**Environment and Human Rights**

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*‘The two issues of this Country are the issues of Human Rights and Environment. Healthy environment is also a Human Right’*

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# Introduction

The world community, probably fearing that the present generation is livingbeyond its environmental means and realizing the immediate need for a concertedeffort to preserve and enhance the human environment, urged people to use theirenvironment wisely, shape their activities in a more prudent way[[4]](#footnote-4) and called uponstates, *(i)* not to isolate environmental protection from their developmentalprocess; *(ii)* to monitor biological diversity; and *(Hi)* to control greenhouse gases.[[5]](#footnote-5)

Almost all the international instruments on the human environment in vogueand the global environmental policy reflected therein, accordingly, stress the needto preserve the environment for the benefit of present as well as future generationsand to pass it on to the latter.

The Stockholm Declaration, *inter alia,* stressing, the need to defend andimprove the environment for present and future generations as ‘an imperative goalfor mankind’,4 called upon governments as well as people of the whole world tosafeguard through careful planning and appropriate management the naturalecosystem[[6]](#footnote-6) and exert common efforts for preservation and improvement of humanenvironment for the benefit of all people and their posterity.6 The United NationsGeneral Assembly also called upon man to use natural resources in a manner thatensures the preservation of ecosystem for the benefit of present and futuregeneration.[[7]](#footnote-7)

*One o*f the most surprising point about human right is while environmental regulationsmay always be amended or repealed human rights by and large remains inviolable. Thisaspect gives a smooth angle for viewing environmental justice from a human rightperspective.

In order to address the issue of environment protection we first have to see thedifficulties, which can arise in the process of implementing the right to environment. Theprocess of development inevitably involves exploitation of natural resources andconsequently makes an impact on the ecology and environment. The growth of economyin all its sphere, in general, and in industrial efforts, in particular, necessarily leads totapping of the natural wealth which, in turn, more often than not, gives rise to not mereeconomic issues but issues concerning environmental security not only at the local or theregional level but, more importantly, at the global level.

# Relationship between Human Rights and Environment

Human beings are integral part of community on earth. We desperately need to recognize that we are the guests and not the masters of the nature. We are bound by the limits of nature herself. Our mission is to help create a sustainable future by cultivating harmonious relationship between Human and Environment. Nature has provided the sustenance for human kind. By abusing or destroying environment for economic gain, we are not going to make our *Bharat SujalamSufalam*. Today, nature is being neglected, abused and exploited without realising the common man’s need for his survival.[[8]](#footnote-8) Environmental Law 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’.[[9]](#footnote-9)

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 onwards, the relationship between State/Individuals 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 internal community.[[10]](#footnote-10)

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 environmental law is such a complex, inter-disciplinary law province, in which Administrative Law, Land Law, International Law, and Criminal Law are equally involved. Such inter-disciplinary attitude of Environmental laws create several consequences directly effecting Human Rights.[[11]](#footnote-11)

Although both Human Rights and Environmental Protection are relatively well-developed areas of public policy, recognition of linkage between the two have been slow.[[12]](#footnote-12) Human rights and Environment go hand in hand. Violation of these is two sides of the same problem. If Human Beings are abused, tortured or jailed because they have exercised their right to free speech, the

Environment loses its defenders. Environmental Degradation is all, too, often resulting in serious

Human Rights violations. Poverty and failure to realize basic Human Rights are placing the Environment under severe stress. Development can serve as a key vehicle for promoting realization of Human Rights and protecting the Environment.[[13]](#footnote-13) The Environment worldwide is in crisis.[[14]](#footnote-14) Even citizen has the right to live in an environment worthy of human existence.[[15]](#footnote-15) For the survival of the man, he must have a healthy environment. Man is at least beginning to realize that his own health and well being and the fate of future generations depends on his actions to avert Environmental Crisis.[[16]](#footnote-16)

# Right to environment as recognized by humanitarian law

The efforts to revise the humanitarian laws of warfare have resultedin the formulation of new principles which are embodied in the 1977 Protocol

Additional to the Geneva Conventions of 1949 in which right to environmenthas been acknowledged in the context of human survival. The relevantarticles of the protocol merit to be reproduced here. Though protectionof the environment is conceived here in the context of warfare it does indicateclearly that “damage to natural environment” which “prejudices the healthor survival of the population” is prohibited. It would appear clear thatsuch prohibition would be equally applicable in peace time also. The tworelevant articles are as follows.

