

## ENVIRONMENT AND HUMAN RIGHTS

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### ABSTRACT

All over the world, people are experiencing the effects of ecosystem decline, from water shortages to fish kills to landslides on deforested slopes. The victims of environmental degradation tend to belong to more vulnerable sectors of society – ethnic minorities and the poor – who regularly carry a disproportionate burden of such abuse. Increasingly, many basic human rights are being placed at risk, as the right to health affected by contamination of resources, or the right to property and culture compromised by commercial intrusion into indigenous lands.

As far back as 1968, the UN General Assembly had adopted a resolution acknowledging the relationship between the environment and human rights. It has been widely accepted that environmental degradation adversely affects the enjoyment of human rights such as the right to life and right to health. Since 1992, the right to a healthy environment (or a related formulation) has been formally recognized by several countries in their national constitutions. In the Indian context, though the protection of the environment figures in the chapter on Directive Principles (which are non-justifiable) the Supreme Court by its interpretation has elevated the right to a clean and healthy environment to the status of a fundamental right within the meaning of ‘right to life’ under Article 21 of the Constitution of India.

**Keywords:** Environment, Human Rights, Constitution of India, 1972 Stockholm Declaration on the Human Environment, Sustainable Development

## INTRODUCTION

*“The arrogance of man is thinking nature is in their control, and not the other way around. So, let them fight”* – quote by Dr. Ichiro Serizawa (played by) in the Hollywood film ‘Godzilla’ (2014)

Environmental degradation is one of the most severe problems human beings are suffering from. Many people do not have access to clean air and drinking water and experience health problems due to the increasing pollution. Yet, the existence of international environmental law is underrepresented in the international legal system.

This paper aims to examine whether a human right to a clean environment exists in international law. It mainly approaches this question from two different angles. At first, some main international environmental law documents will be introduced in order to display their status and find out whether they can justify environmental protection for humans. This part also aims to give a basic idea about international environmental law under the auspices of the United Nations, because environmental law seems to be underrepresented in the international legal literature. Hence, the part will be a little longer than the corresponding parts.

But international environmental law turns out to be very vague. About 200 treaties are registered under the United Nations environmental program register, and in total there are about 900 bi- and multilateral treaties.<sup>1</sup> Many of these treaties are “soft law” and do not seem sufficient to claim a human right to a clean environment. Thus, international human rights law will be discussed in the following step, with the aspiration to locate norms, which could serve as a legal basis for a right to environment. The paper will argue that several international human right norms can be applied for environmental protection. Especially the recent development shows that “environmental law and human rights reached a kind of maturity and omnipresence”.

It is also intended to show at the example of Indian constitutional law and the jurisdiction of Indian courts that human rights norms can indeed be a reasonable basis for claiming a right to

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<sup>1</sup> Schreurs, Miranda E and Economy, Elizabeth C., *The Internationalization of Environmental Protection*, Cambridge University Press, Cambridge, 1997, pp. 1-2.

environment. The example India was selected, because most human rights cases occur in front of domestic jurisdictions, and at the same time India offers an interesting example to illustrate how national jurisdictions can deduce a right to a clean environment from existing human rights norms. It will be alluded how “insubstantial international environmental soft law” can affect the judges’ decisions.

## **HISTORICAL BACKGROUND**

As far as, human rights are concerned, the roots of the human rights and fundamental freedoms of individual can be traced out from humanitarian traditions, the unclosing struggle for human freedom and equality of individuals in all parts of the world and the historic pronouncements of philosophers, political leaders and statesman in different centuries, in general and twentieth century, in particular.<sup>2</sup> Basic rights and liberties of man were recognized by all the major religions of the world. Human rights really emerged as a subject of international relations, though, in the United Nations created in 1945. The covenant of League of Nations, the predecessor of the United Nations, has not even mentioned human rights. In sharp contrast the preamble of the United Nations thighs and Article 1 lists “encouraging respect for human rights and for fundamental freedoms for all” as one of the organization’s principal purpose.<sup>3</sup> In 1948, United Nations Declaration of human Rights which even today provide the most authoritative statement of International Human Rights norms. Its 30 articles encompass a broad range of civil, political, economic, social and cultural rights and subsequently united nations general Assembly adopted two covenants of rights in 1966 i.e., on civil and political Rights and Economic, social and cultural Rights.

The United Nations Declaration on Human Rights provides that Economic, social, and cultural Rights include the right to health, to the highest attainable standard of physical and mental health, including healthy living conditions and available, accessible and acceptable quality health service. Every human being has the right to live a dignified life as a human. Anything that interfere with this is prohibited by all civilizes nations. Right to life, privacy, human punishments etc. are examples of negative rights. Positive rights are usually political and economic rights, like the right to food, shelter, educations, and so on.

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<sup>2</sup> Bhushan, Vidya, *The Evolution of Human Rights & Fundamental Freedom of individuals; An introductory appraisal, Human Rights in India*, Deep & Deep Publication, New Delhi, 2009, p.401.

<sup>3</sup> Article 1, United Nations Charter.

Similarly the protection and preservation of the environment has been integral to the cultural and religious ethos of most of the human communities. Nature has been venerated by ancient Hindus, Greeks, Native Americans and other religions around the world. They worshipper all forms of nature believing that it emanate the spirit of god. Hinduism declared in its dictum that the earth is our mother and we are all her children. The ancient Greeks worshipped god or the earth goddess. Islamic law regards man as having inherited all the resources of life and nature and having certain religious duties to god in using them. In the Judeo –Christian tradition, god gave the earth to his people and their offspring as an everlasting possession, to be cared for and passed on to each generation.<sup>4</sup> Stockholm Declaration adopted by the International Conference o Human Environment in June 1972 to which India was a party is called the ‘Magna Carta’ of environment.<sup>5</sup> After this conference, there have been a number of important International Conferences & Declarations on the specific problems of Environment, Like second United Nations Conference on Human Settlements 1966, Nairobi Declaration, Vienna Convention for the protection of ozone Layer 1985, Basel convention on the control of Transboundary Movements of Hazardous Wastes and other Disposal 1989, united Nations Conference on Environment and Development and development ,climate change convention 1992, convention on Biological Diversity 1992.<sup>6</sup>

The United Nations Declaration of Human Environment, 1972 and subsequent Declarations like the World Charter for Nature 1982, Rai Declaration on environment 1992 and Johannesburg Declaration 2002 on Sustainable Development provide the ideas and programme for the world order for man’s attitude to nature and economic development. Environment protection and sustainable development are goals of modern economic philosophy.<sup>7</sup> India has incorporated most of international environment law contained in the United Nations Declaration on Human environment 1972, in environment protection Act 1986 and environment protection Rules ,1986 other important environmental regulations in India includes environment clearance Notification 1993, the coast Regulation Zone Notification 1991 the violation ( the violation of these regulations has been critised as the damage to coastal

<sup>4</sup> Sabharwal, Y.K., ‘Human Rights & Environment’. Available at <http://www.supremecourtindia.nic.in>.

