



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

HUMAN RIGHTS AND ENVIRONMENT: **THE ENTWINED¹**

Authored By - Lakshmy S

INTRODUCTION

Humankind all over the world is facing environmental problems. It affects their basic rights. Human rights and environment protection are inseparable. Human rights include right to life. To live in a healthy environment is a part of right to life. It is true that international human rights law doesn't recognise a separate right to healthy environment, yet almost all human rights institutions now recognise that environmental degradation can lead to infringement of basic human rights. We can feel the oneness in human rights and environmental protection as each and every individual is entitled to it without distinction of any kind such as race, colour, sex, status, etc. It is not the concern of people of a particular country or group of countries. It is a common concern which lies beyond the national boundaries. There are many international treaties and covenants are here in this field to protect the human rights and the environment.

The other aspect is that the environment should be protected without conquering development. Development includes economic development. It is a part of human development. Indirectly it can be related to right to work, free choice of employment, protection against unemployment, etc and which are a part of economic and social rights. Hence as this provision exists, we have to look into the possibility that human rights in the name of development and it may dominate provisions for environment protection.

¹ Author: Lakshmy S, Assistant Professor, Co-operative School of Law, Kerala

CONTENT

CONVENTIONS

International concerns with human rights, health and environmental protection have expanded considerably in the past several decades. In response, the international community has created a vast array of international legal instruments, specialized organs, and agencies at the global and regional levels to respond to identified problems in each of the three areas. Often these have seemed to develop in isolation from one another. Yet the links between human rights, health and environmental protection were apparent at least from the first international conference on the human environment, held in Stockholm in 1972. Indeed, health has seemed to be the subject that bridges the two fields of environmental protection and human rights.²

The relationship between human rights and the environment was first recognized by the UN General Assembly in the late 1960s. In 1972, the direct relationship between the environment and the right to life was recognized by the United Nations Conference on the Human Environment.³ Concerned with trans-boundary pollution, particularly in the form of acid rain, Sweden in 1968 proposed an international conference to address global environmental problems. In announcing the 1972 UN Conference on the Human Environment in Stockholm (the “Stockholm Conference”), the UN General Assembly stated that the “main purpose” of the conference was to serve as a practical means to encourage and provide guidelines for action by Governments and international organizations designed to protect and improve the human environment.⁴ The Preamble stated that “Man is both creator and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and the man-made are essential to his well-being and to the enjoyment of basic human rights even the right to itself.”⁵ Further

² Dinah Shelton, HUMAN RIGHTS, HEALTH AND ENVIRONMENTAL PROTECTION: LINKAGES IN LAW AND PRACTICE, A Background Paper for the WHO

³ <https://www.aequitas-humanrights.org/human-rights-education/the-environment/brief-introduction-to-human-rights-and-the-environment/>

⁴ Brisman A. (2011) Stockholm Conference, 1972. In: Chatterjee D.K. (eds) Encyclopedia of Global Justice. Springer, Dordrecht. https://doi.org/10.1007/978-1-4020-9160-5_655

⁵ UN Conference on the Human Environment, 1972

the declaration established a link between human rights and environmental protection by stating that “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”⁶

In 1992, the United Nations Conference on Environment and Development (also known as the Earth Summit) stated that “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” The Declaration also provided for the right of access to environmental information and of public participation in environmental decision making. In 2002, the World Summit on Sustainable Development merely acknowledged the position that there exists a possible relationship between environment and human rights.⁷

The World Commission on Environment and Development (the Brundtland Commission), 1987 brought the term ‘sustainable development in common use. It was based on the theme ‘our common future’. The Brundtland report not only given a comprehensive definition of sustainable development, but also provides rights and responsibilities for environmental protection, which includes fundamental human rights. It states that all human beings have the fundamental right to an environment adequate for their health and well-being. It also deals with ‘inter-generational equity’. It implies that states shall conserve and use the environment and natural resources for the benefits of present and future generations. Human rights are always to be protected so here it is concerned not only about the human rights of present generation but also of the future generation.

