

# HUMAN RIGHTS APPROACH TO ENVIRONMENTAL PROTECTION

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© Ontario International Development Agency. ISSN 1923-6654 (print)  
ISSN 1923-6662 (online). Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

**Abstract:** Environmental protection and human rights are interrelated, interconnected, and mutually responsive as both of them intended to the well-being of humanity. Safe and healthy environment is the pre-condition for the enjoyment of fundamental human rights. The linkage between these two approaches has recognised in various international and regional instruments, resolutions of the UN subsidiary organization, the outcome documents of international conferences, and the judicial pronouncement of tribunals, which consider the human rights framework as an effective means to achieving the ends of environment protection. Despite the evident relationship between these two, human rights violations and environmental degradation have been treated by most organizations, governments and even academia as unrelated issues. Environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. 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. Such issues involves not only environmental factors but other factors as well i.e. political, social, economic factors which requires the integration of both approaches to tackle the issues more holistically. The result of looking these two approaches separately is that the victims of environmental degradation are unprotected by the laws and mechanisms established to address human rights abuses. Linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center.

Articulating the fundamental rights of peoples with respect to the environment creates the opportunity to secure those rights through human rights bodies in an international forum as well as the national tribunals. In this regard, the contribution made by the Indian judiciary for the protection of environment and to provide remedies to the victim of environmental harm by applying the right based approach to environmental protection is a clear example of how the framework of human rights can contribute in the protection of environment and the very existence of the humanity. The concept of sustainable development is very well served to interlink these approaches as it comprising three interrelated dimensions: environmental, economic and social. The present study is intended to describe the interlink between environmental protection and human rights approaches by analyzing instruments, initiatives taken by environmental and human rights bodies and the judicial pronouncement of various tribunals. Further it also evaluates how far the mechanism of human rights is helpful to provide remedies to the victim of environmental degradation and to provide better protection to the global environment.

**Keywords:** Development, Environment, Human Rights, Sustainable Development

## Introduction

Environmental protection and human rights are two of the main concerns of modern international law. After the establishment of the UN the main focus of the international community was on the protection and promotion of human rights. It was only in 1972 when the voice about environmental protection rose at the domestic level became the global political agenda. The movement started from Stockholm conference and is still continuing by international conferences in which

governments recognized the ecological interdependence of the world and acknowledged an urgent need to take action for the protection of the environment. The Stockholm Declaration of 1972, Nairobi Declaration of 1982, World Charter for Nature, 1980, Earth Summit of 1992, Johannesburg Conference on Sustainable Development, 2002 and UN Conference on Sustainable Development, 2012 are some of the outcomes of the worrying state of the world community. The central point of all these conferences is that ignoring the environment in the short run may leave long term bad effects on the humanity and the violation of human rights. Though the issue of environment protection came later to human rights on the global agenda but these two areas are interrelated, interconnected and mutually responsive. Both are concerned with the development and promotion of human well-being. To live in a healthy and quality environment is the fundamental or basic human right. While human rights are necessary to the overall development of human personality, material comfort, and the quality environment is equally necessary to safeguard the conditions conducive to such a personality development (Lal, 1995). Human rights and environmental protection are linked because both are required in order to achieve the highest quality of life for all.

The right to health, the right to safe and healthy working conditions, the right to adequate housing and food; these are all fundamental human rights recognised in international human rights instruments. The present scenario of unsustainable development is meant to large superstructure, mega dams, and large industrial units by MNC, mining and tourism activities which have the potential to oust millions of people in one stroke without taking into account their social, economic and cultural aspects of life. Dam projects, mining activities, rapid industrialization and urbanization have affected the people in a large number. This is the very reason that the voice of resistance came up at all those places where such projects are either proposed and have already been established. Such unsustainable development leads the violation of the fundamental human rights i.e. the right to life due to contaminated air and water, noise pollution and the loss of biodiversity. Exposure to toxic chemicals through careless hazardous waste disposal or industrial practices and utilization of pesticides for agricultural purposes are also the reason of environmental degradation and causes the violation of fundamental human rights.

Traditional international environmental law that addresses the rights and obligations between states in reference to the environmental issues has little to offer individuals harmed due to environmental damage. People whose health or livelihood is threatened by exposure to hazardous waste or the pollution of streams and rivers, depletion of ground water level, often have no recourse under international environmental laws. In addition, people harmed by environmental degradation are often ethnic minority groups, indigenous peoples, who are marginalized within their own countries and effectively excluded from political participation or redress under national laws (Lal, 1995).

Linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center. Articulating the fundamental rights of peoples with respect to the environment creates the opportunity to secure those rights through human rights bodies in an international forum as well as the national tribunals. In this regard, the contribution made by the Indian judiciary in the development of environmental jurisprudence and provide remedies to the victim of environmental harm by applying the right based approach to environmental protection is a clear example of how the framework of human rights can contribute in the protection of fauna and flora and the very existence of the humanity.

### **Interrelation between Environmental Degradation and Human Rights**

Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two disciplines interact, it is to be expected that there are different views on how to approach 'human rights and the environment' (Sabharwal, 2005). In this context, there are three approaches prevailing with regard to the relationship between human rights and environmental protection:

The *first* approach is one where environmental protection is described as a possible means of fulfilling human rights standards. Here, the end is fulfilling human rights, and the route is through environmental law. The *second* approach states that

'the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection. This highlights the presently existing human rights as a route to environmental protection. The focus is on the existing human right. The *third* approach to the question of 'human rights and the environment' is to deny the existence of any formal connection between the two at all. According to this approach, there is no requirement for an 'environmental human right.' The argument goes that, since the Stockholm Conference in 1972, international environmental law has developed to such extents that even the domestic environments of states has been internationalized and it is unnecessary to have a separate human right to a decent environment. However, there are many who oppose this view. They argue that there is in fact a benefit to bringing environmental law under the ambit of human rights. Environmental law has in many parts of the world, be it at the international or domestic level, suffered from the problem of standing. Because of this barrier, it is often difficult for individuals or groups to challenge infringements of environmental law. There has been a great deal of debate on the theoretical soundness of the idea of a human right or rights to a satisfactory environment (Boyle & Anerson, 1996).

There can occasionally be a conflict between the established human rights and the protection of the environment. Nevertheless, clearly there is a *prima facie* rhetorical and moral advantage in making the environment a human rights issue (Merieux, 2001). Whether international human rights law can contribute to environmental protection is an issue that remains to be conclusively resolved, but scholars have discussed the relationship between human rights and environmental protection at length. Dinah Shelton claims that human rights and environmental protection represent "overlapping social values with a core of common goals" (Paula, 2010). Alan Boyle (2012) also states that it is self-evident that insofar as we are concerned with the environmental dimensions of rights found in avowedly human rights treaties then we are necessarily talking about a 'greening' of existing human rights law rather than the addition of new rights to existing treaties.

Diego Quiroz (2010) suggests that by adopting a human rights based approach, the environmental model would improve its effectiveness by enhancing the ability to manage risks and improve environmental and development outcomes. Philippe Cullet (1995) also supports the relation between the two approaches that international environmental law

and human rights law have intertwined objectives and strive for better conditions of life on the earth. He further argues that preservation, conservation, and restoration of the environment are a necessary and integral part of the enjoyment of the rights to health, to food and to life including a decent quality of life. Thus, the close link clearly shows that a right to environment can easily be incorporated in the core of human rights protection whose ultimate purpose is the blooming of personality of all human beings. The tight separation between the different branches of international law is not conducive to positive interactions between environmental and human rights law.

Subin Nijhwan (2013) advocates that the environmental law in absence of hard law documents appears to be lagging in dealing with emerging environmental problems. Further, Paula Spieler (2010) admits this point that in the modern international law regime, human rights and environment protection are two main concerns. With the passage of time, international environmental law has followed stricter standards but it lacks effective enforcement mechanisms as a result the state cannot be held responsible for environmental degradation by an individual. There has been a simultaneous increase in 'legal claims for both human rights and environmental goods,' which is a clear reflection of the link between 'human' and the 'environment' and the dependence of human life on the environment. Both environment and human rights law have some common points. Both disciplines have deep social roots and both have become internationalized.

### International Instruments

The linkage between the environment and human rights may be traced in two ways, either one looks at the existing international human rights law in order to examine whether it provides environmental rights, or one can study international environmental law and looks for human rights norms within it. There is no explicit right to environmental quality in the core international human rights instruments i.e. UDHR, ICCPR and ICESCR. However, ICESCR mentioned the issue of the environment in relation to hygiene (Article 7 of the ICESCR). Under Convention on the Rights of the Child (CRC) the issue of environment discussed in terms of prevention of disease and malnutrition. Article 24, paragraph 2 (c) of CRC requires States to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution.

These references relating to the environment attached to a particular issue and do not recognise the human right to a quality environment.

However, regional human rights instruments such as the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights make explicit references to the environment. Article 24 African Charter on Human and Peoples' Rights recognizes that "all peoples have the right to a generally satisfactory environment favourable for their development." Similarly Article 11 of the San Salvador Protocol to the ACHPR states that: "Everyone shall have the right to live in a healthy environment and to have access to basic public services; The States Parties shall promote the protection, preservation, and improvement of the environment." The human rights treaty bodies and regional human rights mechanisms have interpreted their respective human rights instruments in a manner that recognizes the environmental dimensions of protected rights.

