

# THE EARTH DOES NOT BELONG TO US, WE BELONG TO THE EARTH

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## ABSTRACT

*Protection of environment is as necessary as the protection of human life on earth. Without air water and clean air existence of human being on earth would have been difficult. Environment is the sole reason why we are still living in this earth for more than six million years and it's the duty and responsibility of the humans to work and protect our environment. From the early ages mankind has worshiped elements like earth, air, water and fire. In India heavenly objects such as sun and moon and also certain types of plants are still considered important in many rituals. Beginning of the 20th century the importance of the environment has lost its value and no proper measures and strict laws were taken out by the states for the degradation of the environment. Looking at the current scenario the main objective of the State should be to endeavour, the protection and improvement of the environment and to safeguard the forest and wildlife of the country. This paper deals with the interrelation of laws and human rights of the citizens and provides measures to be followed in terms of the protection. Our constitution provides for a balance between human rights and duties based on harmony with nature and harmony among people. Looking at the future from the present time our earth needs proper steps to rectify the acts done earlier by humans else it would be threatening to the very existence and survival of mankind.*

## ENVIRONMENTAL PROTECTION: LEGAL AND HUMAN RIGHTS PERSPECTIVE

### INTRODUCTION

Environment pollution and degradation is one of the biggest problem the world is facing in this era. Problem<sup>1</sup> of environment pollution is not a new concern to our society infact it is as old as the emergence and evolution of Homo sapiens on this planet. Nature in all these years is trying to compromise with the slaughter of the humans. In the name of progress what we humans are doing to nature is miserable and the worst thing is it cannot be restored. We are becoming more greedy. Forest land is being demanded, lakes are getting poisoned with pesticides and air fouled with noxious gases. Earlier people knew the sources of water and use of plants and animals for food and indicial purposes. Man has tried to control the nature according to his needs but unfortunately he did not knew nature could not be controlled and the adverse will be affected not only on humans but also on animals and due to this act of humans the link has got weakned between nature and humans. To manage these conditions in future various laws were passed but these laws are of no use if not implemented or accepted by the society properly. Though government of India introduced plethora of legislations in the field of environmental law which directly or indirectly deals in environmental issues. Though there is bulk of legislations but this didn't had any impact on the condition of environment rather it deteriorated day by day. Therefore one would always think though there is plethora of legislations but why there is no improvement in the condition of environment? As these<sup>2</sup> laws had some intrinsict defects in them and lacks proper implementation.

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<sup>1</sup> Bharat Budholai, Environment Protection Laws in British Era, legalserviceindia (2016)

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiwmZGwgoXlAhULS48KHe72C8wQFjAAegQIAxAB&url=http%3A%2F%2Fwww.legalserviceindia.com%2Farticles%2Fbrenv.htm&usg=AOvVaw3IHllzhkZbxQzVdFPEQYnU>

<sup>2</sup>Subhya Pandey, Environment : Ethics, Laws and its Conservation, legalserviceindia (2015)

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwi2wu23hYXlAhWv6nMBHa33DhEQFjAAegQIABAB&url=http%3A%2F%2Fwww.legalserviceindia.com%2Farticle%2FI231-Environment.html&usg=AOvVaw0gtcJ6TiPsyIb8oO-PvHTE>

## ROLE OF HUMAN RIGHTS

Over the past few years, the international community has increased its awareness on the relationship among human rights abuse and environmental degradation. It is evident that poverty and abuse of human rights increased due to environmental degradation. For a long time environmental issues have been on the fringe of human rights law and human rights on the fringe of human rights policy. Often environmental harm is treated as cost benefit analysis. Human rights requires us to consider in light of its effect on the rights of individuals to live lives of dignity, freedom and equality.

### How do human rights and environment protection interrelate with each other?

*“The protection of environment is a vital part of contemporary human rights doctrine, as it is a sine qua non for various human rights such as right to health and right to life itself. It is essentially necessary to explain on this, as any kind of damage to environment can diminish and endanger all human rights which are listed in the Universal Declaration of Human Rights”* (J. Weeramantry<sup>1</sup> International Court of Justice, 1977). This quote very clearly elaborates the interrelationship between environment and human rights and the necessity of protecting environment as a matter of protecting human rights.