Dominic MCGoldrick has suggested that sustainable development can structurally conceived as having a pillared temple. There are three pillars which are composed of international environmental law, international human rights law and international economic law.⁸ So international human rights law is a part of sustainable development.

The Rio Declaration on Environment and Development, 1992 also recognised human rights as part of sustainable development. According to principle 1 of the declaration, ‘human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in

⁶ Ibid

⁷ <https://www.aequitas-humanrights.org/human-rights-education/the-environment/brief-introduction-to-human-rights-and-the-environment/>

⁸ P S Jaswal-Nishtha Jaswal, Environmental law, Allahabad law agency, 3rd edition, 2009

harmony with nature.

Agenda 21 which is a voluntary action plan also recognises the entwined nature of human rights and environmental protection. Boutros Ghali (UN General Secretary at that time) in his opening address to the UN General Assembly in September, 1992 said that Agenda 21 is a “comprehensive and far reaching programme for sustainable development and it constitutes the centrepiece of international co-operation and co-ordination activities within the United Nations system for many years to come.” The preamble of agenda 21 states that “humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill-health and illiteracy and the continuing deterioration of the ecosystems on which we depend for our well-being. However, integration of environment and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed eco systems and a safer, more prosperous future. No nation can achieve this on its own; but together we can in a global partnership for sustainable development.”⁹

In agenda 21’s socio-economic dimensions, it includes sustainable development eradication of poverty, protection and promotion of human health, which are the basic human rights.

It also focuses on strengthening the role of major groups. It provides for global action for women towards sustainable and equitable development, children and youth in sustainable development, recognising and strengthening the role of indigenous people and their communities, strengthening the role of workers and their trade unions, strengthening the role of farmers, etc.¹⁰ Hence it recognises a major group whereas human rights conventions protect vulnerable also. It gives special focus on them as they are facing many challenges and many of their rights are getting violated. The idea behind it is to bring the unequal up with the equals and make everyone equal. Vulnerable group includes children, women, refugees, workers, persons with disabilities, certain indigenous people, etc. Here in Agenda 21, the vulnerable group is known or considered as the major group.

Vienna Conference on Human Rights, 1993 which aimed to make out a common plan for the strengthening of human rights work around the world, recognises ‘right to development’ as a human

⁹ Supra 6

¹⁰ Ibid

right. It affirms that right to development is a universal and inalienable right and an integral part of fundamental human rights. Whereas many international conventions and covenants in the field of environmental protection recommends that development and environment protection go hand in hand.

Even United Nations Human Rights Commission accepted that human rights and environment protection are part of sustainable development.¹¹

It states that “recalling the extensive work, reports and resolutions adopted by the Commission and human rights treaty bodies on issues relevant to environmental protection and sustainable development, also recalling the Declaration of the United Nations Conference on the Human Environment of 1972 (Stockholm Declaration) (A/CONF.48/14/Rev.1 and Corr.1), the Rio Declaration on Environment and Development (A/CONF.151/26/Rev.1, vol. I and Corr.1), Agenda 21, adopted on 14 June 1992 by the United Nations Conference on Environment and Development and the Johannesburg Declaration on Sustainable Development (A/CONF.199/20 and Corr.1, chap. I, resolution 1, annex) and the Plan of Implementation of the World Summit on Sustainable Development (ibid., resolution 2, annex), adopted in September 2002, and welcoming all efforts, at the national, regional and international levels, towards their implementation. Bearing in mind the goals and targets of the United Nations Millennium Declaration and the United Nations overarching agenda, including poverty eradication, human rights, sustainable development and peace-building, Conscious of the mandate of the Commission on Sustainable Development to promote the implementation of Agenda 21 and the follow-up to the World Summit on Sustainable Development, as well as of the important work undertaken on environment issues by the United Nations Environment Programme and other relevant forums, taking note that respect for human rights can contribute to sustainable development, including its environmental component, considering that environmental damage, including that caused by natural circumstances or disasters, can have potentially negative effects on the enjoyment of human rights and on a healthy life and a healthy environment, considering also that protection of the environment and sustainable development can also contribute to human well-being and potentially to the enjoyment of human rights, recalling that everyone has the right to enjoy the benefits of scientific progress and its applications, as reflected in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant

¹¹ Human Rights Resolution 2005/60

on Economic, Social and Cultural Rights, welcoming actions taken by States, such as legal measures and public awareness activities, that promote and protect human rights and that also assist in the promotion of environmental protection and sustainable development, Reaffirms that peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity are essential for achieving sustainable development and ensuring that sustainable development benefits all, as set forth in the Plan of Implementation of the World Summit on Sustainable Development.”¹² It also puts obligation upon the states to o take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development and reaffirms, in this context, that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. It also stresses the importance for States, when developing their environmental policies, to take into account how environmental degradation may affect all members of society, and in particular women, children, indigenous people or disadvantaged members of society, including individuals and groups of individuals who are victims of or subject to racism, as reflected in the Durban Declaration and Programme of Action adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12 and Corr.1).¹³

It is evident that latest trend is that human rights commission directly working on the entwined nature of human rights and environmental protection.

The human rights that are directly affected by the state of the environment consist but are not limited to the following: The right to life, the right to an adequate standard of living and the right to health. Also, procedural human rights such as access to information and participation in decision making are connected to the right of citizens and communities to partake in the formulation of environmental policies.¹⁴

¹² UN Commission on Human Rights, Human Rights Resolution 2005/60: Human Rights and the Environment as Part of Sustainable Development, <https://www.refworld.org/docid/45377c759.html>

¹³ Ibid

¹⁴ <https://www.aequitas-humanrights.org/human-rights-education/the-environment/brief-introduction-to-human-rights-and-the-environment/>

The Right to Life: On several occasions, environmental destruction would ultimately result in the curtailment of the right to life.

The Right to Health: Article 12 of the International Covenant on Economic, Social and Cultural Rights states that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Article 2(b) therein provides that “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the improvement of all aspects of environmental and industrial hygiene.” The right to health includes an array of factors that contribute to a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights refers to these as the “underlying determinants of health”. They include, amongst others healthy environmental conditions.¹⁵

The Rights of the Child (Right to Health): Article 24 of the Convention on the Rights of the Child, 1989 deals with the right of the child to the enjoyment of the highest attainable standard of health and to facilities to the treatment of illness and rehabilitation of health.¹⁶ Article 24(c) provides that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to combat disease and malnutrition taking into consideration the dangers and risks of environmental pollution.”

In addition, The Committee on Economic, Social and Cultural Rights has underlined that States must protect environment against pollution or contamination by private companies and assess their impact on the environment.¹⁷

In 1994 the forty-sixth session of the Commission on Human Rights (Sub-Commission on Prevention of Discrimination and Protection of Minorities) received a report entitled ‘Review of Further Developments in fields with which the sub-commission has been concerned on human rights and the environment. This was the Final Report prepared by Mrs. Fatma Zohra Ksentini, the Special Rapporteur on this issue appointed in 1989. Mrs. Ksentini work focused initially on the issue of toxic

¹⁵ Ibid

¹⁶ Dr.S.K Kapoor, Human Rights under International law and Indian law, pg 163, Central law agency, 4th edition, 2009

¹⁷ Supra 10

wastes and dumping of these wastes in poorer nations (an issue which was high on the international agenda in the late 1980s). Her work broadened during the research on this and became a major overview of environmental rights.¹⁸

The final report included a full analysis of environmental rights and legislation at a national level. The report also suggested that: for many years environmental problems were almost exclusively considered from the standpoint of the pollution in one part of the world, i.e. the industrialized countries (Immediately after the Stockholm Conference, perception of environmental problems was limited to a specific geographical area, the industrialized countries, and reduced to the simplest of terms, pollution. It identified the need for new approaches to these problems.¹⁹