Article 35

3. It is prohibited to employ methods or means of warfare whichare intended, or may be expected, to cause widespread, long-termand severe damage to the natural environment.[[17]](#footnote-17) Article 55

1. Care shall be taken in warfare to protect the natural environmentagainst widespread, long-term and severe damage. This protectionincludes a prohibition of the use of methods or means of warfarewhich are intended or may be expected to cause such damage tothe natural environment and thereby to prejudice the health orsurvival of the population.
2. Attacks against the natural environment by way of reprisals areprohibited.18

It would be correct to state that the right to environment insofar as itrelates directly to human existence and human survival is of the same categoryand potency as the right to life and peace being a right claimed in thename of humanity and, therefore, applicable at all times whether in peaceor in war and also applicable to whole of the human race wherever it residesparcelled out in different nationalities and whether dwelling in the cities,towns or villages and irrespective of caste, creed or race.

However, this right to environment has to be exercised recognising theduties of states towards each other and also in relation to the internationalcommunity as a whole, and this aspect does lead us on to the concept ofsustainable development. Development must be sustainable in relationto one’s neighbours, whether in the national or international context, andsustainability is essential in terms of the entire community of human beings.This aspect has to beemphasised in any discussion which concerns itselfwith international life, inter-state affairs, and invokes principles of internationallaw. It appears necessary, therefore, to examine also the rightto development as such in relation to the environment which is the storehouseof nature.

# Role of human rights

Growing environmental activism has forced the international community to ponder uponthe impact of human activities on the environment. For the first time the GeneralAssembly of the United Nations initially recognized the link between human rights andenvironment protection in a 1968 resolution[[18]](#footnote-18).

Human rights can also play vital role in order to solve the environmental issues

1. Environmental issues are best handled with the participation of all concernedcitizens, at the relevant level. At the national level, each individual shall haveappropriate access to information concerning the environment that is held bypublic authorities, including information on hazardous materials and activities intheir communities, and the opportunity to participate in decision-makingprocesses. States shall facilitate and encourage public awareness and participationby making information widely available.
2. One of the fundamental prerequisites for the achievement of sustainabledevelopment is broad public participation in decision-making. Furthermore, inthe more specific context of environment and development, the need for newforms of participation has emerged.

This includes the need of individuals, groups,and organizations to participate in environmental impact assessment proceduresand to know about and participate in decisions, particularly those that potentiallyaffect the communities in which they live and work. Individuals, groups andorganizations should have access to information relevant to environment anddevelopment held by national authorities, including information on products andactivities that have or are likely to have a significant impact on the environment,and information on environmental protection measures.

1. Further rights that have broad importance for environment protection include rightto seek and receive information, the right to participate in governance, right tolife, right to health,, to association, personal liberty. All of the abovementionedinternationally protected human rights afford a basis for environment justice.

More importantly unlike environmental treaties to date, human rights instrumentsoften permit individual petition to be filed against the state that fail to fulfill theirobligation under the agreement[[19]](#footnote-19).

1. Rights to information, participation and remedies in respect to environmentalconditions thus formed the focus of the Rio Declaration. In addition to Principle10, the Declaration includes provisions on the participation of differentcomponents of the population: women (Principle 20), youth (Principle 21), andindigenous peoples and local communities (Principle 22). Public participationalso is emphasized in Agenda 21[[20]](#footnote-20).

# Attitude of International legal community

The international legal community has been reluctant to formally recognize the necessityof a health environment to exist within these rights. For instance the European Court andthe European commission on human rights have heard the cases in which theenvironment threats have been linked to human rights. In these cases regarding noisepollution caused by airports[[21]](#footnote-21), the commission found that excessive noise pollutionresulted in intolerable stress and violated the petitioner’s rights to privacy, home andproperty. But contrary to this these violations were balanced against the interest of thecommunity as a whole and the importance of the airports to international trade and theBritish economy. As a result the Commission found that the noise did not violate theEuropean Convention.

