



The nexus between human rights and the rights of nature and the global perspective of environmental protection

Dr. K L Chandrashekhara

Assitant Professor, Department of Law, Vidyavardhaka Law College, Affiliated to Karnataka State Law University, Mysuru, Karnataka, India

Abstract

The Human rights jurisprudence increasingly incorporates the rights of nature as part of the right to a healthy environment. This right highlight the link between human well-being and the rest of the natural world, emphasizing the intrinsic reciprocity among all these elements. The complementarity of human rights and the rights of nature is also reflected in the efforts of Indigenous environmental and human rights defenders, who connect cultural rights with a relational approach to nature. This approach fosters the emergence of a legal perspective that considers the natural world as an interconnected system, composed of diverse life forms in dynamic relationships with one another, encompassing the biosphere as a whole—both human and non-human.

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 people, who are marginalized within their own countries and effectively excluded from political participation or redress under national laws. 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 people 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 for remedies provide to the victims 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.

Keywords: Human rights, rights of nature, environmental protection, environmental harm

Introduction

The Human Rights jurisprudence increasingly incorporates the rights of nature as part of the right to a healthy environment. This right highlight the link between human well-being and the rest of the natural world, emphasizing the intrinsic reciprocity among all these elements. The complementarity of human rights and the rights of nature is also reflected in the efforts of Indigenous environmental and human rights defenders, who connect cultural rights with a relational approach to nature. This approach fosters the emergence of a legal perspective that considers the natural world as an interconnected system, composed of diverse life forms in dynamic relationships with one another, encompassing the biosphere as a whole—both human and non-human.

Human Rights and environmental protection are two 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. The right to health, the right to safe and healthy working conditions, the right to adequate housing and food; are fundamental human rights recognized in international human rights instruments. To live in a healthy and quality environment is held as the fundamental or basic human right.

Dam projects, mining activities, rapid industrialization and urbanization have affected the social, economic and cultural aspects of people in a large scale. 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.

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 people, who are marginalized within their own countries and effectively excluded from political participation or redress under national laws. 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 people 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 for remedies provide to the victims 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.

Human Rights and the Protection of Environment

Human beings by virtue of their being human possessing certain basic and inalienable rights which are known as 'Human rights'. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right, are therefore inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. Because they are significance to human beings, they are also sometimes referred to 'Fundamental Rights', 'Inherent Rights', 'Natural Rights' and 'Birth Rights'. United Nations Declaration on Human Rights (UDHR), 1948 recognized several rights as basic human rights and later they have divided as Civil & Political rights, Economic, Social and Cultural rights and Collective rights^[1].

Civil rights are related to the protection of the right to life and personal liberty. They are essential for a person so that he may live a dignified life. Such rights include right to life, liberty and security of person, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thoughts, conscience and freedom of movement. Political rights may be referred to those rights which allow a person to participate in the Government of a State. Thus, right to vote, right to be elected at genuine periodic election, right to take part in the conduct of public affairs, directly or through chosen representatives are instance of political rights^[2].

Economic, social and cultural rights are related to the guarantee of necessities of the life to human beings. In the absence of these rights the existence of human beings is likely to be endangered. Right to adequate food, clothing, housing and Adequate standard of living and freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights^[3].

Collective Rights^[4] cannot be exerted individually, but only by groups or collectivities of people. It includes right of people to self-determination, right to peace; right to development, right to humanitarian assistance, right to healthy environment, right of sexual minorities, ethnic, religious linguistic, right to economic and social

development, right to natural resources, right to communicate and communication rights, right to participation in cultural heritage, rights to intergenerational equity and sustainability etc. These rights have a positive consideration in international level. They mainly focused on protection and preservation of environment. Hence they are known as 'Green Rights'.

Environment is nothing but the surrounding or external factor which influence on growth or development. It includes water, air and land and the relationship which exists among and between water, air, land, human beings, other living organisms, micro-organism and property. Environment can be divided into Physical or Biotic environment and Biological or Biotic environment.