Human rights includes political rights. Environmental rights also include political rights like rights for indigenous peoples and other collectives, the right to information and participation in decision-making, freedom of opinion and expression, and the right to resist unwanted developments. The right to claim reparations for violated rights, including rights for climate refugees and others displaced by environmental destruction, the right to claim ecological debt, and the right to environmental justice. Many of these rights, particularly the political ones, are well-established and enshrined in various conventions and agreements. We can credit the establishment of some of these rights, as well as the acceptance of others that are not yet legally recognised, to the ongoing struggles of communities and indigenous peoples around the world. All of these rights are equally important, and they are all interdependent. Environmental rights are human rights, as people's livelihoods, their health, and sometimes their very existence depend upon the quality of and their access to the surrounding environment as well as the recognition of their rights to information, participation, security and redress.²⁰

From all these we can understand that environmental human rights includes;

- The right to a clean and safe environment
- The right to act to protect the environment

¹⁸ Dinesh Rao, Human Rights and Environment, <http://www.legalserviceindia.com/legal/article-929-human-rights-and-environment.html>

¹⁹ Ibid

²⁰ Friends of the earth international, Environmental rights are human rights, <https://www.foei.org/what-we-do/environmental-rights-human-rights>

- The right to information participate in decision-making Different organisations across the world are approaching these issues in their own ways, but there are some commonalities:
- The right to a clean and safe environment these are substantive rights. They are the most basic rights, and the hardest to define. Many organisations would support the idea that clean water and food security are basic human rights (quotes from UNEP Geo 2000 report). The UN Draft Principles from 1994 (see Appendix) spell out what these might be in more detail.
- The right to act to protect the environment. This right is inherent in the UN Declaration and associated Conventions, through the right to organise and to free assembly. This right is under threat in many nations. The Just Earth campaign run by the Sierra Club and Amnesty International USA has highlighted many such examples.
- The right to information, to access to justice, and to participate in environmental decision-making these rights enable citizens to play an active part in creating a healthy environment, and they are directly linked to the key points in several UN Conventions and Declarations.²¹

In Europe these rights are enshrined in the European Convention on Access to Information, Public Participation and Access to Justice in Environmental Decision-Making, other regions will need to consider how best to deliver these rights within local circumstances. These rights do not exist in isolation: they cannot be seen as separate from other human rights or from other issues linked to poverty, economic and social exclusion.

A human rights perspective to sustainable development moves from the traditional green issues to a wider approach to protecting the most vulnerable in society. These rights can provide a platform for environmental and sustainable improvements are likely to benefit the most marginalised people, the poor, women, and minorities. The human rights perspective facilitates policies that have a strong impact on poverty and exclusion for reasons of gender or race. The right to information, justice and participation within the sustainable development context includes rather than excludes people who have felt excluded from the traditional green movement agendas. Environmental human rights support a bottom up approach. Active involvement and shared control, by the people and states most affected by a degraded environment is fundamental at local, national and global levels.²²

²¹ Dinesh Rao, Human Rights and Environment, <http://www.legalserviceindia.com/legal/article-929-human-rights-and-environment.html>

²² Ibid

Human Rights and Environmental Protection: India

Indian Constitution imposes certain fundamental duties upon its citizen. It is the duty of every citizen to protect environment. Article 51-A (g), recognises that 'it shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.'

Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. Article 48 deals with organization of agriculture and animal husbandry. It directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and draught cattle. Article 48 -A of the constitution says that the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.²³

The Constitution of India under part III guarantees fundamental rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone. Right to environment is also a right without which development of individual and realisation of his or her full potential shall not be possible. Articles 21, 14 and 19 of this part have been used for environmental protection.²⁴

According to Article 21 of the constitution, no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in Maneka Gandhi vs. Union of India, (AIR 1978 SC 597). Article 21 guarantees fundamental right to life. Right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity.

²³ Ibid

²⁴ Ibid

The Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. The preamble of it states, 'the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.