In a 1991 case, ***Fredin v. Sweden23***the European Court of human Rights discussed theimpact of environmental protection on human rights protection in the EuropeanConvention. The case resulted from Sweden’s revocation of a permit to extract gravelfrom the petitioner’s land. The Swedish government based its discussion on legislationprotecting the environment. The Court again balanced the interests of the communityagainst the rights of the individual. Although it noted that protection of the environment“**is an increasingly important consideration**” the

Court held that Sweden had violatedthe petitioner’s rights.

# Role of WTO: -

WTO has not adequately balanced trade and environment policies although both areissues of major concerns to the major states. The WTO committee on trade andenvironment has made some efforts but in order to reconcile free trade with environmentprotection but could not do so far because of the following reasons: -

* The WTO panels, which settle dispute, which assess the compatibility of traderrestrictions with the WTO rules have also shown lack of sympathy to environmentenvironmental protection measures. But the problem regarding panels is most ofthe times panels are composed of trade officials who lack the scientific expertiseto evaluate environmental issues.
* Further the secrecy of the process also hampers the input from environmentalorganizations. As a consequence the panels rejected basic

environmentalprinciples, such as the ‘polluter pays24’ in their decision making process. Environment Protection also threatens the long-term viability of the free trade system, byfailing to implement existing rules and regulations and prevent over exploitation ofnatural resources.

Unregulated market will further lead to inefficiencies andenvironmental and social degradation.

23192 Eur. Ct. H.R. (Ser. A) at 6 (1991)

24The polluter pays principle basically means that the producer of goods or other itemsshould be responsible for the cost of preventing or dealing with any pollution that theprocess causes. This includes environmental cost as well as direct cost to the people orproperty; it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those, whichare immediately tangible.

The unresponsiveness of the free tradenegotiations to environmental and social concerns means those concerned withenvironmental and social justice must look to other avenues of regulations.

# Development of Environmental Jurisprudence and Justice

Environmental Jurisprudence in India made a beginning in the mid-seventies whenParliament enacted the Water (Prevention and Control of Pollution) Act, 1974. But soon,there was a quantum leap with the amendment of our Constitution in 1976 andincorporation of Article 48A[[22]](#footnote-22) in the Directive Principles of State Policy and Article 51-A (g)[[23]](#footnote-23) in the Fundamental Duties of every citizen of India. Both these Articlesunequivocally provide for protection and improvement of the environment. Inevitably,Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981 and theEnvironment (Protection) Act, 1986. With this core group of three enactments, a modestbeginning was made by Parliament. Unfortunately, soft laws were enacted (and theycontinue to remain so) at a time when strong legislation was critical for environmentalconservation.[[24]](#footnote-24)

Prior to 1980s, only the aggrieved party could go to the court and seek remedy for hisgrievance and any other person who was not personally affected could not do so as aproxy for the victim or the aggrieved party. But around 1980, the Indian legal system,particularly the field of environmental law, underwent a drastic change in terms ofdiscarding its moribund approach and instead, charting out new horizons of socialjustice.[[25]](#footnote-25) The Supreme Court appreciated the necessity of sternness in environmentalissues and seized the opportunity in Municipal Council, Ratlam[[26]](#footnote-26) in this case residents ofRatlam filed a complaint under Section 133 of the Criminal Procedure Code alleging thatthe Municipality had failed to prevent the discharge from the nearby alcohol plant ofmalodorous fluids into the public street and provide sanitary facilities on the roads. TheMunicipal Council approached the Supreme Court and one of the key questions raisedwas whether “by affirmative action a court can compel a statutory body to carry out itsduty to the community by constructing sanitation facilities at great cost”. The SupremeCourt directed the Municipality to follow the statutory duties and stop the effluents fromthe Alcohol plant from flowing into the *Nala*or street. It was held by the Supreme Courtthat:

A little later in the decision, it was said that, “Decency and dignity are non-negotiablefacets of human rights and are a first charge on local self-governing bodies”.