<sup>5</sup> Ameer, Mubassir Latif, “Healthy Environment – An Human right”, Human rights In India, Deep &Deep publication, New Delhi 2009, p.523.

<sup>6</sup> Dr .H.O. Aggarwal, *International law & Human Rights*, 18<sup>th</sup> edn, Central Law Agency, Allahabad, 2011, pp.614-625.

<sup>7</sup> Prof. S Bhart, *International Environmental Law*, A Bh Publishing Corporation, New Delhi, 2012, p.26.

areas in recent Tsunami disaster in India on 27<sup>th</sup> December, 2001, would have been much less), the Hazardous Waste Rules 1989, Air pollution Act 1981 and Rules in 1982, Water prevention and control of pollution Act 1974 with amendments, Forest Conservation Act 1980 and Rules 1981, and wildlife protection 1977 and Rules of 1973.<sup>8</sup>

## **HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION: DYNAMICS OF THEIR INTER-RELATIONSHIPS**

The linkages between human rights and environmental protection are multi-dimensional and reciprocal. Through legislation and jurisprudence, it has become generally accepted that:

- Failure to respect, ensure and fulfil internationally- and domestically-guaranteed human rights can lead to environmental destruction by ignoring the needs of individuals and groups who can contribute to environmental protection and economic development if they are consulted and are able to participate in decision-making about activities, programmes and policies that may impact them or their surroundings;
- Failure to conserve natural resources and biodiversity can undermine human rights, e.g. by destroying resources and ecosystem services on which many people, especially indigenous and local communities, depend;
- Economic and other public activities, programmes and policies can either undermine or support the goals of environmental protection, human rights and sustainable development. Failure to provide information or consult affected persons, as well as activities that displace local communities, can negatively impact both human rights and environmental protection. Conversely, environmental protection supports human rights through securing sustainable availability of critical natural resources and ecosystem services

The 1972 Stockholm Declaration on the Human Environment recognized the link between human rights and environmental protection stating that “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits

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<sup>8</sup> *Ibid*, pp.26-27.

a life of dignity and well-being". The Stockholm Declaration "does not actually proclaim a right to the environment, but implies that the exercise of other human rights indispensably requires basic environmental health".<sup>9</sup>

Considering environmental protection as a "precondition to the exercise of fundamental human rights", for instance, has inherent risks because the alleged lack of these preconditions might be and has been used to deny human rights. Another view sees environmental protection not as a precondition for human rights, but as an integral part of their enjoyment. The United Nations Human Rights Committee, for instance, has decided a case that recognized environmental harm as a valid cause of action. In cases before the European Commission on Human Rights and the European Court on Human Rights, existing human rights to some extent afforded environmental protection through the application of the right to life, privacy, and property. Yet it is clear that environmental concerns are not a cause of action in themselves, but have to affect an existing human right granted by the Convention.<sup>10</sup>

The relationship between environmental issues and human rights is increasingly interdependent. International NGOs such as Greenpeace and Amnesty International work towards shifting their respective areas of concern out of exclusive national jurisdiction under Art. 2(7) of the UN Charter up on the international level and towards restraining government and private actors' power in this respect on the domestic level.<sup>11</sup>

However, there are tensions between human rights activists and environmentalists. For human rights activists, the urgent problems of survival are more crucial than long-term ecological security. This is reflected in "the anxiety of the affluent (developed nations) to protect the Amazonian rain forests without full consideration of the human lives which may depend upon the forest."<sup>12</sup> Most people will understandably give preference to immediate basic human needs such as food over long-term environmental concerns. "Such tension cannot be wished away, despite the fashionable view that human rights and environmental protection are

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<sup>9</sup> Shelton, D., "Human Rights, Environmental Rights and the Right to Environment", Vol. 28, *Stanford Journal of International Law*, 1991.

<sup>10</sup> *Ibid.*

<sup>11</sup> Anderson, M., and Boyle, A. (eds.), *Human Rights Approaches to Environmental Protection*, Clarendon Press, Oxford, 1996.

<sup>12</sup> *Ibid.*



interdependent, complementary, and indivisible”.<sup>13</sup> Human rights activists see the challenge as protecting environment for people and not protecting environment from people. Conservation efforts have often failed because they did not command the support and full participation of the communities concerned.

The collective right to self-determination as recognized in common Art. 1 of the International Covenants, could also contribute to environmental protection. Common Article 1 of the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights reiterate that all peoples have the right to self-determination, by virtue of which, "they freely determine their political status and freely pursue their economic, social and cultural development". This includes the right to freely dispose of their natural resources. Moreover, "in no case may a people be deprived of its own means of subsistence" (Article 1). It is a severe indictment of the inadequacy of international environmental law that pollution and environmental degradation have made a mockery of these rights for many communities worldwide.

## THE HUMAN RIGHT TO ENVIRONMENT

Environmental rights can be interpreted in different ways. They can be understood to refer to rights of the environment, i.e. rights that the environment possesses, rather than the right of humans to a healthy environment. This interpretation would particularly concern those in developing countries and those who consider the protection of nature and respect for human rights to be conflicting interests.<sup>14</sup> An alternative interpretation views environmental rights as a “reformation and expansion of human rights and duties in the context of environmental protection”.

There are counter-arguments to the recognition of a right to environment. The fact that the Rio Declaration failed to recognize the explicit right to “a decent, healthy, or viable environment”, strongly underlines the arguments of those who do not accept the need or wish to recognize any such right to environment.<sup>15</sup> One author believes that it is “misconceived to assume that the cause of environmental protection is furthered by postulating a generic human right to the

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<sup>13</sup> *Ibid.*

<sup>14</sup> Shelton, D., “Human Rights, Environmental Rights and the Right to Environment”, Vol. 28, *Stanford Journal of International Law*, 1991.

<sup>15</sup> Anderson, M., and Boyle, A. (eds.), *Human Rights Approaches to Environmental Protection*, Clarendon Press, Oxford, 1996.

environment in whatever form”.<sup>16</sup> Creating a human right to environment entails a number of problems such as the difficulty in definition, the inefficiency of developing environmental standards in response to individual complaints, and the fundamentally anthropocentric character of viewing environmental standards through a human rights focus.

