights, which in turn ensures the smooth functioning of the society and the legal system which control the society, has long gone by.

### **Religion: A Saviour?**

Human race has a duty to protect the environment. This has taken shape as a co relative to the right that we have as regards the environment, i.e., the right to live in a healthy environment.<sup>10</sup> The time is not far, before we lose our environment, to the uncontrollable expanse of human activity and the problems that it gives rise to.

Having come face to face with such a circumstance, whether religion is able to ensure a higher degree of compliance, is an area that needs attention. The role it has played is understood well and is quite definitive. Starting from determining a man's attitude and way of life, to affecting almost all his day-to-day activities; religion has been able to carve a niche for itself over mankind. An attribute of religion which differentiates it from law can be understood to be that

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<sup>9</sup>Joseph Raz, *Liberating Duties*, 8 *Law and Philosophy* 3 (1989), at p. 5, available at <http://www.jstor.org/stable/3504627>, accessed on 19/02/2017.

<sup>10</sup>This right is included in the Indian Constitution, under Article 21.

there is no fear of sanction as far as religion is concerned *as is* present in law. Religion urges one to do his duty that has been imposed by the principles and puts it across that if one fails to do so, one would definitely suffer divine consequences that are beyond man's comprehension. This, to a religious person is much bigger a reprimand than anything that can be accredited to law. The fear that a divine sanction would work against him in some way ensures that a person would not do anything which are against his religion. This in turn leads to an observation that religion plays a greater role in ensuring that man does his duty. As opposed to Law which speaks of 'rights' more often than 'duties', religion speaks more of the 'duties'. Whether religion squarely fits into the scheme of environment protection is debatable. Since one can relate religion in so far as it has instigated the individual to perform solemn obligations of social life from time immemorial<sup>11</sup>, there is little to think of it being considered as one of *the* factors that determine man's behaviour and shapes his conduct. But what needs to be realised is the way in which it surpasses its spiritual form and converts into physical action, wherein followers are exhorted to perform their duties thereby auguring better levels of environment protection. The fear of divine sanction gives religion an enviable position, because it is the reason why religion has been able to exert a solid control over the man's actions and behaviour.

### **Theoretical underpinnings**

Lynn White in his essay, 'The Historical Roots of Our Ecological Crisis', had opined that religion does play a great role in shaping one's attitude<sup>12</sup>. Quite understandably, religion has had a powerful impact on mankind. It has ensured that mankind as a whole act in ways which are favourable to the environment thereby guaranteeing protection and safety.

To realise the relation religion and law has, it is quite imperative that one falls back on decided cases which have played a great role in bringing out opinions of various jurists. In *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*<sup>13</sup>, the court was of the opinion that "*religion is a matter of faith with individuals*

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<sup>11</sup>Varapa Rkrachakarn, George P. Moschis, Fon Sim Ong, and Randall Shannon, Materialism and Life Satisfaction: The Role of Religion, *Journal of Religion and Health* 54, no. 2 (2015): 413-26; J Hill, Rejecting Evolution: The Role of Religion, Education, and Social Networks. *Journal for the Scientific Study of Religion*, 53(3), 575-594; Colleen Murphy, "Religion & Transitional Justice." *Daedalus* 149, no. 3 (2017): 185-200.

<sup>12</sup>All about Religion and the Environment, available at <http://www.uvm.edu/~gflomenh/ENV-NGO-PA395/articles/Lynn-White.pdf>, accessed on 19/02/2017. See also, Matthew B. Arbuckle, and David M. Konisky, *Social Science Quarterly* 96, no. 5 (2015): 1244-263.

<sup>13</sup>AIR 1954 SC 282

*or communities, and it is not necessarily theistic*". Similarly in *Davis v. Beason*<sup>14</sup>, it was opined that religion does have an innate connection with an individual's idea and conception of the all-powerful. The role that needs to be played by religion, in the betterment of the society, too was dealt with by the Supreme Court of India, in *Sri Adi Visheshwara of Kashi Vishwanath Temple Varanasi and others v. State of U.P. and others*<sup>15</sup>. Religion, it was opined, was to "guide community life and advise people to follow the tenets laid down so as to ensure that an egalitarian social order can be created".

But then, it has not always been a cake-walk. Religion and religious rites have in quite a large number of circumstances drawn the ire of the judiciary and the people alike. In *Minersville School District Board of Education v. Gobitis*<sup>16</sup>, Justice Frankfurter had to deal with the intricacies of religion and society. He said that people should never be relieved from obeying general law. If a person has a religious belief or conviction which contradicts the rules of the society, it does not take away the duty to follow the general law which casts political and social responsibilities. The Himachal Pradesh High Court in *Ramesh Sharma v. State of Himachal Pradesh*<sup>17</sup> dealt with animal sacrifice in places of worship and laid down that such practises need be done away with. The Court went to the extent to say that "we must permit gradual reasoning into religion"<sup>18</sup>.