The larger part of international environmental law is still belongs to the category of soft law. In the twenty years between the United Nations Conference on the Human Environment in 1972 and the U.N. Conference on Environment and Development, 1992 increasing attention has been paid to the impact of environmental problems on human rights. Even in 1972, the Stockholm Declaration stated the human right to "adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being" (A/Conf.48/14, 1972). Diego Quiroz (2010) clearly outlines that human rights have inconsistently appeared in the discourse of environment and development from the Stockholm Conference, 1972 onwards. The World Commission for Environment and Development defined "sustainable development" as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs." The Rio Declaration on Environment and Development, 1992 included the concepts of sustainable development and the rights of future generations to a healthy environment (A/Conf.151/5/rev.1, 1992). It states that human

beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature.

The World Summit on Sustainable Development in Johannesburg, 2002 focused on the concept of sustainable development was affirmed in the Johannesburg Declaration (A/CONF.199/20, 2002). The final outcome document of the Rio+20 Summit also reaffirmed the importance of the human rights, particularly the rights to health, food and safe drinking water. While most international human rights treaties do not make a specific reference to the environment, healthy environmental conditions is regarded as one of the necessary prerequisites for the enjoyment of human rights especially the rights to life (Article 3 of UDHR; Article 6(1) ICCPR; Article 6 CRC) and health (Article 25(1) of UDHR; Article 12(1) ICESCR; Article 24 CRC and Article 12 CEDAW).

Besides these conferences some progress made in the form of resolutions, special reports and debate by human rights bodies and specialized agencies working in the area of environment and human rights in this regard. UNGA in its resolution in 1990 observed that environmental protection is indivisible from the achievement of full enjoyment of human rights by all (UNGA Res. 45/94, 1990). One of the most encouraging steps in this direction has been the work in the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1994 the Special Rapporteur to the sub-commission proposed a set of draft principles providing for a stand-alone environmental right, described as the right "to a secure healthy and ecologically sound environment" (Human Rights and the Environment, 1994). In 2002, a Joint Expert Seminar was convened by the UN Commission on Human Rights inviting the High Commissioner for Human Rights and the Executive Director of UNEP which concluded that national and international developments reflect the growing interrelationship between approaches to guaranteeing human rights and environment protection (Human Rights and the Environment, 2002). It is also observed the role of environmental protection as a pre-condition for the effective enjoyment of human rights (OHCHR, 2002). The United Nations Secretary-General's 2005 report on the Relationship between Human Rights and the Environment concluded that 'since the World Summit on Sustainable Development (2002), there has been growing recognition of the connection between environmental protection and human rights' (E/CN.4/2005/96, 2005).

Human rights concerns are also increasingly integrated into the mainstream of climate change texts (Malé Declaration, 2007 & Cancun Agreements, 2010). The United Nations Human Rights Council has, in three separate resolutions (7/23, 10/4, and 18/22), noted the threat of climate change to individuals and communities, and its implications on the enjoyment of human rights (HRC Res. 7/23, 2008). The Office of the U.N. High Commissioner for Human Rights (OHCHR) examined the relationship between climate change and human rights, concluding in its report (2009) that climate change threatened the enjoyment of a broad array of human rights. Moreover, human rights law placed duties on states concerning climate change; including an obligation of international cooperation (A/HRC/10/61, 2009).

It is relevant to mention here that though the regional human rights instruments recognised the right to a healthy environment and the states' obligation to protect, to preserve and improve the environment, it does not allow individual to file a petition in case the state is not fulfilling its obligations. Environmental harm can only be alleged by showing that it can cause severe human rights violation guaranteed under ACHR. In regard to the right to a healthy environment the role of regional human rights institutions and domestic courts is quite commendable. The right to a quality environment has been given content by regional human rights tribunals and national courts through the incorporation of environmental jurisprudence, law, principles and standards. Such bodies increasingly utilize environmental standards to adjudicate human rights claims related to the environment and to judge whether or not states have complied with their legal obligations (Shelton, 2010).

In 1994, in the landmark case of *Lopez-Ostra v. Spain*, the European Court opened the door for the protection of human rights against nearly all sources of environmental pollution. The claim was related to the inactivity of the Lorca municipal authorities in respect of a nuisance caused by a waste treatment plant, which violated the right to privacy, home and family, under Article 8 of the European Convention on Human Rights. The Court decided that there was indeed a breach of Article 8 of the Convention, stating that the article creates a positive duty of regulation and protection on the part of the State, so that state tolerance of environmentally noxious activities may constitute a breach. Again in *Diego Cali & Figli Srl v. Servizi Ecologici Porto Di Genova SpA (SEPG)*, the European Court of Justice

states that the prevention of pollution serves the interests of not only current, but also future generations, and remarkably makes reference to Principle 3 of the Rio Declaration and to the report of the WCED (Giorgetta, 2010).