The origins of a right to environment can be found in the Stockholm Declaration. Moreover, since 1980 several international and regional human rights instruments have included various statements of a right to environment. Environmental Rights in Existing Human Rights Treaties Concerned with Civil and Political Rights in The United Nations Charter, 1945 does not define human rights. However, the human right to environment could be interpreted through the concept of "well-being". Similarly, the Universal Declaration of Human Rights, adopted by the General Assembly on December 10, 1948 does not mention a human right to environment. It affirms the right to life and a right to a standard of living adequate for health and well-being. Again, the right to environment could be read into this right. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights affirm that every human being has the “inherent right to life” and the right of everyone “to the enjoyment of the highest attainable standard of physical and mental health” through “the improvement of all aspects of environmental and industrial hygiene”.

The right to life and the right to be free from interference with one's home and property are civil and political rights covered by various treaties. In environmental terms the right to life may include a positive obligation on the state to take steps to prevent a reduction of or an extension of life expectancy. For example, by providing better drinking water or less polluted air. Article 8, of the European Convention on Human Rights incorporates the right to be free from interference with one's home and property. The limited case law in this area usually deals with noise pollution for example, in alleged nuisance complaints about excessive aircraft noise at Heathrow Airport the European Court on Human Rights found that the benefits to the community out-weighed the individual's right to bring a claim. However, in the case of *Lopez Ostra v Spain* (20 EHRR 277 of 9 December, 1994), the Court ruled that the applicant suffered

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<sup>16</sup> Handl, ‘Human Rights and the Protection of Environment: A Mildly Revisionist View’, in Trindade, A.C.C (ed.), *Human Rights, Sustainable Development and the Environment*, Instituto Interamericano de Derechos, 1992, p.117.



health problems from the fumes of a tannery waste treatment plant operating a few meters away from her home.

Economic, Social and Cultural rights include the right to, a healthy environment, a decent working environment, and decent living conditions and to health. These rights are covered by various treaties which establish the close relationship between socio-economic development, environmental and human rights concerns.

## **THE EVOLUTION OF COMPARATIVE ENVIRONMENTAL LAW SINCE THE EARTH SUMMIT '92**

Several countries have been adopting laws to combat pollution since the United Nations Conference on the Human Environment held in Stockholm in 1972. However, it was only at and after the United Nations Conference on Environment and Development (the Earth Summit) held in Rio de Janeiro, Brazil in 1992, that the international community, represented by more than 121 Nations, agreed on the adoption of more comprehensive laws to protect the environment as a system.

The international community recognized the concept of sustainable development as integral to the paradigm both for environmental protection and economic development. The 1992 Biodiversity and Climate Change Conventions, together with Agenda 21 (a soft law document) were adopted at the Earth Summit, creating a new international environmental framework.<sup>17</sup>

The framework includes new legal principles and concepts that require from nations a different approach to the regulation of the protection of the environment to achieve their sustainable development goals.<sup>18</sup> New national regulatory systems should incorporate the precautionary principle as well as new tools and concepts such as the need to perform environmental impact assessment studies and devise economic market incentives to promote the protection of the environment.

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<sup>17</sup> GA. Res. 228, § I, 15(d), U.N. GAOR, 44th Sess., Supp. No. 49, at 153, U.N. Doc. A144149 (1990) (deciding to convene UNCED and directing that conference should "promote the further development of international environmental law, taking into account the Declaration of the United Nations Conference on the Human Environment); UNITED NATIONS ENVIRONMENT PROGRAMME, TWENTY YEARS SINCE STOCKHOLM: 1992 ANNUAL REPORT OF THE EXECUTIVE DIRECTOR v (1993).

<sup>18</sup> *Ibid.*

Due to the international recognition of the sustainable development paradigm and its incorporation into national regulatory systems, the field of comparative environmental law is one of the fields of law that has been growing steadily in the past decades. Some of the countries have enacted the protection of the environment as a constitutional right while others choose to review their existing sector-based pollution legislation or have adopted environmental regulations incorporating the new legal principles and concepts of Rio.

In Latin America, most States have made fundamental changes in the late 1990s to their legal systems to include environmental protection. The changes range from environmental impact assessment to constitutional guarantees of a clean environment. Some African countries have started to introduce laws and rules on environmental impact assessment. In the Middle East, until the 1990s, oil wealth was so great that governments, planners and ordinary citizens hardly considered the risks posed by the mountains of trash, toxic chemicals and air pollutants that wealth engendered. Since 1990, environmental awareness is growing in the Middle East and this growth is reflected in the adoption of several local laws and the creation of government institutions for the protection of the environment in virtually every Gulf Cooperation Council member country. The Secretariat General of the Gulf Cooperation Council and member states are currently conducting a study in cooperation with the Regional Marine Environment Organization and the European Union on the feasibility of imposing penalties and fines on ships which dispose of their ballast illegally in their territorial waters. At present, each state imposes its own penalties on ships found guilty of polluting its waters.

In Asia and the Pacific Region, countries such as China, Indonesia, the Philippines and Singapore have recently strengthened their existing environmental laws. The same goes for the ever increasing body of environmental laws and directives in the European Union.

## **IMPORTANCE OF THE RELATIONSHIP BETWEEN THESE TWO SPHERES**

Over the years, the international community has increased its awareness on the relationship between environmental degradation and human rights abuses.<sup>19</sup> It is clear that poverty

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<sup>19</sup> Subrata Sankar Bagchi, Arnab Das, *Human Rights and the Third World: Issues and Discourses*, Lexington Books, 6<sup>th</sup> December, 2012, pp. 60-61.

situations and human rights abuses are worsened by environmental degradation. This is for several obvious reasons:

- *Firstly*, the exhaustion of natural resources leads to unemployment and emigration to cities.
- *Secondly*, this affects the enjoyment and exercise of basic human rights. Environmental conditions contribute to a large extent, to the spread of infectious diseases. From the 4,400 million of people who live in developing countries, almost 60% lack basic health care services, almost a third of these people have no access to safe water supply.
- *Thirdly*, degradation poses new problems such as environmental refugees. Environmental refugees suffer from significant economic, socio-cultural, and political consequences. And fourthly, environmental degradation worsens existing problems suffered by developing and developed countries. Air pollution, for example, accounts for 2.7 million to 3.0 million of deaths annually and of these, 90% are from developing countries.

Upon . . . inspection, the precise relationship between human rights and environmental protection is far from clear. The relationship may be conceived in two main ways. First, environmental protection may be cast as a means to the end of fulfilling human rights standards. Since degraded physical environments contribute directly to infringements of the human rights to life, health, and livelihood, acts leading to environmental degradation may constitute an immediate violation of internationally recognized human rights. The creation of a reliable and effective system of environmental protection would help ensure the well-being of future generations as well as the survival of those persons, often including indigenous or economically marginalized groups, who depend immediately upon natural resources for their livelihoods.