### **An Introspection**

Environment protection is the need of the hour; it can be said without any hesitation whatsoever. The harm that has been caused by us, humans, to the environment has been unfathomable. Ever since man settled down, he has been in one way or the other causing some harm to the environment. The growth of science furthered this, as man got to use a lot of hitherto unknown, unseen and unheard ways of endangering the environment.

The greatest peril that has ever befallen on mankind has cataclysmic powers. Time was not far away when we, humans faced the wrath of nature. It was only at a much later stage that man

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<sup>14</sup>(1888) 133 US 333, at p. 342 G

<sup>15</sup> (1997) 4 SCC 606

<sup>16</sup> 310 US 586, 594-595, 84 L. Ed. 1375, 60 S Ct 1010 (1940)

<sup>17</sup> MANU/HP/0934/2014

<sup>18</sup>*Ibid*, para 78

realized his folly and soon he was frantically seeking steps to overcome the harm he had caused. It was then, that he realized that it was not an easy task, but an arduous one that had to be tackled meticulously, lest all life perish. The eco-system was on the verge of a collapse that would possibly put an end to all life; and here was man, resting on his laurels and achievements. He was basking in the glory of his accomplishments; least cared about the consequences that his wanton acts would one day bring. And bring it did! Soon he was running helter-skelter. Realizing the effects that such a situation would give rise to, man engaged himself in a last-ditch effort to save nature. Selfishness still rules, one can argue, for man, who is straining every nerve of his to save the Earth, is engaging himself in such activities, when he was at the receiving end. Little did he bother, when his actions were suffocating all other life forms.

Turning back, we can see that man's actions were to be controlled and it was precisely as a result of this line of thought laws were made by the state. They aimed to keep a check on the activities of man and regulate them for common good. Punishments were present to ensure that such unwanted actions were not done. But throughout history it was seen that laws however stringent they may be, are seen as having a compulsory nature and has its limitations in reforming man. Reformative punishment aims to make man understand the wrongdoing of his acts and tries to create a sense of repentance in man when he realizes his mistake. Law, as said earlier, many a time lacks this sort of an effect on man. Law has not been able to stop man from destroying the environment, owing to his wanton acts. There are a lot of laws that were passed to protect the environment, when it was realized that it needs to be protected. But were they successful? Laws emerged as a result of the growing sense of environment protection amongst world nations. World conferences were held and declarations were made regarding the hot topic of 'environment protection'. Punishments for environmental degradation, as said earlier, were galore and they were made out for a variety of offences, under numerous laws. The enforcement mechanism, though not satisfactory in implementation, made its presence felt. Various bookings under various Acts were made and lots of people were punished. Environmental protection was the watchword. Thus being so, people were aware of the consequences they would face, if they do anything which was in contravention of the law present.

### **An Analysis**

But was the so called 'law' successful in protecting the environment by deterring and more importantly reforming man from his anti-environment acts? The answer is a big and blatant,

on the face, 'NO'! This is made evident by the innumerable circumstances that have been caused by man, wherein he was plundering the resources given by nature, shamelessly and consciously. Mother Nature was suffering at the very behest of her 'loving' sons and daughters! Law, with all the sanction that it prescribed was not able to restrict man from harming the environment.

For sure, law made its presence felt when people were punished for actions harming the environment. But then still people continue doing so. Law, it can be said has had a very limited role in making man aware; making him realize the gravity of the situation. This is because formal laws do not have the effect of creating awareness; as for the common man, it is made by the rulers and imposed on him. This situation happens even in a democratic society, as the common man's participation is very limited in law making. Law thus remains aloof from the people for whom it is made. The compliance is ensured not through the hearty co-operation of people, but through coercive measures. This is the greatest limitation of law in any case, and particularly so in the case of protection of environment.

Law has had a very restricted effect in the sense that we all are aware of the fact that environmental pollution and degradation is on the rise and has reached at levels which are threatening the very existence and continuation of all life on planet Earth. This situation has arisen due to mankind's irresponsibility and uncontrolled wanton acts. Though laws were present, they were not able to ensure that man stop his activities that harm nature. Even in the presence of such a large number of laws, that purportedly were enacted to provide some sort of a succor to the tormented environment, there was still no dearth of instances wherein man continued his rampage and destroyed nature.

Law, it can be argued, had miserably failed in creating awareness in man as regards environment protection. More importantly, it has failed in creating a thought in man that he is part of the environment, and it is his duty to ensure its protection, owing to his superior place on Earth. Man had this sort of a feeling long time back; that he was part and parcel of nature and was to revere nature. This feeling that existed has been clearly depicted in the musings of the Indian Chief<sup>19</sup>. It was this sense of oneness that was to be created so as to ensure that man had an inner feeling, an innate urge, to live in tune with nature and take care of it.

