

## Human Rights Approach towards Pollution free Environment

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### Introduction:

Environment and life are interrelated. The existence of life on earth depends on the harmonious relationship between ecosystem and environment. Especially homo-sapiens have very close interaction with nature. Human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature.

In the long evolution of the human race on this planet, a stage has been reached when, through the rapid acceleration of science and technology, we have acquired the power to transform our environment in countless ways and on an unprecedented scale. Humanity's capacity to transform its surroundings, if used wisely and with respect to the ways of nature, can bring to all communities the opportunity to enhance the quality of life. Wrongly or heedlessly applied, or applied in iniquitous ways, the same power can do incalculable harm to human beings and their environment. We see around us growing evidence of human-caused harm in many regions of the earth the dangerous levels of pollution in water, air, earth and living beings; destruction and depletion of irreplaceable life forms and natural resources; major and undesirable disturbances in the earth's climate and protective layers; gross deficiencies, harmful to physical, mental and social health, in the living and working environments of humans, especially in cities and industrial complexes.

It is important to recognize our dependence on the earth's natural resources. Natural resources such as air, water, and land are fundamental to all life forms: they are, much more than money and economic infrastructure, the base of our survival. To large numbers of humanity, especially communities that have been termed 'ecosystem people' (people depending on the natural environments of their own locality to meet most of their material needs) [1], natural resources are the base of survival and livelihoods. Their material and economic sustenance largely depends on these. In India alone, around 70% of the population directly depends on land-based occupations, forests, wetlands and marine habitats, for basic subsistence requirements with regard to water, food, fuel, housing, fodder and medicine as also for ecological livelihoods & cultural sustenance. Given this close interdependence of humans and their environment, it is not surprising that the culture of societies is so greatly influenced by their environment. They seek inspiration, knowledge, spirituality and aesthetics within their natural surroundings. But it is not only 'ecosystem people' who are dependent on the natural environment. It is all humans, even the rich urban resident in Paris or Washington who may be under the delusion that s/he is buffered by the props of modern technology. In the growing cities of the industrializing world, millions of residents of all classes are now prone to lung and skin diseases, water-borne illnesses, and congenital abnormalities from toxics in their food and water, some of which may have originated hundreds of kilometers away. [2]

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.

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## Life and Environment

Life, livelihoods, culture and society, are fundamental aspects of human existence - hence their maintenance and enhancement is a fundamental human right. Destruction of environment and thereby of the natural resources, is therefore, a violation or leads to the violation of human rights – directly by undermining the above aspects of human existence, or indirectly by leading to other violations of human rights, for example through social disruption, conflicts and even war. Conversely, human rights violations of other kinds can lead to environmental destruction, for instance, displacement by social strife/war can cause environmental damage in areas of relocation; or breakdown in sustainable common property management. The manifestations of such violations present themselves through a loss of access to clean air and water; loss of access to productive land; loss of energy sources and biomass; loss of food and health security; social and economic marginalization; and physical displacement. Several hundred million people have been increasingly forced to live far below the minimum levels required for a decent human existence, deprived of adequate water, food, clothing, shelter and education, health and sanitation. Development, which was supposed to alleviate such problems, has often increased them, especially by allowing the powerful sections of society to appropriate the natural resources of poor and resource-dependent people. [3]

## Environment and Human Rights

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 due to the exhaustion of natural resources leads to unemployment and emigration to cities which affects the enjoyment and exercise of basic human rights. Environmental conditions contribute to a large extent, to the spread of infectious diseases. Environmental 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:

✚ *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 [4] onwards, the relationship State-individual is of pertinence to the international community. On the other hand, the phenomenon 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.