Concept of Environment protection gained movement only after industrial revolution. Countries of the world exploited the natural resources for the sake of development which resulted in degradation of environment. Increase in industrial activities and urbanization gave birth to Environmental Pollution. Then world Community started to feel the heat of pollution. In order to protect, conserve and preserve natural resources many international conventions evolved. Stockholm and Rio Conference were the important international instruments which committed for protection of environment. As a result of these instruments a new concept called as 'Sustainable Development' emerged.

The Right to life, right to health, right to food, right to development, right to property, right to shelter and housing, right to work, right to culture and family life, right of indigenous people, right of women and work in healthy conditions are major human rights often affected by environmental harms.

In March 2008, the UN Human Rights Council linked the issue of Climate Change with human right and held that Climate Change, as a human rights issue.

The nexus between Human Rights and Environmental Protection

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.' In this context, there are three approaches^[5] 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 'the legal protection of human rights is an effective means for 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 extent 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.

The Nexus between Human Rights and the Rights of Nature

Over the years, the international community has increased its awareness on the relationship between environmental degradation and human rights abuses. It is clear that, poverty situations and human rights abuses are worsened by environmental degradation. This is for several obvious reasons ^[6]:

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

Environmental and human rights law have essential points in common that enable the creation of a field of cooperation between the two ^[7]:

- Firstly, both disciplines have deep social roots; even though human rights law is more rooted within the collective consciousness, the accelerated process of environmental degradation is generating a new “environmental consciousness.”
- Secondly, both disciplines have become internationalized. The international community has assumed the commitment to observe the realization of human rights and respect for the environment. From the Second World War onwards, the relationship between state and individual is of pertinence to the international community. On the other hand, the phenomena brought on by environmental degradation transcends political boundaries and is of critical importance to the preservation of world peace and security. The protection of the environment is internationalized,

while the State-Planet Earth relationship has become a concern of the international community.

- Thirdly, both areas of law tend to universalize their object of protection. Human Rights are presented as universal and the protection of the environment appears as everyone’s responsibility.

The UN Convention and Treaties relating to Human Rights and Environmental Protection

Most human rights treaties were drafted and adopted before environmental protection became a matter of international concern. As a result, there are few references to environmental matters in international human rights instruments, although the rights to life and to health are certainly included and some formulations of the latter right make reference to environmental issues. 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.

Universal Declaration on Human Rights, 1948

The declaration does not refer to the environment directly.

However, Article 25 acknowledges:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” The term ‘including’ indicates that the component elements listed were not meant to form an all-inclusive list, but serve as an indication of certain factors essential for an adequate standard of living. Therefore, it can be argued that satisfying the standards of the Declaration necessitates the environment being of sufficient quality to maintain human health and well-being.

International Covenant on Civil and Political Rights, 1966

As far as the environment is concerned; this covenant is not of great importance. It declares: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life ^[8].”

International Covenant on Economic, Social and Cultural Rights, 1966

This covenant guarantees the right to safe and healthy working conditions ^[9] and the right of children and young person’s to be free from work harmful to their health ^[10]. The right to health ^[11] within the Covenant expressly calls on States parties to take steps for “the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.”

Convention on the Elimination of All Forms of Discrimination against Women, 1979

This convention obligates States parties to eliminate discrimination against women, particularly in rural areas, to ensure that women “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications ^[12].”

Convention on the Rights of the Child, 1989

This convention refers to aspects of environmental protection in relation to the child's right to health. Article 24 provides that parties (States) shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution^[13]. Information and education is to be provided to all segments of society on hygiene and environmental sanitation^[14].

The ILO Convention on Indigenous and Tribals, 1989

This convention contains numerous references to the lands, resources, and environment of indigenous peoples^[15]. Part II of the Convention addresses land issues, including the rights of the peoples concerned to the natural resources pertaining to their lands. Further, governments are to ensure adequate health services are available or provide resources to indigenous groups "so that they may enjoy the highest attainable standard of physical and mental health^[16]." Article 30 requires that governments make known to the people concerned their rights and duties.

Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, 1998

It is known as The Aarhus Convention. This important convention takes a comprehensive approach to the many international agreements, utilizing procedural human rights to achieve better environmental protection in order to protect human health. The Preamble of this convention proclaims, "Every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations."

United Nations Declaration on the Rights of Indigenous Peoples, 2007

It's the first General Assembly Declaration on Human Rights which recognizes the conservation and protection of the environment and resources as a Human Right. Article 29 of the Declaration declares:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the people affected by such materials are duly implemented.