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<sup>19</sup>Supra n.1



But why has law failed? This called for a thorough introspection. With the onset of laws, it can be seen that man was concerned more about his rights. Duties, a component of similar status, if not more, were completely overlooked by man. Overshadowed by rights, duties had been treated with 'contempt', if liberty can be taken to use such strong words. This 'alien' treatment of duties is what has been the main reason for the failure of law.

The reason for this failure can be attributed to the compulsory nature of law; the 'imposition' of it on man. Law is an external agency. It is a child of the state. It has not come from within. Had it had come from within; it would have definitely played a greater part in controlling man's actions. Though it can be said without an inkling of doubt that religion has the necessary attributes to foster human duty to protect the environment, whether it would transform itself and be successful or just be an over hyped panacea, only time would tell! But if it is so, what legal systems, around the world, can imbibe from religion to guarantee better protection of the environment can be looked into and action can be taken to help law enjoy a higher level of compliance as well as create an inborn affinity, which it previously did not have.

### **Religion and its relevance**

Religion was mooted as the alternative for law. Religion, as we all are aware of, has a control over its followers that is far beyond common man's perception. It has been able to mould man and restrict his activities in a way that is conducive to its teachings. Religion thereby exerts a much higher influence on man than laws that are present.

Religion, it can be found has an impact on man that law is not capable of exerting. Law has its limitations, owing to man treating it as an external factor; a factor that is imposed on man by reason of him being a subject of a particular land. It is this aspect of religion that helps it big time to score in an area where law has not been able to make its mark. Stamping its authority, religion it can be said, has been highly successful in checking the actions of man and creating in him a sense of togetherness with all things present in nature in general and all life in particular.

### **Suggestions**

Law's relevance cannot be done away with. To have the sanction of the State is one of the essential features of law. That is where the strength of law lies. Religion has a drawback when compared to law in the sense that its principles are 'binding', rather followed, only by followers. It lacks the power to unite people from all faiths. So what is proposed is that an



atmosphere be made so as to enable the principles of religion to be incorporated into law; as well as to protect by law what has been protected by religion. By such a step it can be made applicable to all, irrespective of the religion that one belongs to. Steps, a few which have been listed out, can be initiated so as to ensure that such principles are incorporated in law.

- A brief study of various religions should be made compulsory in schools, so that the students get an idea about various religions that are practiced and the principles that are present in them. The incorporation of principles as regards environment protection and ways in which the environment is to be treated that are embodied in religious texts should be compulsorily taught at schools. The students should be made aware of the consequences of damage caused to the environment. Everything in nature responds to our acts, irrespective of it being good or bad. The fact that trees respond to the love and affection showered on them; that they, on realizing man's presence, tries to catch his attention like animals is to be realized. An opportunity for the children to realize this should be created in the schools as a part of their curriculum. This will enable the children to love the nature as their own friend or mother and be successful in instilling the attitude at a very young age itself.
- Studies which are restricted between the four walls of the classes should be done away with and an education system that proliferate the growth of an environment friendly approach should be created whereby the students get an opportunity to be close to nature. By doing so an affinity would be developed inherently.
- Keeping in mind the fact that a large majority of children lack primary education, steps should be initiated at the grass root level so as to ensure the message of environment protection is spread.
- Religious practices that foster environment protection and the like should be given much prominence and be highlighted, and people made more aware of the consequences of such acts. In short, an education or a creating of awareness in people as regards the benefits of environment protection is what is needed. Such awareness should not be restricted to any age group as it would not serve the purpose. Only if the grownups are aware would they pass on to their young the same values.
- Curbing of religious activities that cause harm to the environment should be implemented through law after making the people aware of the harmful effects.

- Religious leaders should come forward and play an important role in instilling in the minds of people the need to take care of the environment.

### **Concluding Remarks**

Religion to a great extent helps man realize himself, and thereby other life forms as well. It helps him channelize his energy and intelligence. It 'awakens' man's inner being. The essence of all religions is sacred and environment friendly. While there are laws to prohibit the evil effects of religion like Sati, child marriage etc., it is sad that there is no legal initiative in harnessing the positives of religion and making it available to all, irrespective of religion. Lawyers, religious leaders, social reformers, academicians, politicians and common man together can do a lot to protect environment, by creating a feeling of oneness in the minds of people, not by making legislations, but by arranging camps, seminars, workshops, and many other such programmes, which should be sponsored by the State. After all, creating an innate sense of love for the environment and all that it encompasses is the only sure way to win this last battle; to ensure that mankind continues to roam on this Earth.