Environmental protection has means of fulfilling human rights standards. Environmental law is conceptualized as ‘providing protection that would help to ensure the well-being of human beings as well as other life forms that depend on environment and natural resources for their survival.’ Here, the ultimate aim is fulfilling human rights, while means of fulfilling is through environmental law. Similarly the legal protection of human rights is an effective means to achieve

the ends of conservation and environmental protection.’ In this context, there exists a debate on whether one should recognize an actual and independent right to a satisfactory environment as a legally enforceable right. This would obviously shift the emphasis onto the environment and away from the human rights.[5]

Since the Stockholm Conference in 1972, international environmental law has developed to the extent that even the domestic environment of states has been internationalized. In light of the vastness of environmental law and policy, and the all pervasive manner of environmental protection in every aspect in an international sense and notwithstanding the concept of state sovereignty, provides for 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 in 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.[6] Nevertheless, clearly there is a prima facie rhetorical and moral advantage in making the environment a human rights issue.[7] There has been a simultaneous increase in ‘legal claims for both human rights and environmental goods,’ which is a clear reflection of the link between ‘human’ and the ‘environment’ and the dependence of human life on the environment.

### **International Human Rights Law relating to Environmental Protection:**

The right to healthy environment is found in number of human rights instruments in International Law. They are

- Universal Declaration of Human rights -the first major UN human rights document adopted in 1948
- International Covenant on Civil and Political Rights - the human rights covenant adopted in 1966
- International Covenant on Economic, Social and Cultural Rights - the human rights covenant adopted in 1966 and entered into force in 1976
- The Right to Life – European Convention on Human Rights Article 2(1) - providing for the right to life protected by law
- The Right to Health - The Convention on the Rights of the Child (1989) at article 24(2) (c) requires State parties in the matter of combating disease and malnutrition to take into consideration, ‘the damage and risks of environmental pollution.’ It provides for the highest attainable standard of health for children through the prevention of environmental contamination.
- The Right to Be Free Of Interference of One's Home and Property - European Convention on Human Rights Article 8 - stipulates the right to respect for one's private and family life, home and correspondence
- New Rights to Protect the Environment - Draft Declaration of Principles on Human Rights and the Environment 1994 - proposed in the Ksentini Report studying the connection between human rights and the environment
- Vienna Declaration on Human rights - the Vienna declaration and program of action

**The Regional Human Rights System:** The right to a healthy environment is now to be found in a number of regional human rights instruments around the world.

- Article 11 of the Additional Protocol to the Inter-American Convention on Human Rights (1994) popularly known as the San Salvador Protocol, states that (1) everyone shall have the

right to live in a healthy environment and to have access to basic public services; (2) the state parties shall promote the protection, preservation and improvement of the environment.

➤ The African Charter on Human and People's Rights 1981 proclaims in Art. 24(1) a right to 'a general satisfactory environment favourable to their development.'

**Role of International Human Rights Law in the Protection of Environment:** Environmental pollution directly affects the health of human beings and also attests the quality of life. They have direct impact on a number of economic, social, civil and political rights. A human being can not maintain his dignity and honor in their absence. Thus safe and adequate environment is most significant can so it is rightly characterized as human right.

Thus it was rightly observed that "his right to live peace, in a sage and adequate environment is a right which relates to his very existence such a condition which goes to the very root of one's own human existence must be categorized as a fundamental right beyond doubt. [7a] But this aspect of human right was not realized earlier. Neither the Universal declaration of Human Rights nor the two international covenants stipulated for conserving the environment. The narrowest but strongest argument for a human right to the environment focuses not on environmental quality but on procedural rights. Thus environmental protection and sustainable development is implicit in its provisions in Articles 19 & 21 of Universal declaration of Human Rights and also in International covenant on civil and political rights Articles 19 & 24.[7b] At its broadest, it can be argued as a human right to environmental matters as in 1993 UN Conference on Human Rights Vienna Declaration.