As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian Parliament inserted two Articles, i.e., 48A and 51A in the Constitution of India in 1976.²⁵

Article 253 of the constitution specifically empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Entries No.13 and 14 of the Union list includes the subject matters over which the parliament can make laws, provides participation in international conferences, associations and other bodies and implementing decision made thereat and entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.²⁶

In India a separate ministry namely The Department of Environment was established in 1980 to ensure a healthy environment for the country.

Coming to human rights, the preamble of Indian constitution itself shows its aims and purposes. Through the preamble, the people of India have resolved to secure all citizen the following objectives;

- Justice, social, economic and political
- Liberty of thought, expression, belief, faith and worship
- Equality of status and opportunity
- Fraternity assuring the dignity of the individual and the unity and integrity of the nation

²⁵ Ibid

²⁶ Supra 6

Under UDHR, right to effective remedy²⁷ is one among the civil and political rights. Under Article 32 of the Indian Constitution the same right has been implemented. In case of violation of environmental protection and preservation or any act which harms the environment and thereby the bio-diversity, the people can opt the same provision. They can file a writ petition or a Public Interest Litigation.

Role of Judiciary

Considering the role of judiciary in this area is something which is inevitable. Article 21 is the heart of fundamental rights and has received expanded meaning from time to time and there is no justification as to why right to live in a healthy environment, cannot be interpreted in it. For healthy existence and preservation of essential ingredients of life, stable ecological balance is required. The judicial grammar of interpretation has made 'right to live in healthy environment' as the sanctum sanctorum of Human rights.²⁸

History of Indian Judiciary shows that the 1980s was a period where the Indian Judiciary became more liberal and very creative. In the case of Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh,²⁹ the importance of air and water as the most indispensable gift of nature for the preservation of life was discussed. The judges did not expressly discuss Article 48A or Art 21. Still, this case is considered as the start of liberal interpretation of Article 21.

The Supreme Court in Subhash Kumar v. State of Bihar,³⁰ held that Article 21 includes the right to a wholesome environment. They followed the liberal thinking which started in the 'Rural litigation case' and had laid down an expansive interpretation of the word "life" in Article 21 by including environmental protection in Right to Life.

This position was again reaffirmed in Virender Gaur v. State of Haryana,³¹ where it was held that enjoyment of life and right to live with dignity includes the protection and preservation of the environment and without it, life could not be enjoyed.

²⁷ Article 8

²⁸ Supra 6

²⁹ 1985

³⁰ 1991

³¹ 1994

M. C Mehta v. Kamal Nath³²

Supreme Court made it crystal clear that any disturbance of basic environmental elements namely air, water and soil which are necessary for life would be hazardous to life and can't be polluted. (Hotel was discharging effluent into river and hence causing disturbance to aquatic life and water sanitation)

Preventing pollution of Ganga and Yamuna³³

Under the Environmental protection Act, 1986 the Supreme Court asked for the removal of all polluting industries settled on the bank of Ganga in Kanpur, Hoogly in Calcutta and of Yamuna in Delhi.

P.A. Jacob v. Superintendent of police, Kottayam³⁴

In this case the Kerala high Court held that the freedom of speech does not include freedom to use loudspeakers or sound amplifiers to cause noise pollution and risk to human health.

T.K. Koolwal v. State of Rajasthan³⁵

The High court extended the right to know to entitle a person to have complete information about the sanitation programme of the municipal corporation. Hence, the citizens' access to official environmental information within reasonable limits is now a guaranteed right.

M.C Mehta v. Union of India³⁶

The apex court directed certain tanneries to stop functioning as they were discharging foul effluents without setting up a primary treatment plant and held that "we are conscious that closure of industries may bring unemployment, loss of revenue but life, health and ecology have a greater importance to people"

Consumer Education and research forum v. Union of India³⁷

The court in this case took a view that right to good health was an integral facet of meaningful right to life and extended the right to robust health and vigor of the workers without the workers would lead a life of misery.

³² AIR 2002 SC 1997

³³ 1995

³⁴ AIR 1993 ker. 1.