In the second approach, the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection. Thus the full realization of a broad spectrum of first and second generation rights would constitute a society and a political order in which claims for environmental protection are more likely to be respected. A more ambitious variant of this view provides that there is and should be an inalienable human right to a satisfactory environment, and that legal means should exist to enforce this right in a consistent and effective manner. Put in these terms, it is no longer the impact of the environment on other human rights which is the law's focus; but the quality of the environment itself. Expressed in

this qualitative way, a right to a decent environment has much in common with other claims, such as sustainable development or intergenerational equity, and suffers comparable problems of subjectivity, definition, and relativity which make it inherently problematic for any notion of universal human rights.

Environmental and human rights law have essential points in common that enable the creation of a field of cooperation between the two:

- *Firstly*, both disciplines have deep social roots; even though human rights law is more rooted within the collective consciousness, the accelerated process of environmental degradation is generating a new “environmental consciousness.”
- *Secondly*, both disciplines have become internationalized. The international community has assumed the commitment to observe the realization of human rights and respect for the environment. From the Second World War<sup>20</sup> onwards, the relationship State-individual is of pertinence to the international community. On the other hand, the phenomena brought on by environmental degradation transcends political boundaries and is of critical importance to the preservation of world peace and security. The protection of the environment is internationalized, while the State-Planet Earth relationship has become a concern of the international community.
- *Thirdly*, both areas of law tend to universalize their object of protection. Human Rights are presented as universal and the protection of the environment appears as everyone’s responsibility.

The linkage between human rights and environmental concerns embrace at least three dimensions:

- The right to a healthy environment is a fundamental part of the right to life and to personal integrity.
- Environmental destruction can result in discrimination and racism.<sup>21</sup> Thus, socially and economically disadvantaged groups seem to live more often than other groups do in areas where environmental problems pose a real threat to human health.

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<sup>20</sup> Kane, Michael J., “Promoting Political Rights to protect the Environment”, *The Yale Journal of International Law*, Volume 18, Number 1, pp.389-390.

<sup>21</sup> Concerning environmental discrimination, see e.g: GÜNTHER BAECHLE, VIOLENCE THROUGH ENVIRONMENTAL DISCRIMINATION (1999); P. Mohai and B. Bryant, *Environmental Injustice: Weighing*

- Procedural human rights such as access to information, access to justice and participation in political decision-making are often crucial for ensuring policies that respect environmental concerns.

However, while the linkage between human rights and environmental concerns seem to be obvious, the issue of linkages does raise a number of useful and legitimate questions:

- Would a focus on environmental rights as human rights not imply a shift of paradigm away from the recognition that the environment has its own value independent of its utility for humans and towards a purely anthropocentric approach to the environment?<sup>22</sup>
- What are the benefits from a human-rights perspective to adding environmental concerns to the traditional human rights concerns? Is there not a risk that the limited resources that are available for protecting basic human rights will become too widely dispersed?
- What are the benefits from an environment perspective? Do those concerned with international environmental policy-making have the time and resources to enter the human rights debate, or should they instead focus their resources on core environmental challenges?
- Are there benefits from an overall perspective, e.g. with regard to institutional or governance issues?

The international community began to put limits on environmental sovereignty well before the modern treaty regime emerged following the Stockholm Conference in 1972. In addition to the early conventions on migratory wildlife and shared watercourses, the 1941 Trail Smelter arbitration reinforced the notion that compensation must accompany state behavior that produces environmental damage beyond its borders. The international environmental treaty regime that exploded following the 1972 conference at Stockholm addresses problems ranging from regulating the use of Antarctica and outer space to controlling marine, river, and air pollution to protecting endangered species. By the 1980s a “second generation” of environmental treaties had emerged to address more complex global issues such as ozone

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*Race and Class as Factors in the Distribution of Environmental Hazards*, 63, U. COLO. L. REV., 1992, pp.921-32.

<sup>22</sup> Concerning different anthropocentric and non-anthropocentric environmental ethics, see generally: R. Elliot (ed.), *Environmental Ethics*, 1995; Jens Petersen, *Anthropozentrik und Ökozentrik im Umweltrecht*, 83, ARSP 361, 1997.

depletion, climate change, shared use of the ocean, movement and disposal of hazardous waste, and biodiversity. Additional declarations reinforced the principles that undergird these agreements and the customary international law that emerged from them. The limitations created by these agreements attempt to address not only transboundary but also global commons harms.

While the well-known Principle 1 of the Stockholm Declaration has inspired many national constitutional provisions since the early 1970s recognizing the right to environment as a fundamental right under domestic law<sup>23</sup>, that right has not to date been transposed into a binding rule of international law of universal application.<sup>24</sup> In 1986, the Experts Group on Environmental Law of the World Commission on Environment and Development (WCED), noting that the right to a healthy environment could not yet be considered “a well-established right under present international law”<sup>25</sup>, proposing to fill this gap by including in a set of universal legal principles on environmental protection and sustainable development, which it drafted with a view to their eventual incorporation in a global, legally binding instrument, a provision stipulating that “[a]ll human beings have the fundamental right to an environment adequate for their health and well-being.”<sup>26</sup>

The issue of the relationship between environment and human rights was taken up by the United Nations during the preparatory process of the UN Conference on Environment and Development (UNCED). After some preliminary discussions in 1989, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, “affirming the inextricable relationship between human rights and the environment” and referring to “new trends in international law relating to the human rights dimension of environmental protection”, decided in August 1990 to initiate a study on the subject and appointed a Special Rapporteur.<sup>27</sup> This decision was endorsed by the Commission on Human Rights and later by the General Assembly, which adopted an important resolution in December 1990 in which it urged the

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<sup>23</sup> the report of the UN Commission on Human Rights, Human Rights and the Environment, UN Doc. E/CN.4/Sub.2/1994/9, Annex III.

<sup>24</sup> M. Déjeant-Pons & M. Pallemarts, Human Rights and the Environment, Council of Europe Publishing, Strasbourg, 2002, p.326.

<sup>25</sup> Experts Group on Environmental Law of the World Commission on Environment and Development, Environmental Protection and Sustainable Development: Legal Principles and Recommendations, Graham & Trotman/Martinus Nijhoff, London/Dordrecht/Boston, 1986, p.40.

<sup>26</sup> *Ibid*, p.38.

<sup>27</sup> Resolution 1990/7, 30 August 1990.



Commission to continue its study and to report to the UNCED Preparatory Committee. In this same Resolution 45/94, the General Assembly, apparently inspired by the language of the WCED proposal, also “recognize[d] that all individuals are entitled to live in an environment adequate for their health and well-being.”<sup>28</sup> This resolution, adopted without a vote, seemed to open the prospect of including similar language in the instrument on the “general rights and obligations of States in the field of the environment”<sup>29</sup> which was due to be adopted by UNCED two years later.