The importance of safe and adequate human environment was stressed in the Stockholm conference of 1972. When the declaration was adopted the conference proclaimed that both natural and man made environment are essential to his wellbeing and to the enjoyment of basic human rights even the right to life if self. In Earth summit also principle 10 in Rio declaration [7c] is potentially of greater significance and also principle 23 world charter for nature. The Rio summit also recognized that all human beings are entitled to a health and productive life in harmony with nature. [7d] Though there is no consensus at the international levels to treat the right to environment as fundamental right, efforts have been made to recognize such right.[7e]

Despite of many other Environmental rights, the general policy of extending participatory rights has thus secured international support which is reflected in draft principles of human rights an the environment proposed in the Ksentini Report. The draft principles on human rights and the environment are guided by character of UN, UDHR, Intension covenant on Economic, Social and cultural Rights, Covenant on Civil and Political Rights, Vienna Declaration and Action programme of the world conference of Human rights and other relevant international human rights instruments and relevant instruments of International environmental law (International Conference like Stockholm Declaration, Rio summit, Agenda 21) and also by fundamental principles of international humanitarian law. The procedural rights identified include right to information concerning environment, Right to participate in decision making including environmental impact assessment, right to freedom of association for the purpose of protecting the environment, right to effective remedies and refresh for environmental harm in administrative and judicial proceedings. This is a comprehensive formulation which again draws heavily on existing human rights law and international environmental law. The principles were applied most notably in India after the Bhopal disaster.[7f]

The first principle of the 1972 Stockholm Declaration declares 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations." Almost twenty years later, in resolution 45/94 the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment.

In the mid 1990s, recognizing the urgent need and importance of deepening the link between human rights and the environment, and of exploring ways to achieve a better collaboration, harmony, and complement the agendas of different United Nations institutions working on both subjects which offered a theoretical, thematic, and practical framework to address the linkages between human rights and the environment.

Links between the environment and human rights have also been recognized by the Inter-American Court of Human Rights. The case of *Awás Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, involved the protection of Nicaraguan forests in lands traditionally owned by the Awás Tingni. Government-sponsored logging on this native land was found to be a violation of the human rights of these tribals. Similarly, the Commission established a link between environmental quality and the right to life in response to a petition brought on behalf of the Yanomani Indians of Brazil.[8] The construction of a highway was found to have violated the American Declaration of the Rights and Duties of Man.

Nearly all global and regional human rights bodies have accepted the link between environmental degradation and internationally-guaranteed human rights. In nearly every instance, the complaints brought have not been based upon a specific right to a safe and environmentally-sound environment, but rather upon rights to life, property, health, information, family and home life. Underlying the complaints, however, are instances of pollution, deforestation, water pollution, and other types of environmental harm.

The developments that are taking place through the intervention of national Courts in various parts of the world, also proves that the courts are moving the right to a healthy environment up the hierarchy of human rights by recognising it as a fundamental right are defining the content and nature of the right to a healthy environment through landmark decisions.

**Environment and Indian Constitution:** The backbone of these is relevant provisions in India's Constitution. The Constitution of India, 1950, did not include any specific provision relating to environment protection or nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualized by the framers of the Constitution. However, the past five decades have witnessed two major developments in this connection. The first development took place when the Constitution (Forty-second Amendment) Act, 1976, was adopted in the mid-seventies. Specific provisions relating to certain aspects of the environment, more especially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy – and List III – The Concurrent List – of the Seventh Schedule of the Constitution. As a result, the Constitution has now the following provisions specifically relating to environment protection and nature conservation: Part IV: Directive Principles of State Policy (Article 48A): Protection and improvement and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A: Fundamental Duties (Article 51-A): It shall be the duty of every citizen of India – (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Seventh Schedule (Article 246) List III - Concurrent List Item no. 17 Prevention of cruelty to animals, Item no. 17A Forests, Item no. 17B Protection of wild animals and birds.[9]