³⁵ AIR 1988 Raj. 2

³⁶ AIR 1997 SC 734.

³⁷ AIR 2001 SC 1948.

Enjoyment of a pollution-free environment is directly in relation to the quality of life. As the environment, which includes natural resources, are essential for a healthy life, any pollution or damage to the environment could have adverse effects on human beings. This has been proven by various incidents that changed the jurisprudence of environmental law in India.³⁸

Sustainable Development

Sustainable development is the idea that human societies must live and meet their needs without compromising the ability of future generations to meet their own needs. The “official” definition of sustainable development was developed for the first time in the Brundtland Report in 1987.

Specifically, sustainable development is a way of organizing society so that it can exist in the long term. This means taking into account both the imperatives present and those of the future, such as the preservation of the environment and natural resources or social and economic equity.³⁹

Sustainable development is an approach to economic planning that attempts to foster economic growth while preserving the quality of the environment for future generations. Despite its enormous popularity in the last two decades of the 20th century, the concept of sustainable development proved difficult to apply in many cases, primarily because the results of long-term sustainability analyses depend on the particular resources focused upon. For example, a forest that will provide a sustained yield of timber in perpetuity may not support native bird populations, and a mineral deposit that will eventually be exhausted may nevertheless support more or less sustainable communities. Sustainability was the focus of the 1992 Earth Summit.⁴⁰

Although numerous international environmental treaties have been concluded, effective agreements remain difficult to achieve for a variety of reasons. Because environmental problems ignore political boundaries, they can be adequately addressed only with the cooperation of numerous governments, among which there may be serious disagreements on important points of environmental policy. Furthermore, because the measures necessary to address environmental problems typically result in

³⁸ <https://blog.ipleaders.in/right-to-the-pollution-free-environment/>

³⁹ <https://youmatter.world/en/definition/definitions-sustainable-development-sustainability/#:~:text=Sustainable%20development%20is%20the%20idea,the%20Brundtland%20Report%20in%201987.>

⁴⁰ <https://www.britannica.com/topic/environmental-law/Sustainable-development>

social and economic hardships in the countries that adopt them, many countries, particularly in the developing world, have been reluctant to enter into environmental treaties. Since the 1970s a growing number of environmental treaties have incorporated provisions designed to encourage their adoption by developing countries. Such measures include financial cooperation, technology transfer, and differential implementation schedules and obligations.⁴¹

The greatest challenge to the effectiveness of environmental treaties is compliance. Although treaties can attempt to enforce compliance through mechanisms such as sanctions, such measures usually are of limited usefulness, in part because countries in compliance with a treaty may be unwilling or unable to impose the sanctions called for by the treaty. In general, the threat of sanctions is less important to most countries than the possibility that by violating their international obligations they risk losing their good standing in the international community. Enforcement mechanisms other than sanctions have been difficult to establish, usually because they would require countries to cede significant aspects of their national sovereignty to foreign or international organizations. In most agreements, therefore, enforcement is treated as a domestic issue, an approach that effectively allows each country to define compliance in whatever way best serves its national interest. Despite this difficulty, international environmental treaties and agreements are likely to grow in importance as international environmental problems become more acute.⁴²

Many areas of international environmental law remain underdeveloped. Although international agreements have helped to make the laws and regulations applicable to some types of environmentally harmful activity more or less consistent in different countries, those applicable to other such activities can differ in dramatic ways. Because in most cases the damage caused by environmentally harmful activities cannot be contained within national boundaries, the lack of consistency in the law has led to situations in which activities that are legal in some countries result in illegal or otherwise unacceptable levels of environmental damage in neighbouring countries.⁴³

In India, the Environment Protection Act⁴⁴ implements the Stockholm convention. Along with that our judiciary always tried to carry on the idea of sustainable development in their decisions.