Notwithstanding the General Assembly resolution and the initiatives of the Commission on Human Rights and its Sub-Commission, whose Special Rapporteur submitted a preliminary report in August 1991, UNCED itself did not explicitly affirm the human right to a healthy environment. No provision of the Rio Declaration explicitly addresses human rights. The Declaration does, however, contain a few provisions which have some relevance to the issue. As we know, Principle 1 states that human beings are “entitled to a healthy and productive life in harmony with nature.” Compared with Principle 1 of the Stockholm Declaration, the reference in Rio to a vague entitlement to live “in harmony with nature” tends to water down the human rights dimension of environmental protection.

While no progress was made at Rio with respect to the recognition of a substantive human right to a healthy environment, the Rio Declaration does recognize, in its Principle 10, the need for public access to environmental information, public participation in environmental decision-making and access to justice, which can be viewed as procedural rights deriving from this substantive right. Principle 10 initiated a global movement towards the further elaboration and affirmation, in both soft law and hard law, of procedural environmental rights – or should we rather say a movement towards the proceduralization of environmental rights, as a substitute for the firm recognition of the substantive human right to a healthy environment?

There is no explicit right to environmental quality in the Universal Declaration on Human Rights 1948 (UDHR)<sup>30</sup>, nor in the International Covenant on Civil and Political Rights

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<sup>28</sup> UN General Assembly Resolution 45/94, 14 December 1990.

<sup>29</sup> 6 UN General Assembly Resolution 44/228, 22 December 1989.

<sup>30</sup> Universal Declaration on Human Rights (10 December 1948) UN Doc GA/Res/217A (III).

(ICCPR).<sup>31</sup> There is mention of some environmental issues in other international human rights instruments but attached to particular issues.

## **SUBSTANTIVE HUMAN RIGHTS THAT REQUIRE SUSTAINABLE DEVELOPMENT**

There is a fundamental link between human rights and ecosystem services, many constituents of human well-being are attached to human rights, including security and basics for a good life and health. These are also necessities to ensuring sustainable development for all people and to alleviate poverty.

Sustainable development has been considered by the International Court of Justice (ICJ) in the Case Concerning the Gabčíkovo-Nagymaros Project (the Danube Dam case).<sup>32</sup> This concerned the construction of a system of locks on the Danube River, pursuant to a 1977 treaty between Hungary and Czechoslovakia. The primary purposes of the development were electricity generation, ease of navigation and protection against flooding in the Bratislava to Budapest section of the Danube. Work on the project began in 1978 but, by 1989, Hungary had become concerned about the ecological dangers of the project, including threats to ground water and wetlands. Slovakia wanted the development to continue and undertook a variation of its own, diverting the river through its territory to service a power station. Both Hungary and Slovakia in argument referred to sustainable development. Simplistically, Hungary stressed the environmental aspects of sustainable development, and Slovakia the development aspects.<sup>33</sup>

The majority of the Court held that there was a new “concept” of international law – sustainable development – that had to be taken into account by the parties in any interpretation of the 1977 Treaty and the obligations under the Treaty. The Court sent the parties away to negotiate in accordance with the treaty provisions and the new concept. While the majority recognised the

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<sup>31</sup> International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171.

<sup>32</sup> Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia) [1997] ICJ Rep 7 [Danube Dam case]. See P Taylor “The Case Concerning the Gabčíkovo-Nagymaros Project: A Message from the Hague on Sustainable Development” (1999), Vol.3 NZ J Envtl L 109 for a full discussion.

<sup>33</sup> Phillippe Sands, *Principles of International Environmental Law*, 2<sup>nd</sup> ed, Cambridge University Press, Cambridge, 2003, pp.144-147.

“concept” of sustainable development in international law, it stopped short of saying that it was a norm of customary international law.<sup>34</sup>

Vice-President Weeramantry, in a separate opinion, recognised sustainable development (and particularly the aspect relating to the protection of the environment) as a norm of customary international law.<sup>35</sup> Indeed, he said that it was “one of the most ancient ideas in the human heritage”. Vice-President Weeramantry saw the protection of the environment as being very much a question of human rights.<sup>36</sup>

UN treaty bodies and the Inter-American and European courts, hear complaints about failures to enforce national environmental rights or about environmental degradation that violates one or more of the guaranteed rights in the agreements over which they have jurisdiction.<sup>37</sup> This jurisprudence is important in setting a baseline or central framework for decisions about projects or policies that aim at creating or stimulating a green economy and sustainable development. By examining the jurisprudence and establishing where rights can be further enhanced, this section identifies where opportunities to increase sustainable development have arisen. In addition, these rights should be used to help shape the green economy by setting standards the green economy must incorporate due to the interplay and interdependence of some human rights, economic development and environmental protection. In turn, the enjoyment of these rights will be enhanced through environmental protection in the creation of a green economy.

The right to life, enshrined in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, is “non-derogable” and foundational, because without it, all other rights would be devoid of meaning. The Human

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<sup>34</sup> The concept of sustainable development was given practical legal consequences by the WTO Appellate Body in *United States – Import Prohibitions of Certain Shrimp and Shrimp Products*, Report of the Panel, WT/DS58/R (15 May 1998) (98-1710) [the *Shrimp/Turtle* case]. The Appellate Body characterised sustainable development (as contained in the Preamble to the WTO Agreement) as a concept which “has been generally accepted as integrating economic and social development and environmental protection” (1999) 38 ILM 121, para 129, note 107.

<sup>35</sup> *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* [1997] ICJ Rep 7 [Danube Dam case]. See P Taylor “The Case Concerning the Gabčíkovo-Nagymaros Project: A Message from the Hague on Sustainable Development” (1999), Vol.3 NZ J Envtl L 109 for a full discussion.

<sup>36</sup> *Ibid.*

<sup>37</sup> Most commonly invoked are the rights to life, health, property, culture, information, privacy, and home life. See Shelton, Dinah, “Human Rights And The Environment: What Specific Environmental Rights Have Been Recognized?”, Vol. 35, *Denver Journal of International Law & Policy*, 2006, p.129.

Rights Committee has said that it is a right that should not be interpreted narrowly and that States should take positive measures to guarantee it, including measures to reduce infant mortality and to increase life expectancy. The right to life can be affected by environmental disasters and more long-term environmental degradation, which produce life-threatening diseases. The Red Cross estimates that 1998 was the first year in which the number of refugees from environmental disasters exceeded those displaced as a result of war.<sup>38</sup> Between 2000 and 2004, some 262 million people were affected by climate disasters and 98 percent of them were in the developing world.<sup>39</sup>

Although ‘sustainable development’ is used throughout the Rio Declaration, it was not until the 2002 World Summit on Sustainable Development that anything approaching a definition of the concept could be attempted by the UN. Three ‘interdependent and mutually reinforcing pillars of sustainable development’ were identified in the Johannesburg Declaration – economic development, social development, and environmental protection.<sup>40</sup> This seems tailor-made for a reformulation of the rights guaranteed in the ICESCR.