*Are environmental issues can come under the treatment of human rights?* The answer is yes, to a great extent the relationship between protection of human rights and the environment has been widely recognised in the international instruments. This relationship was first recognised by UN General Assembly in the late 1960s. This development is attributed to certain real facts in the form of environmental calamities and disasters and the consequences the world<sup>2</sup> faced like Bhopal gas tragedy, Exxon Valdez oil spill and many more. But still there are many questions on the precise nature of this relationship. Questions are raised like what exactly environmental rights are and predominantly does international law recognise the right to a healthy environment. For this we must understand the convoluted relationship between environment protection and human rights. Human Rights are regarded as absolute rights each individual possesses that are believed to be given by nature. The right to healthy environment requires positive and abstaining obligations of the state and the behavioural changes in the individual. There had been many discussions about what is the legal value to be protected. Majority of the people have favoured an anthropocentric approach according to which the environmental protection is justified to the extent that is directly related to individual's legal rights, such as life and health of the people. Majority of environmentalists have adopted the Anthropocentric approach depending on the interrelationship between environment and legal rights. The provisions of UN STOCKHOLM DECLARATION OF 1972<sup>3</sup> are an explicit example of the anthropocentric view as they emphasize the concerns and efforts to protect environment on the fact that it is integral for human felicity and to the enjoyment of basic human rights. Although these two fields of human rights and environment are distinct and separate but these are intimately analogous to the fact that they are actually interdependent. Human rights are based on fundamental attributes such as dignity, equality and freedom and for procuring such rights we need an enabling environment. Environmental degradation directly affects the enjoyment of

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<sup>1</sup>Bridget Lewis, Human Rights and Environmental Wrongs : Achieving Environmental Justice through Human Rights Law, International Journal for Crime and Justice (2012)

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwii066viIXlAhWQ7XMBHbfKBggQFjAAegQIBBAC&url=http%3A%2F%2Fciteseerx.ist.psu.edu%2Fviewdoc%2Fdownload%3Fdoi%3D10.1.1.1023.7680%26rep%3Drep1%26type%3Dpdf&usq=AOvVaw2ISYu\\_9geXcPsIImAOLbj3](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwii066viIXlAhWQ7XMBHbfKBggQFjAAegQIBBAC&url=http%3A%2F%2Fciteseerx.ist.psu.edu%2Fviewdoc%2Fdownload%3Fdoi%3D10.1.1.1023.7680%26rep%3Drep1%26type%3Dpdf&usq=AOvVaw2ISYu_9geXcPsIImAOLbj3)

<sup>2</sup>Pradyuman K. Mishra, Bhopal Gas Tragedy : Review of Clinical and Experimental Findings after 25 years, International Journal of Occupational Medicine and Environmental Health (2009)

[https://www.researchgate.net/publication/26885602\\_Bhopal\\_Gas\\_Tragedy\\_Review\\_of\\_clinical\\_and\\_experimental\\_findings\\_after\\_25\\_years](https://www.researchgate.net/publication/26885602_Bhopal_Gas_Tragedy_Review_of_clinical_and_experimental_findings_after_25_years)

<sup>3</sup>Gunther Handl, Declaration of United Nation Conference on the Human Environment, Audiovisual Library of International Law (2019)

<http://legal.un.org/avl/ha/dunche/dunche.html>

human rights such as right to life, food, health and water. The relationship between human rights and environment have been recognised in two aspects:

(a) through the proclamation of a new right of healthy environment, safe and sustainable and

(b) by deepening the linkages between already recognised human rights such as rights to life health and the environment. There are two sets of rights in relation to the environment. Firstly, rights that are vulnerable to environmental degradation, these are the rights whose enjoyment is directly affected by environmental degradation. Specific environmental threats have been recognised as having a damaging effect on certain rights. For the right to life there are threats such as the scanty and inadequate management of toxic and hazardous waste, or the effects due to climate change on rights to life, health, food etc. Human rights treaties like UN convention on rights of the child explicitly refer to this relationship. Secondly there are rights whose exercise are conducive for an appropriate and transparent environmental policy formulation such as right to freedom of expression, to association and participate in decision making process and to a legal remedy. However there is still a lack of determination of specific obligations that human rights law imposes in order to protect the environment. Here it is essential to incorporate the concept of “environmental justice” which was adopted to the environmental debate in the United States in the seventies. This arises from the recognition that vulnerable groups have been particularly affected by the environmental pollution and depletion of natural resources. This concept of environmental justice has two dimensions. Firstly a distributive dimension that points to the equitable distribution of environmental good effects such as parks and its bad effects such as polluting industries. Secondly a participatory dimension that lies on the assumption that citizens have the ability to influence environmental decision making processes. These two dimensions are an application of equality, non-discrimination and participation which are recognised in various declarations and treaties on human rights. Thus there is an inextricable link between human rights and environment. The full enjoyment of various human rights depends largely on the state of environment.