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ 1986

Human rights jurisprudence relating to the environment has developed significantly in the past 25 years since the Rio Conference, but none of this owes anything to UN human rights bodies. An early attempt to adopt a UN declaration on human rights and the environment terminated in 1994 when an ambitious but politically controversial draft failed to secure the backing of states. The Office of the High Commissioner for Human Rights (OHCHR) returned to the problem in 2009, emphasizing that “While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.” Three theoretical approaches were subsequently identified. The first sees the environment as a “precondition to the enjoyment of human rights”. The second views human rights as “tools to address environmental issues, both procedurally and substantively”. The third integrates human rights and the environment under the concept of sustainable development. Finally, the report also identifies “the call from some quarters for the recognition of a human right to a healthy environment” and notes the alternative view that such a right in effect already exists.⁴⁵

An independent expert-special rapporteur (Professor John Knox) was appointed by the UN Human Rights Commission (UNHRC) in 2012 to report on the substantive and procedural dimensions of human rights obligations relating to the enjoyment of a “safe, clean, healthy and sustainable environment” and the role of various institutional mechanisms in implementing those obligations. His reports articulate a largely uncontroversial account of what human rights law has contributed to environmental protection at the national and international level. The Special Rapporteur noted that “no global agreement sets out an explicit right to a healthy (or satisfactory, safe or sustainable) environment...Nor have the later conferences on sustainable development in Johannesburg in 2002 and Rio de Janeiro in 2012 proclaimed a right to a healthy environment.” However, his final report in 2018 advocates recognition of a right to a “safe, clean, healthy and sustainable environment”, derived largely from existing human rights law.⁴⁶

At the same time there is value in setting down those elements of human rights law already reflected in the jurisprudence and in national law, and on which some degree of international consensus is

⁴⁵ Alan Boyle, Climate change, sustainable development and human rights, https://link.springer.com/chapter/10.1007/978-3-030-30469-0_10

⁴⁶ Ibid

achievable. The rapporteur has at least demonstrated that regional environmental practice in Europe, Latin America and Africa has global significance, including the procedural rights enshrined in the Aarhus Convention, the obligation to assess environmental impacts and ensure a reasonable balance between economic development and environmental protection, the need to implement and enforce applicable environmental standards, and to protect vulnerable groups such as indigenous peoples. But while the UNHRC now recognises the environmental dimensions of human rights law, including its relevance for sustainable development, it remains to be seen whether UN treaty bodies follow suit in a meaningful way.⁴⁷

In its submission to the Paris Conference in 2015 the OHCHR set out ten considerations that should guide states in the actions they take to address climate change. Inter alia these include mitigating climate change and preventing negative effects on human rights; ensuring accountability and effective remedy for human rights harms caused by climate change; and guaranteeing equality, non-discrimination, and meaningful and informed participation in decision-making. States should cooperate to ensure an equitable outcome that delivers “low-carbon, climate-resilient, and sustainable development, while also rapidly reducing greenhouse gas emissions.” The policy asserts that “Only by integrating human rights in climate actions and policies and empowering people to participate in policy formulation can States promote sustainability and ensure the accountability of all duty-bearers for their actions. This, in turn, will promote consistency, policy coherence and the enjoyment of all human rights.”⁴⁸

An anthropocentric approach to sustainable development can be found in the 1992 Rio Declaration, whose Principle 1 declares that ‘Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.’ This, however, does not preclude considerations of the other two pillars, as acknowledgement of the economic and environmental pillars is crucial for the attainment of human well-being. Without a decent environment and economic enhancement, human needs and wants cannot be accommodated. The individual dimension of the social pillar is well protected by human rights documents, and it includes a wide array of rights, including the most basic right to life, as well as religious freedom and the right to private and family life. The social pillar is represented not only by civil and political rights,

⁴⁷ Ibid

⁴⁸ Ibid

but also by matters related to human dignity and basic human needs in the context of work, education and improved health. These human rights are traditionally thought of as individual rights, but the collective dimension of them should be pointed out. The right to religion, for instance, includes a freedom to worship in community with others, and improved education and health facilities promote the interests of the collective. There are, moreover, human rights that are collective by nature, namely, the rights and freedoms of social and cultural minorities.⁴⁹