The Regional Human Rights Treaties

Not all regions have a regional human rights convention or charter. There are three main regional human rights treaties such as:

- The American Convention on Human Rights in the Area of Economic, Social and Cultural Rights;

- The African Charter on Human and Peoples' Rights;
- The European Convention on Human Rights;

Out of these three, first two only address environmental issue as a part of human rights.

American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988

The protocol to the convention provides for both a right to environment and a right to health. Article 10 states that (1) everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. (2) In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

- a. Primary health care, that is, essential health care made available to all individuals and families in the community;
- b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
- c. Universal immunization against the principal infectious diseases;
- d. Prevention and treatment of endemic, occupational and other diseases;
- e. Education of the population on the prevention and treatment of health problems, and
- f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

African Charter on Human and Peoples' Rights, 1981

The charter contains both a right to health and a right to environment. Article 16 of the Charter guarantees the right to enjoy the best attainable state of physical and mental health to every individual. Article 24 declares that all peoples shall have the right to a general satisfactory environment favorable to their development.

Non-binding Declarations and Reports on Human Rights and Environmental Protection The Stockholm Declaration, 1972

This declaration proclaims its concern about: "growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment". Principle 7 calls on States to take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health.

Declaration on Right to Development, 1986

This and several other international documents, among them the Vienna Declaration^[17], state that the right to development is a "universal and inalienable right and an integral part of fundamental human rights^[18]." Article 8(1) of the Declaration on the Right to Development says that states should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their

access to basic resources, education, health services, food, housing, employment and the fair distribution of income. In interpreting this article, the UN General Assembly clarified and reaffirmed in its Resolution 54/175 that the right to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community. The UN General Assembly, in its 1994 Resolution 45/94, had already recognized that all individuals are entitled to live in an environment adequate for their health and well being.

Brunt Land Report/Our Common Future (Legal Principles for Environmental Protection and Sustainable Development), 1987

The influential Brunt Land Report sought for solutions to parallel problems of global environmental degradation and global lack of social and economic development by asking for these challenges to be addressed in an integrated way in the interests of present and future generations. In the report, sustainable development was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Article 1 of the legal principles, adopted by the Expert Group of the Brundtland Commission, expressly links the three fields in declaring that: “All human beings have the fundamental right to an environment adequate for their health and well-being.”

Rio Declaration on Environment and Development, 1992

Chapter 6 of Agenda 21, adopted at the 1992 Rio Conference on Environment and Development, is entirely devoted to “protecting and promoting human health condition”, while the Rio Declaration itself proclaims that human beings are entitled to a healthy and productive life in harmony with nature ^[19] and provides that states should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that, inter alia found to be harmful to human health ^[20].

Declaration of Principles on Human Rights and the Environment, 1994

This is the most comprehensive international statement on environmental rights till date. It was appended to the Report of the UN Special Reporter on Human Rights and the Environment. The Report was presented to the Sub-Commission on Prevention of Discrimination and Protection of minorities at its 46th Session ^[21].

The Declaration sets out a series of general principles, including the human right to a secure and healthy environment, the right to non-discrimination and the right to an environment adequate to meet the needs of the present generation without impairing the rights of future generations to meet their needs. It further defines a series of substantive rights, including the human right to protection of the environment, the right to safe and healthy water, the right to preservation of unique sites and the rights of indigenous peoples to land and environmental security, delineating procedural rights, including the right to environmental information, and active participation in environmental decision-making, and the right to effective redress for environmental harm.

The principles set out in the Draft Declaration reflect and build upon the rights found in both national and

international law. Although this instrument is non-binding legally, national courts have used the Draft Declaration as a basis for decisions on environment matters and have found legal support in the Draft Declaration in deciding in favor for the protection of the fundamental right to a healthy environment.

United Nations Environment Programme, 1999

When UNEP reported on its activities in the field of human rights and the environment in 1999, it explicitly referred to the individual’s right to a clean and healthy environment. The report started with mentioning: Environmental standards in environmental management are an important tool which ensures the right to a clean and healthy environment for all people living on this earth.