## INTERNATIONAL APPROACH FOR PROTECTION OF ENVIRONMENT

Many environmental problems have international causes, and in subsequent years many organisations and associations became concerned about the effects of economic globalisation and the unequal sharing of the earth's resources. The complex pressures of globalisation have resulted in increased influence of international markets and changed macro-economic structures and national policies, with new pressures on natural resources and eco-systems, and the development of unsustainable levels of consumption. There has been little attempt at an international level to address the long-term environmental costs of these destructive policies on sustainable development. At international level people are now concerned with the attempt to control pollution and degradation of natural resources within the framework of sustainable development. Mankind therefore made a bold move and held the UN Conference on human environment in Stockholm in 1972 which brought man close to nature. The conference<sup>1</sup> focused on invogating and providing guidelines for action by national government and international organisations facing environmental issues. This conference marked a turning point in the development of international environment politics. The conference had this motto “only one earth”. In the Stockholm conference the meeting agreed on the declaration which was called Stockholm Declaration that had been containing 26 principles involving the environment and development and working plan with 109 recommendations and resolutions. The Stockholm declaration also led to creation of United Nations Environment Programme (UNEP) in December 1972 to coordinate global efforts to promote sustainability and safeguard the natural environment. This conference put the environment on political agenda. The Preamble of this declaration 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*”. Declaration makes an analysis of problems of human rights and global environment.

## ENVIRONMENT ISSUES AND LAW IN ACTION

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<sup>1</sup>Barry Dalal-Clayton and Steven Bass, Challenges of Environmental Mainstreaming, International Institute for Environment and Development (2009)

<http://www.environmentportal.in/files/environmental%20mainstreaming.pdf>

In India there are various of legislations for conservation of environmental. All these law are made just to show that these areas have been covered by the Government and is making laws on such issues but there is no proper implementation of these laws, we have the Water Act, the Air Act, the Noise Pollution Act, the Forest Preservation Act and the Environment Act and list goes on and on and these laws serve no purpose.

## a) The Contribution of Supreme court of India

Our Judiciary has repeatedly recognized human right to environment .A possible right to environment, together with public interest litigation, cannot prevent that many people are heavily affected through environmental degradation without any possible remedy. The Indian courts cannot handle all the existing delinquencies. The reality is rather sobering. Today<sup>1</sup> the Constitution's (Forty Second Amendment) Act 1976 expressly incorporates in it the environmental protection and improvement as part of State duty with the insertion of Article 48A. Article 51A (g) imposed<sup>2</sup> a similar duty on every citizen "to protect and to improve the natural environment which are forests, lakes, rivers, and wildlife and to have compassion for all living beings."

With respect to Article 21 of the Constitution of India, it states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme<sup>3</sup> Court explained this negative right in two ways. Firstly, any<sup>4</sup> law which hinders the personal liberty should be made reasonable, fair and just. Secondly, the<sup>5</sup> Court acknowledge several inarticulated liberties which were implied by Article 21. It is by this other method that the Supreme Court interpreted the right to life and personal liberty for the inclusion of the right to the environment.

*Rural Litigation and Entitlement Kendra v. State of U.P* was one of the foremost case where the Supreme Court dealt with issues which concern with environment and ecological balance. The elaborative concept of the right to life under our Constitution was further explained out in *Francis Coralie Mullin v. Union Territory of Delhi* where the Supreme Court made a list of positive obligations on the State, as part of its duty

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<sup>1</sup>Meha Bhushan and Heena Kumara, Human Rights and Protection of Environment in India, Law Mantra (2014)

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjC9rSvjoXlAhXOknAKHWMoAkWQFjAAegQIABAB&url=https%3A%2F%2Fwww.scribd.com%2Fdocument%2F221387112%2FHuman-Rights-and-Protection-of-Environment-in-India&usg=AOvVaw0rhS5t4kBh2qiO9HOgwa2D>

<sup>2</sup>Partha Saha, Right to Environment as Human Right, TRIPURAINFO (2019)