### Indian Perspective

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 (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 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.

The Indian judiciary played a remarkable job to put the issue of environmental degradation in the framework of fundamental rights to provide remedies to the victim of environmental harm. In 1976, provisions were inserted into the Constitution that

imposed responsibilities on both the state and citizens to protect the environment (Rosencranz & Jackson, 2013). The Indian judiciary has also considered sustainable development as a basic mantra of striking a balance between the environment and development through this universal agenda. The courts in general and the Supreme Court in particular tried its best to fulfill the aspirations related to the right to environment and to fill the gaps present in the environmental law. It also gave a liberal interpretation of the existing laws in the light of international human rights instruments to achieve the goal of human dignity by easy access to basic life support elements of life like: pure water, clean air and healthy surroundings through the root of human rights law. Various landmark judgments on environmental protection were delivered by way of Public Interest Litigations.

The Constitution of India is one of the very few Constitutions in the world that responds to the problem of environment. By the 42<sup>nd</sup> Constitutional Amendment happened in 1976 and judicial interpretation down the years the law of the constitution developed the environmental jurisprudence in India. The broad meaning given to the right to life guaranteed under Article 21 of Indian Constitution in the case of *Menaka Gandhi* (1978) enables the court to accommodate various rights within the ambit of the right to life. *Rural Litigation and Entitlement Kendra v. State of U. P.* (1985) is one of the earliest cases where the court dealt with issues relating to the environment and ecological balance. Further in *Francis Coralie* case (1981) the court set out a list of positive obligation on the state as part of the duty correlative to the right to life. The link between environmental quality and the right to life was further addressed by the court in *Charan Lal Sahu* case (1990). In *Subash Kumar* (1991) case, the court observed that right to life guaranteed by Article 21 include the right of enjoyment of pollution free water and air for full enjoyment of life. The similar spirit has been expressed in the recent case of *N. D. Jayal v. Union of India* (2004) the Supreme Court has declared that 'the adherence to sustainable development is a *sine qua non* for maintenance of symbiotic balance between the right to development and development'. This concept is "an integral part of life under article 21 of the Constitution".

There is a long list of cases in which the Supreme Court recognized the right to healthy environment as part of human right jurisprudence and provides remedy to the victim of environmental harm. It is

evident by analyzing the judicial pronouncement that the right based approach applied by the Indian judiciary is the right step in the protection of environment. The judiciary has played a vital role in the development of environment jurisprudence specially by interpreting the constitutional provisions and national laws in terms of international environmental law and international human rights law through the tool of Public Interest Litigation and the liberalization of the rule of *locus standi*.

### Conclusion and Suggestions:

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. Following are some sensible suggestions to make use of the human rights framework for the better protection of the environment: (1) The quality of human rights in conditioned by the human being is relationship with the surrounding ecology. Threats to the environment compromise mankind's well being and the full enjoyment of fundamental human rights. The kind of luxurious and unsustainable lifestyle adopted by developed nations is also responsible for the deterioration of our environment. As the issue of environmental pollution does not recognise the political boundary, the world's poor are forced to pay the price for the selfishness of others. The human rights approach can stop this happening. By focusing on equality and respect for individual dignity, an insistence on attention to human rights has the effect of forcing all decision-makers to look outside their own circle, to see the human as well as the global consequences of their actions. (2) The Indigenous population often suffers the brunt of environmental harm and have least access to justice and has no role in the decision making process. This particular fact must be taken into consideration while making policies and programme for the protection of the environment as well as at the time of allowing and development activities in the area of such population. (3) The scientific community can contribute to the theoretical soundness of the right to a healthy environment by providing data regarding the impact of environmental degradation on human health and the environment as a whole. (4) In the Indian

perspective, the right to healthy environment should be incorporated in part III of the Constitution on the line of the recommendation made by the Commission on the review of the working of the Constitution (National Commission to Review the Working of the Constitution, 2002). (5) With regard to the linkage between human rights and environment, regional human rights bodies and domestic court are working well but it is not appropriate to leave such an important and vital right to judicial vagaries. Judicial interpretation has its limitation. The right to healthy environment should be included in the hard law. (6) Linking human rights to environmental harm allows individuals to use global and regional human rights complaint procedures when states violate human right by allowing substantial environmental degradation. Of course, one of the most important consequences is to provide victim of environmental degradation the possibility to access to justice. Human rights protection will be strengthened with the incorporation of environmental protection because it extends human rights protection to an area previously overlooked.

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