Johannesburg Declaration on Sustainable Development, 2002

The World Summit on Sustainable Development, 2002 specifically commits to “assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels ^[22].”

UN Commission on Human Rights, 2002

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. It is also observed the role of environmental protection as a pre-condition for the effective enjoyment of human rights.

UN Secretary-General Report on Relationship between Human Rights and the Environment, 2005

In February 2005, the Secretary-General released an updated report on the relationship between the environment and human rights, science and environment - Human rights and the environment as part of sustainable development.

The report analyses some of the developments that have taken place at the international, regional and national level in recognition of the link between the protection of the natural environment and the enjoyment of human rights. The report concludes that, since the World Summit on Sustainable Development, there has been growing recognition of the connection between environmental protection and human rights.

United Nations Conference on Sustainable Development, 2012

The final outcome document of the Rio+20 Summit also reaffirmed the importance of the human rights, particularly the right to health, Human rights concerns are also increasingly integrated into the mainstream of climate change texts (Yalé 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 ^[23]. 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 ^[24].

It is relevant to mention here that though the regional human rights instruments recognized 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 UDHR. 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* ^[25], 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 & FigliSrl v. Servizi Ecologici Porto Di GenovaSpA* ^[26] (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.

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. At the same time, 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.

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 taking 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 movements 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. It 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 inserting Article 48A and 51A (g) into the Constitution through 42nd Amendment in 1976, which imposed the responsibilities on both the state and citizens to protect the environment and through judicial interpretation down the years the law of the constitution developed the environmental jurisprudence in India.

The broad meaning is given to the right to life guaranteed under Article 21 of Indian Constitution in the case of *Maneka Gandhi* ^[27] 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 ^[28], is one of the earliest cases where the court dealt with issues relating to the environment and ecological balance.

Further in *Francis Coralie case* ^[29] 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* ^[30]. In *Subash Kumar case* ^[31], 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* ^[32] 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 environment'. 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

victims of environmental harm. It is evident by analyzing the judicial pronouncements 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 liberalizing the rule of locus standi^[33].

Conclusion and Suggestions

It is clear from the above discussion 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 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 recognize 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 programmes 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^[34].
5. With regard to the linkage between human rights and environment, regional human rights bodies and domestic courts 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.

References

1. This division of human rights into three generations was introduced in 1979 by Czech jurist Karel Vasak. The three categories align with the three tenets of the French Revolution: liberty, equality, and fraternity.
2. The Civil and Political rights are included under International Covenant on Civil and Political Rights, 1966 (ICCPR). These rights are called as 'First Generation Human Rights'.
3. These rights are included in the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). They are generally called as 'Second Generation Human Rights'.
4. They are 'Third Generation Human Rights', also called as solidarity rights.
5. An article written by Hon'ble Justice Y.K.Sabarwal, Former Chief Justice of India, available at <http://www.google/Human Right and Environment.com>.
6. Ibid.
7. Ibid.
8. Article 6(1).
9. Article 7(b).
10. Article 10(3).
11. Article 12.
12. Article 14 (2)(h).
13. Article 24(2)(c).
14. Article 24(2)(e).
15. Articles 2, 6, 7, 15.
16. Article 25(1).
17. Adopted by the World Conference on Human Rights, 1993.
18. Article 1(10).
19. Principle 1.
20. Principle 14.
21. UN Doc, E/CN.4/Sub.2/1994/9.
22. Para. 5 of Johannesburg Declaration.
23. HRC Res. 7/23, 2008.
24. A/HRC/10/61, 2009.
25. App. No. 16798/90, A/303-C, [1994] ECHR 46, (1995) 20 EHRR 277, IHRL 3079 (ECHR 1994), 9th December 1994, European Court of Human Rights.
26. European Court Reports 1997 I-01547 (ECLI identifier: ECLI:EU:C:1997:160).
27. Maneka Gandhi v. Union of India AIR 1978 SC 597.
28. AIR 1985 SC 652.
29. Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.
30. Charan Lal Sahu v. Union of India (1990) 1 SCC 613.
31. Subhash Kumar v. State of Bihar AIR 1991 SC 420.
32. (2004) 9 SCC 362.
33. The right or capacity to bring an action or to appear in a court.
34. National Commission to review the working of the Constitution, 2002.