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwjEztzVj4XlAhUc6XMBHfADAFgQFjACegQIAXAB&url=http%3A%2F%2Fwww.tripurainfo.com%2FpgDetailSpecialArticle.aspx%3FWhatId%3D6875&usg=AOvVaw1iQdw4U\\_HEYLUHQOG0qPnL](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwjEztzVj4XlAhUc6XMBHfADAFgQFjACegQIAXAB&url=http%3A%2F%2Fwww.tripurainfo.com%2FpgDetailSpecialArticle.aspx%3FWhatId%3D6875&usg=AOvVaw1iQdw4U_HEYLUHQOG0qPnL)

<sup>3</sup> Dr. Jonna Razzaque, Human Rights and the Environment, Developments at the National Level, South Asia and Africa, Joint UNEP-OHCHR Seminar on Human Rights and Environment (2002)

<http://center-hre.org/wp-content/uploads/2011/05/Human-Rights-and-the-Environment-Developments-at-the-National-Level-South-Asia-and-Africa.pdf>

<sup>4</sup>S. Tharani, Amenability of Judiciary to Environmental Protection, Jurisedge Journal of Juridical Research (2014)

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=2ahUKEwjEztzVj4XlAhUc6XMBHfADAFgQFjADegQIABAC&url=http%3A%2F%2Fwww.jurisedge.com%2Fjournal%2Fwp-content%2Fuploads%2F2016%2F12%2F.S.THARANI.pdf&usg=AOvVaw1fXd7lCczy5Y9cKuH6p8u3>

<sup>5</sup> Deva Prasad M., Environmental Jurisprudence in India : The Role of Supreme Court, Vlex Peru (2008)

<https://vlex.com/p/vlex-peru/>

correlated with the right to life. The importance of this case lies in the readiness on the part of the Court to be contingent in adopting an extensive understanding of human rights. It is only through such an understanding that claims concerning the environment can come within the ambit of the broad rubric of human rights. The link<sup>1</sup> among environment and the right to life was again addressed by a constitution bench of the Supreme Court in the *Charan Lal Sahu*. Similarly, in *Subash Kumar*, the Court observed that 'right to life' guaranteed by article 21 includes 'the right of pollution-free water and air for full enjoyment and living of life.' Through this case, the Court recognised the right to a wholesome and pollution free environment as fundamental part of the right to life.

This case also indicated that the municipalities and a large number of other concerned Government authorities could no longer be satisfied with various unimplemented measures for the reduction and prevention of pollution. They may be obliged to take positive measures to improve the environment. The Supreme Court has made the right to life as a basis for implementing the need to take important steps to combat air and water pollution. It has ordered the closure or relocation of industries and ordered the evacuation of land to be used for the needs of the community. The courts have taken a serious view of unscientific and uncontrolled quarrying and mining, issued orders for the maintenance of ecology around coastal areas, shifting of hazardous and heavy industries and in restraining tanneries from discharging effluents.

## CONCLUSION

Current environmental issues require new approaches. Interconnection of human rights with environmental policies and priorities is an admission that conservation will not be successful without human development. Such an approach requires a new focus on governance and accountability, and provides the underlying principles to support that focus. The links between human welfare and resource exploitation are strong. These links need to be openly addressed to provide a common base under international law for all future action on sustainable development. This principle has extensively been recognized as the most fundamental principle of 'Sustainable Development'. Principle 15 the Rio declaration states that: "*In order to preserve the environment, the preventive measures shall be widely applied by States according to their capacities. Where there are dangers of serious or irreversible damage, lack of full scientific proof shall not be used as a reason for postponing effective measures to prevent environmental degradation.*"<sup>2</sup> Environment and development are the two faces of the same coin. Any one of these cannot be overlooked for the other. Recently drought in Assam (extreme eastern part of India which has places like Cherapunji which receives highest rainfall in world) and flood in Rajasthan particularly in the city of Jaisalmer and Barmer (which receives lowest rainfall in India, to the extent that people of those places have never seen rainfall in their life and rain is considered as holyday). We have to fight these climate changes in an appropriate manner and achieve sustainable development at the same time. Both issues are two sides of the same coin. The sustainable development requires the States to ensure that they develop and use their natural resources in a manner which is sustainable. The aim of the government must be on how to come out with some laws and ideas with an utter commitment to preserve natural resources for the generations of today & tomorrow.

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<sup>1</sup>Ritesh Kumar Prasad, Human Rights and Environment, Law Mantra (2014)

<https://www.scribd.com/document/221175174/Human-Rights-and-Environment>

<sup>2</sup> Swamy N. Maheshwara, Law relating to Environmental pollution and protection, 78-79(12<sup>th</sup> ed, 2014)