# Environmental Courts or AppelateEnvironmetalBodies in India as at Present

Apart from the superiorCourts (Supreme Court[[27]](#footnote-27)& High Court[[28]](#footnote-28)), the subordinate civil courts exercise powers in regard to public and privatenuisances.[[29]](#footnote-29) Criminal Courts exercise powers under various sections of the Indian PenalCode (IPC) dealing with offences relating to environment. Chapter XIV of the IPC referto offences under sections 269, 270 ,271[[30]](#footnote-30), fouling water of public spring or reservoir34,making atmosphere noxious to health[[31]](#footnote-31), negligent conduct with respect to poisonoussubstances, fire or combustible matter, explosive substances, machinery, and pullingdown or repairing buildings; animals[[32]](#footnote-32), endangering life or personal safety of others[[33]](#footnote-33)mischief[[34]](#footnote-34), mischief by injury to works of irrigation or by wrongly diverting water[[35]](#footnote-35),mischief by injury to public road, bridges, river or channel[[36]](#footnote-36), mischief by causinginundation or obstruction to public drainage, attended with damage[[37]](#footnote-37), and culpablehomicide42. Chapter X of the Code of Criminal Procedure, 1973 also contains provisionsfor enforcement of various provisions of the substantive law.[[38]](#footnote-38)

# Right to live in a Healthy Environment – A Human Right

Polluted environment affects directly the health –mental as well as physical, of human beings, and therefore, it is human being whose survival has become difficult due to change in physical, chemical and biological conditions of the environment. Discharge of effluents into the atmosphere, oil spills, dumping of refuge, acid rain and noise are some of instances of pollution that has considerably affected the quality of human life. They have a direct impact on a number of economic, social, cultural, civil and political rights.[[39]](#footnote-39)

Right to live in a Healthy Environment is a fundamental Human Right. The Apex Court has dealt with the issue in a number of cases. In *M.C. Mehta v. Union of India*[[40]](#footnote-40) *and Ratlam*

*Municipality v. Vardhi Chand[[41]](#footnote-41),* the Apex Court held that the ‘Right to Life’ under Article 21 means a life of dignity to be lived in a proper environment free from the dangers to diseases and infection. In *Subhash Kumar v. State of Bihar*47*,* it was observed that ‘Right to Life’ is a Fundamental Right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has to right to have recourse to Article 32 of the Constitution. In *ChhetriyaPardhushanMuktiSangharshSamiti v. State of Uttar Pradesh*[[42]](#footnote-42)the

Supreme Court held that Article 21 of the Constitution provides every citizen with the Fundamental Right to enjoyment of quality of life and living. In case of any violations or derogation of law endangering or impairing this right, recourse to Article 32 could be taken. It is abundantly clear that the Supreme Court has again and again emphasized in number of cases that the right to life can be enjoyed in proper and healthy and unpolluted environment.

# Concluding remarks

The present generation does not have an absolute right to excessively exploitand indiscriminately use, rather misuse, natural resources at the expense of futuregenerations. It is legally as well as morally obliged to preserve, conserve and savethe environment for posterity. Future generations, like the present one, have theright to inherit from their predecessors an ecologically sound and healthy environment.A careful reading of national, regional and international instruments on thehuman environment in vogue reveals that the present generation has to be fair andjust to itself, its unborn children and to mother earth. Sustainable development, in ultimate analysis, is premised on the idea of intergenerational equity, responsibilityand justice. Tenets and spirit of sustainable development, reflected in thelatest national environmental laws and United Nations documents on the environment,oblige states to avoid, if not possible, at least to minimise, callous use ofnatural resources and unsustainable patterns of development. The *Minors Oposa[[43]](#footnote-43)*ruling of the Supreme Court of the Philippines, the firstof its kind in the world, unequivocally, not only conveys that it is an inalienableright, natural as well as legal, of future generations to inherit a decent and healthyenvironment but also stresses that states have to play the role of *parenspatriae*to protect the environmental interests of future generations.It is high time for the world community to do away with the “internationalpolitics of environment”for States to sincerely implement the spirit of ‘sustainabledevelopment’ and *be parenspatriae*of future generations; for national higherjudicial institutions, which are vested with the inherent power to render ‘justice’ and to be ‘protectors’ of rights of ‘persons’, natural as well as legal, to drawinspiration from the *Minors Oposa*to grant *locus standi*to minors, born as wellas yet to be born, to protect legitimate and moral claims and interests of futuregenerations in the environment and for man to resist his blemish temptations ofunwarranted comforts in order to save mother earth for his children. Otherwise “the day would not be too far when all else would be lost not only for the presentgeneration, but also for future generations, which stand to inherit nothing butparched earth incapable of sustaining life’.