The challenge posed by sustainable development is to ensure that environmental protection is fully integrated into economic policy. Acknowledging that the environment is part of this equation, the 1992 Rio Declaration (Principle 3) and the 1993 Vienna Declaration on Human Rights (paragraph 11) both emphasize that ‘[t]he right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations’. The International Court of Justice has repeatedly referred to ‘the need to reconcile economic development with protection of the environment [which] is aptly expressed in the concept of sustainable development’.<sup>41</sup> In the Pulp Mills Case, the Court again noted the ‘interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic development and environmental protection that is the essence of sustainable development’.<sup>42</sup> The essential point of these examples is that, while recognizing

<sup>38</sup> International Committee of the Red Cross, Annual Report (Geneva, 1999).

<sup>39</sup> Raymond Colitt, “World must fix climate in less than 10 years –UNDP”, *Reuters*, 27<sup>th</sup> November, 2007.

<sup>40</sup> Merrills, ‘Environmental Rights’, in D. Bodansky, J. Brunnée, and E. Hey (eds), *The Oxford Handbook of International Environmental Law*, Oxford University Press, 2007, p.666.

<sup>41</sup> Gabčíkovo Nagymaros Dam Case [1997] ICJ Rep 7, at para. 140. See also Iron Rhine Case [2005] PCA and Higgins, ‘Natural Resources in the Case Law of the International Court’, in A.E. Boyle and D. Freestone (eds), *International Law and Sustainable Development*, Oxford University Press, 1999, at ch. 5.

<sup>42</sup> Pulp Mills on the River Uruguay Case, [2010] ICJ Rep, at para. 177

that the right to pursue economic development is an attribute of a state's sovereignty over its own natural resources and territory, it cannot lawfully be exercised without regard for the detrimental impact on the environment or on human rights.

The Court's very limited focus was on whether Uruguay had complied with its international obligations when deciding to build the plant, and its references to integrating economic development and environmental protection have to be seen in that context. It did not attempt to decide whether a policy of building pulp mills was sustainable development in any other sense. In effect, the process of decision-making and compliance with environmental and human rights obligations, rather than the nature of the development itself, constitute the key legal tests of sustainable development in current international law.

The African Commission's decision in *Ogoniland* is by far the most important case to address the public interest in protecting the environment as such<sup>43</sup>, but it does so in a setting where environmental destruction had caused serious harm to the affected communities.

The decision in *Ogoniland* can be seen as a challenge to the sustainability of oil extraction in that part of Nigeria. Given the degree of environmental harm and a lack of material benefits for the Ogoni people, it is not surprising that the African Commission does not see this case simply as a failure to maintain a fair balance between public good and private rights. The decision gives some indication of how a right to a decent or satisfactory environment could be used, but its exceptional basis in Articles 21 and 24 of the African Convention has to be recalled. It is unique in adjudicating for the first time on the right of peoples to dispose freely of their own natural resources and in ordering extensive environmental clean-up measures to be taken.<sup>44</sup> Moreover, the rights created by the African Convention are peoples' rights, not individual rights, so the recognition of a public interest in environmental protection and sustainable development is less of an innovation. The African Convention is the only regional

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<sup>43</sup> Boer, Ben, *Environmental Law Dimensions of Human Rights*, Oxford University Press, 2015, p.227.

<sup>44</sup> Although Art. 1(2) of the 1966 ICCPR also recognizes the right of peoples 'freely [to] dispose of their natural wealth and resources', it is not justiciable by the HRC under the procedure for individual complaints laid down in the Optional Protocol: see *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990), at para. 32.1.

human rights treaty to combine economic, social, civil, and political rights and make them all justiciable before an international court.

## INTERNATIONAL JUDICIAL INTERVENTIONS

If we look at the developments that are taking place through the intervention of national Courts in various parts of the world, we come to note several things: *first*, the courts are moving the right to a healthy environment up the hierarchy of human rights by recognising it as a fundamental right; *second*, the courts are defining the content and nature of the right to a healthy environment through landmark decisions.

In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.

In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court observed that “side by side with fundamental rights such as liberty, equality and necessary conditions for people’s life, there is the right to the environment.”<sup>45</sup> The right to a healthy environment cannot be separated from the right to life and health of human beings. In fact, factors that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity.”

In the same year, the Supreme Court of Costa Rica affirmed the right to a healthy environment in a case concerning the use of a cliff as a waste dump. In the case of *Carlos Roberto García Chacón*, the Supreme Court stated that life “is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination.”<sup>46</sup>

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<sup>45</sup> Chakravarthy, C.S., “Human Rights and the Environment: An Analytical Study”, *International Journal of Academic Research*, Vol 2., Issue 3(1), July-September, 2015.

<sup>46</sup> *Ibid*.



Guatemala too has seen the environmental ombudsman note in a 1999 case<sup>47</sup> that “lack of interest and irresponsibility on the part of authorities in charge of National Environmental Policy amounts to a violation of human rights, considering that it impairs the enjoyment of a healthy environment, the dignity of the person, the preservation of the cultural and natural heritage and socio-economic development.”

The question of human rights and the environment has also come up for consideration in our neighbouring countries.

The Constitution of Bangladesh does not explicitly provide for the right to healthy environment either in the directive principles or as a fundamental right. Article 31 states that every citizen has the right to protection from ‘action detrimental to the life liberty, body, reputation, or property’, unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. In 1994, a public interest litigation<sup>48</sup> was initiated before the Supreme Court dealing with air and noise pollution. The Supreme Court agreed with the argument presented by the petitioner that the constitutional ‘right to life’ does extend to include right to a safe and healthy environment. A few years later, the Appellate Division and the High Court Division of the Supreme Court dealt with this question in a positive manner, in the case of *Dr. M. Farooque v. Bangladesh*,<sup>49</sup> reiterating Bangladesh's commitment in the ‘context of engaging concern for the conservation of environment, irrespective of the locality where it is threatened.’

Article 9 of the Constitution of Pakistan states that no person shall be deprived of life or liberty save in accordance with the law. The Supreme Court in *Shehla Zia v. WAPDA*<sup>50</sup> decided that Article 9 includes ‘all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally’. The petitioner questioned whether, under article 9 of the Constitution, citizens were entitled to protection of law from being

<sup>47</sup> In the case of *Concesiones otorgadas por el Ministerio de Energía y minas a Empresas Petroleras* (1999).

<sup>48</sup> *Dr. M. Farooque v. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh and 12 Others (Unreported)*. The case involved a petition against various ministries and other authorities for not fulfilling their statutory duties to mitigate air and noise pollution caused by motor vehicles in the city of Dhaka.

<sup>49</sup> (1997) 49 Dhaka Law Reports (AD), p.1.