Case law analysis: The case law analysis will highlight examples of how sustainable development can be operationalized through human rights courts. Deeper empirical evidence is not yet available, but the following cases show a development towards an implementation of the elements of sustainable development in certain situations. In the context of human rights courts, it is important to point out that the courts do not mention the concept of sustainable development as such, that would be too politically sensitive since the respective conventions do not entail a right to sustainable development. The courts can, however, help us to deepen our understanding of sustainable development by recognising and reasoning around the individual and collective dimensions of the concept's elements described above.⁵⁰

López Ostra case⁵¹, where the European Court made clear that environmental obligations under the ECHR do not only cover state activities, but also cover activities carried out by private parties, in this case a waste treatment plant. The Court held that the environmental degradation in this case directly obstructed the applicant's right to private and family life, Article 8 of the ECHR. The European Court stated that even if there were no grave health risks, severe environmental pollution could nonetheless affect the well-being of individuals and their right to effectively enjoy their homes. Although recognising that states do have a certain margin of appreciation to protect the economic interest of the town in having a waste treatment plant nearby, the Court nonetheless held that such interests could not outweigh the right to private life, referring to its 'practical and effective' doctrine. This doctrine emphasises that rights are to be interpreted and applied in a way that makes them practical and effective, not theoretical and illusory 'rights on paper'. In this case, the right to private and family life had been rendered practically ineffective, due to fume emissions, noise and strong smells from the

⁴⁹ Emilee Folkoson, Human rights court interpreting sustainable development: Balancing individual rights and collective interest, <https://www.elevenjournals.com/tijdschrift/ELR/2013/2/ELR-D-13-00016>

⁵⁰ Ibid

⁵¹ European Court of Human Rights: López Ostra v. Spain, Application No. 16798/90, Judgment of 9 December 1994.

plant, according to the Court. It therefore came to the conclusion that the right to private and family life was violated, as Spain had not struck a fair balance between the general interest in having the waste treatment plant nearby and the individual right.⁵²

Four years later, the European Court came to a similar conclusion in the Guerra and Others case.⁵³ Moreover, the Court held that environmental responsibilities under Article 8 include an obligation of State authorities to provide affected people with information about the environmental situation that might interfere with their private and family life. Thereby, the European Court also recognised a procedural dimension of the environmental pillar.⁵⁴

Also in the Giacomelli case,⁵⁵ the European Court found a violation of Article 8, due to environmental destruction. In its assessment, the Court evaluated whether the authorities had complied with the national environmental requirements. Since the domestic procedures on suspension for facilities that did not fulfil the environmental requirements were not followed, the Court held that it indicated that the state had failed to fulfil its obligations under Article 8. The European Court has hence set national environmental standards as a measurement of compliance with the obligations under the ECHR. Thus, the Court is hesitant to set its own standards for the environmental pillar and recognise that environmental protection in general is important for human well-being. It rather relies on the Contracting Parties' existing national standards, thereby giving them a certain margin of appreciation as to the threshold for environmental destruction to trigger protection under the ECHR.⁵⁶

These cases illustrate that the European Court implicitly recognises the three pillars of sustainable development. The parameter used to include the environmental pillar in the domain of the Court, however, is whether or not the environmental destruction directly and severely interferes with the right to private and family life.⁵⁷

⁵² Ibid

⁵³ European Court: Guerra and Others v. Italy, Application No. 14967/89, Judgment of 19 February 1998.

⁵⁴ Ibid

⁵⁵ European Court: Giacomelli v. Italy, Application No. 59909/00, Judgment of 2 November 2006

⁵⁶ Ibid

⁵⁷ Ibid

Concluding Remarks

By referring all the relevant facts related to this point it can assure that human rights and environmental protection are the entwined. Sustainable development includes human development and economic development. Judiciary's role in this area is commendable. It always tried to make sustainable development and environment protection go hand in hand without affecting human rights. In the name of sustainable development, human rights cannot get separated from environmental protection. After all right to life is the precious one among other rights.