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4. See, Declaration of the United Nations Conference on the Human Environment 1972, 11 *ILM*1416(1972), [hereafter referred to as the Stockholm Declaration]. The Stockholm Declaration has beenaffirmed in governmental as well as non-government meetings, see generally, Hague Charter Declarationon the Environment 1989, 28 *ILM* 1308 (1989) and Draft Charter on Environment Rights andObligations 1990, 21 *Environmental Policy and Law* 81 (1991). [↑](#footnote-ref-4)
5. See, Rio Declaration on Environment and Development 1992, 31 *ILM* 876 (1992), Also see the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 [for text see 28 *ILM* 657 (1989)] and the Convention for the Protection of the Ozone Layer, 1985 [for text see 26 *ILM* 1529 (1987)]. 4Proclaim 6, *ibid.* [↑](#footnote-ref-5)
6. Principle 2, *ibid.* 6Principle 2, *ibid.* [↑](#footnote-ref-6)
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15. Ibid. [↑](#footnote-ref-15)
16. Supra note 1, p.425. [↑](#footnote-ref-16)
17. Protocol 1, pt. Ill, s. 1, art. 35. 18Protocol 1, ch. III. [↑](#footnote-ref-17)
18. In 1969, the General Assembly adopted the declaration on progress and development in thesocial arena in order to further explore this link. In 1972 the Stockholm Declaration, adopted atthe United Nations Conference on the human Environment, formally promulgated the right toenvironment as an aspect of human rights. [↑](#footnote-ref-18)
19. The Optional Protocol to the International Covenant on Civil and Political Rights 1966, whichallows victims of human rights violations to bring complaints against state parties to the Covenantand Protocol has been invoked in cases concerning environmental issues. [↑](#footnote-ref-19)
20. Agenda 21 also calls on governments and legislators to establish judicial and administrativeprocedures for legal redress and remedy for actions affecting the environment that may beunlawful or infringe on rights under the law, and to provide access to individuals, groups andorganizations with a recognized legal interest [↑](#footnote-ref-20)
21. Arromdelle v. United Kingdom, Appt. No. Dec. & Rep 5 (1982) [↑](#footnote-ref-21)
22. Protection and improvement of environment and safeguarding of forests and wild life. – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. [↑](#footnote-ref-22)
23. Fundamental duties – It shall be the duty of every citizen of India to protect and improve the naturalenvironment including forests, lakes, rivers and wild life, and to have compassion for living creatures. [↑](#footnote-ref-23)
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28. Writ petitions filed under Art 226 of Constitution of India, 1950 [↑](#footnote-ref-28)
29. See section 9 and also section 91 of the Code of Civil Procedure, 1908. [↑](#footnote-ref-29)
30. Neglecting or doing malignant acts likely to spread infectious diseases dangerous to life, disobedience of quarantine rules 34 section 277 IPC [↑](#footnote-ref-30)
31. section 278 IPC [↑](#footnote-ref-31)
32. section 291 IPC [↑](#footnote-ref-32)
33. sections 336 to 338 IPC [↑](#footnote-ref-33)
34. section 425 IPC [↑](#footnote-ref-34)
35. section 430 IPC [↑](#footnote-ref-35)
36. section 431 IPC [↑](#footnote-ref-36)
37. section 432 IPC 42 section 299 to 304A IPC [↑](#footnote-ref-37)
38. See for eg. section 133 CrPC. [↑](#footnote-ref-38)
39. Supra note 7, p.625-626. [↑](#footnote-ref-39)
40. AIR 1987 SC 965 [↑](#footnote-ref-40)
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