<sup>50</sup> PLD 1994 SC 693.

exposed to hazards of electro-magnetic field or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. The Court noted that “under [the Pakistan] Constitution, Article 14 provides that the dignity of man and subject to law, the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man and right to ‘life’ are guaranteed under Article 9. If both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.”

## ENVIRONMENTAL ISSUES IN INDIA

On Independence, two contrasting ideologies, Gandhian (sustainable) and Nehruvian (Modernisation) struggled for shaping India’s future. The modernizers, representing the aspirations of India’s urban elite, had early prevailed, signaling the launch of massive state-sponsored development of the country’s natural resources to encourage Industrial Growth. Terming dams and power stations temples of modern India, Nehru called on tribals and peasants to sacrifice for the larger national interest.<sup>51</sup>

Sacrifice they did. When their lands were submerged under dams, they received a pittance in compensation. Paper mills were granted bamboo at throw-away prices, which they promptly exhausted, switching to eucalyptus when bamboo was no longer available. But millions of rural artisans dependant on bamboo had no such option and were turned into ecological refugees. There were then two major contradictions in the development strategy. While we talked of modernization, no serious effort was made to educate the masses of illiterate Indians. For these ecosystem people who lived close to the earth, modernization merely meant destruction of the natural resource base on which they had been traditionally dependent. Indeed, development had quickly equated to channelizing nation’s resources to a narrow elite of omnivores-powerful landowners and urbanites in the organized industries and service sectors.

India has major water pollution issues. Discharge of untreated sewage is the single most important cause for pollution of surface and ground water in India. There is a large gap between generation and treatment of domestic waste water in India. The problem is not only that India

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<sup>51</sup> Gadgil, Madhav, “The Emerging Paradigm,” *The Hindu*, 1 June, 1997.

lacks sufficient treatment capacity but also that the sewage treatment plants that exist do not operate and are not maintained.<sup>52</sup> The majority of the government-owned sewage treatment plants remain closed most of the time due to improper design or poor maintenance or lack of reliable electricity supply to operate the plants, together with absentee employees and poor management. The waste water generated in these areas normally percolates in the soil or evaporates. The uncollected wastes accumulate in the urban areas cause unhygienic conditions and release pollutants that leach to surface and groundwater.<sup>53</sup>

In India, a state of natural imbalance has been developed by many human-centric activities such as the industrialization, urbanization and the large scale exploitation of natural resources damaging the environment led to many serious repercussions on a large scale including Global Warming, drought, flood, environmental Refugees and migration, health issue, Ozone Depletion etc. such as urbanization to accommodate a vast population, and industrialization to meet their necessities. At the same time, a lack of strong legislative measures worsens the situation. It is quite pertinent to mention that the country which was self-sufficient in terms natural resources now natural resources like water, air, forest, and biodiversity has come to a stage of threat.<sup>54</sup> (Kothari, 2013).

India is witnessed to a large superstructure, mega dams, and large industrial units which have the potential to oust millions of people in one stroke without taking into account their social, economic and cultural aspects of life. A large number of people became the direct victim of mega project forced to migrate, loss of cultural identity, their land, employment and forced to live in the degraded environment. The approach which is being followed by the government is exclusive in nature means without taken into account the interest of those affected. This is the very reason that the present world has seen different kinds of stiff resistance phenomena at regular intervals. The voice has become more vocal in the recent years because of increasing awareness and the support of the local grass root organizations. Narmada Bachao Andolan, Anti-Tehri Dam Movement, Silent Valley Project, Bhopal Gas Disaster, Plachimada Controversy, Koodankulam Nuclear Plant Controversy are some of the major movement to

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<sup>52</sup> "Evaluation Of Operation And Maintenance Of Sewage Treatment Plants In India-2007". *Central Pollution Control Board, Ministry of Environment & Forests, 2008.*

<sup>53</sup> *Ibid.*

<sup>54</sup> Kothari, A., Moghe K., & Pathak N. (Eds.). *Environment: Background and Perspective*, Infochange India, Retrieved From <http://www.infochangeindia.org/EnvironmentIbp.jsp>.

protect the environment and the human rights of the society concerned. If the approaches of sustainable development, alternative viable development and redefining of development are proceeded with, it will protect the environment without hampering the development.

According to a World Health Organization study<sup>55</sup>, out of India's 3,119 towns and cities, just 209 have partial sewage treatment facilities, and only 8 have full wastewater treatment facilities. Over 100 Indian cities dump untreated sewage directly into the Ganges River.<sup>56</sup>

The disaster in Bhopal has been not just an environmental tragedy, nor only an environmental tragedy, but also a human rights disaster. A slew of international human rights laws and standards were trampled before the gas leak even happened, and Union Carbide, Dow Chemical, and the government of India have continued to violate human rights laws and standards by refusing to clean up, refusing to provide compensation, denying people clean water, denying them proper medical care, and generally ignoring the plight of thousands upon thousands of people in Bhopal who continue to suffer from the effects of the 1984 gas leak and the water contamination that persists to this day.

## IMPLEMENTATION AND ENFORCEMENT MECHANISMS

The recognition of the right to a healthy environment in the constitution, legislation and other national policy arrangements will not have a real effect if it is not accompanied by the availability of means to implement the right and adequate mechanisms of enforcement.

Fundamental human rights are guaranteed under Part III of the Indian Constitution. Most of the rights falling under the ICCPR to which India is a signatory would fall within this Part. Rights corresponding to those under the International Covenant on Economic, Social and Cultural Rights however, would fall under Part IV of the Constitution i.e., the directive principles of state policy. Rights under this Part are enforceable and more of the nature of goals sought to be achieved. The right to environment, some conclude would fall under Part IV and

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<sup>55</sup> World Health Organization, "Our Planet, our Health: Report of the WHO Commission on Health and Environment", Geneva, 1992.

<sup>56</sup> "Water: A Story of Hope", National Geographic Society, Washington D.C., 1995.

not Part III.<sup>57</sup> Under Part IV, there is a duty upon both the State and the citizens to protect the environment. Article 48A provides that the State should endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.<sup>58</sup> Article 51A(g) imposes an obligation on the every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.<sup>59</sup> This imposition of a duty upon citizens is significant as private actions can considerably damage the environment and by virtue of such a provision, the right to environment could be claimed against private actors also.

Encouragingly, the Indian Courts have given environmental issues the serious consideration they call for. In fact, using the writ jurisdiction to approach the High Court under Article 226 or the Supreme Court under Article 32 for the purpose of public interest litigation is now a fairly common practice. Under such litigations, the right to a wholesome environment has been read into the right to life under Article 21 of the Indian Constitution.<sup>60</sup> One of the most significant cases is *Subhash Kumar v. State of Bihar*<sup>61</sup> where the Supreme Court held that the right to live under Article 21 includes the right of enjoyment of pollution free water and air for full enjoyment of life.<sup>62</sup> Additionally, this case also relaxed locus standi rules in respect of environmental cases. It laid down that any third person who was doubtful about the existence of conditions necessary for a life of dignity at a given place, could approach the Court. While giving its judgment, the Supreme Court used international 'soft law' discussed above in its reasoning. In a prior case, it was held that the slow poisoning by the polluted atmosphere caused by environmental pollution should be regarded as a violation of the right to life under Article 21 of the Constitution.<sup>63</sup> This right has been upheld in several subsequent cases relating to the right to life.

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<sup>57</sup> Chakravarthy, C.S., "Human Rights and the Environment: An Analytical Study", *International Journal of Academic Research*, Vol 2., Issue 3(1), July-September, 2015.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> Links between Human Rights And Environmental Sustainability International Law. Available at <https://www.lawteacher.net/free-law-essays/international-law/links-between-human-rights-and-environmental-sustainability-international-law-essay.php>.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

In India, the enforcement of the constitutional right to a healthy environment can be seen in the case of *M.C. Mehta v. Union of India*.<sup>64</sup> This case is about pollution by a number of tanneries and the failure of the authorities to take appropriate steps. The petition asked the court to restrain certain industries from discharging trade effluents into the Ganges River. The Supreme Court ordered the tanneries to close down unless the trade effluents were subjected to a pre-treatment process by setting up primary treatment plants as approved by the State Pollution Board. The court noted that “closure of tanneries may bring unemployment [and] loss of revenue, but life, health and ecology have greater importance to the people.”<sup>65</sup>

## THE CONTRIBUTION OF THE SUPREME COURT OF INDIA

The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen “to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures.”

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body such as the Supreme Court to find a breach of this article, without the need for a definition of an environmental right as such. All that the Court needs to do is what it must in any event do; namely, define the Constitutional right before it. Accordingly, a Court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated. This is well illustrated by the cases that have come before the Supreme Court, in particular in relation to the broad meaning given to the Right to Life under Article 21 of the Constitution. The right to life has been used in a diversified manner in India. It includes, *inter alia*, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. However, it is a negative right, and not a positive, self-executory right, such as is available, for example, under the Constitution of the Philippines. Section 16, Article II of the 1987 Philippine Constitution states: ‘The State shall protect and advance the right of the people to a balanced and healthful ecology in accord

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<sup>64</sup> A.I.R. 1987 S.C. 1086

<sup>65</sup> *Ibid.*



with the rhythm and harmony of nature'. This right along with Right to Health (section 15) ascertains a balanced and healthful ecology.<sup>66</sup> In contrast, Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme Court expanded this negative right in two ways. *Firstly*, any law affecting personal liberty should be reasonable, fair and just. *Secondly*, the Court recognised several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

*Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>67</sup> was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin v. Union Territory of Delhi*<sup>68</sup> where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life. The importance of this case lies in the willingness on the part of the Court to be assertive in adopting an expanded understanding of human rights. It is only through such an understanding that claims involving the environment can be accommodated within the broad rubric of human rights. The link between environmental quality and the right to life was further addressed by a constitution bench of the Supreme Court in the *Charan Lal Sahu*.<sup>69</sup> Similarly, in *Subash Kumar*,<sup>70</sup> the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.' Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

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<sup>66</sup> See the case of *Minors Oposa v. Sec. of the Department of Environment*, 33 ILM 173 (1994).

<sup>67</sup> AIR 1985 SC 652.

<sup>68</sup> AIR 1981 SC 746.

<sup>69</sup> *Charan Lal Sahu v. Union of India* AIR 1990 SC 1480.

<sup>70</sup> *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution.<sup>71</sup> It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community.<sup>72</sup> The courts have taken a serious view of unscientific and uncontrolled quarrying and mining,<sup>73</sup> issued orders for the maintenance of ecology around coastal areas,<sup>74</sup> shifting of hazardous and heavy industries<sup>75</sup> and in restraining tanneries from discharging effluents.<sup>76</sup>

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

Matters involving the degradation of the environment have often come to the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum due to the lenient view adopted by the Court towards concepts such as *locus standi* and the ‘proof of injury’ approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an ‘aggrieved person’ test, which means a right or recognised interest that is direct and personal to the complainant.

## CONCLUSION

Environmental protection and issues relating sustainability, environmental rights are recent phenomena in the international human rights protection mechanisms. In earlier days especially during the time when most international human rights instruments such as UDHR, ICESCR,

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<sup>71</sup> *V. Mathur v. Union of India*, (1996) 1 SCC 119.

<sup>72</sup> *M.C. Mehta v. Union of India*, (1996) 4 SCC 351.

<sup>73</sup> *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1991 SC 2216.

<sup>74</sup> *Indian Council for Enviro-Legal Action v. Union of India (Coastal Protection Case)*, (1996) 5 SCC 281.

<sup>75</sup> *M.C. Mehta v. Union of India*, (1996) 4 SCC 750.

<sup>76</sup> *M.C. Mehta v. Union of India (Ganga Water Pollution Case)*, AIR 1988 SC 1037.

CEDAW and the likes were adopted, the concern given to environment was not that much significance. Very few individual rights such as, the right to adequate living standards, favorable condition of work and the right to health that have one way or the other some relation with environment were recognized. The relationship between environment human rights and the need for sustainable environment were not a hot issue. It was in 1972, the UN Stockholm conference on the Human environment that human activities were addressed as harming the environment and putting human at risk.

In the effort to protect human right and environment, there were different approaches proposed. One approach was that the existed human rights instrument and institutions were adequate enough to ensure the protection of environment and human rights whereas on the contrary, some argued that new environmental instruments and institutions shall be established in order to address issues of human rights and environment. The other most moderate approach regarding human rights and environment dictates that the existed human rights instruments and the proposed environmental instruments can be integrated in the protection. In the effort to protection, there are a number of environmental conventions, protocols and declarations adopted by the global community having on international or regional character

The need for sustainable environment is one of the major issues recognized by most instruments as a human rights issue. Environment is a totality of human life such as a source of food, health and livelihood. Endangering the environment means endangering the fundamental rights of human beings. That is to mean that, the right to life, health and any other fundamental rights are highly dependent on the favorability of the general environment. Therefore, the application of sustainable environment is not a luxury rather a necessity.

Whatever perspective one adopts regarding the link between human rights and the environment, it is clear that failure to preserve a healthy environment has a clear and even increasing effect on the enjoyment of human rights. The linkage of human rights to the environment not only helpful to protect the environment but at the same time the human rights system would be strengthened by the incorporation of environmental concerns, enabling the expansion of the scope of human rights protection in the area of environment.

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