The constitution makers themselves construct the fundamental rights in its broad sense especially to right to life. The Supreme Court of India has given essence to the right so that every person can enjoy life to its fullest extent. The Indian Supreme Court came out of the shackles of mechanical and rule bound justice and provided impetus to the expanded horizons of the fundamental right to life and personal liberty guaranteed in Article 21. Two methods are used by Supreme Court to strengthen Article 21 and to interpret unenumerated rights under Article 21, it required laws affecting personal liberty to pass the tests of Article 14 and 19 of the constitution, there by ensuring that the procedure depriving a person of his or her personal liberty be reasonable, fair and just. The court recognized several matriculated rights that were implied by Article 21. It is by this method the Supreme Court interpreted the right to life and personal liberty

to include the right to wholesome environment and all other rights. Thus Courts have undertaken to explicate the development of ideology of environment as being part of the right to life by various judicial pronouncements.

The judicial craftsmanship attempted to expand the reach and ambit of Article 21 rather than accentuate their meaning and content by judicial construction. Thus the judiciary broadened the concept of life. Thus extended the scope of personal liberty so as to include within itself all the varieties of rights which go to make the personal liberties of man. Right to life extended its scope to include right to wholesome environment and right to sustainable development. Indian democracy wedded to rule of law aims not only to protect fundamental rights of its citizens but also to establish an egalitarian order. Law being an instrument of social engineering obliges the judiciary to carry out the process established by it.

Environmental deterioration could eventually endanger life of present and future generations. Therefore, the right to life has been used in a diversified manner in India. It includes, inter alia, the right to survive as a species, quality of life, the right to live with dignity, right to good environment and the right to livelihood. In India, these rights have been implicitly recognized as constitutional rights. The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Thus it is clear that article 21 has a multidimensional interpretation. Any arbitrary, whimsical and fanciful act on the part of any state, depriving the life or personal liberty would be against Article 21 of the Indian constitution.

Judicial Activism towards Human Right to Life and Environment: The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the Charan Lal Sahu Case [10] In 1991, the Supreme Court interpreted the right to life guaranteed by article 21 of the Constitution to include the right to a wholesome environment. In Subash Kumar, [11] the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.' Through this case, the court recognized the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment. This was reaffirmed in M.C. Mehta v. Union of India.[12]The case concerned the deterioration of the world environment and the duty of the state government, under article 21, to ensure a better quality of environment. The Supreme Court has held that life, public health and ecology have priority over unemployment and loss of revenue. The Supreme Court ordered the Central government to show the steps they have taken to achieve this goal through national policy and to restore the quality of environment. In another case,[13]the Supreme Court dealt with the problem of air pollution caused by motor vehicle operating in Delhi. It was a public interest petition and the court made several directions towards the Ministry of Environment and Forests. Decisions such as this indicate a new trend of the Supreme Court to fashion novel remedies to reach a given result, although these new remedies seem to encroach on the domain of the executive.[14] In Shanti Star Builders vs. Narayan Totame.[15], the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. In Subhash Kumar vs. State. of Bihar- (1991) 1 SCC 598, the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life. In M. C. Mehta vs. Union of India & Ors. 1987 SCR (I) 819 (the Oleum Gas Leak case), the Supreme Court established a new concept of managerial liability – 'absolute and non-delegable' – for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not. In Vellore Citizens Welfare Forum vs. Union of India, AIR 1996 SC 2715, the Supreme Court held that industries are vital for the

country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country.[16] In *Indian Council of Enviro-Legal Action vs. Union of India*, 1996 3 SCC 212 (the Bichhri pollution case), following the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water. Enunciating the doctrine of 'Public Trust' in *M. C. Mehta vs. Kamal Nath* (1997) 1 SCC 388, the SC held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

The changing trajectory of environmental rights in India, from a historical perspective Active judicial intervention by NGOs, community groups, and others, have also set a series of important precedences that go beyond what the bare laws provide. There are many initiatives in Public Interest Litigation (PIL). Some of these include the cases against the construction of the Tehri Dam (*Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh*, 1992 SUP (1) SCC 44) and Narmada Dams (*Narmada Bachao Andolan vs. Union of India* AIR 1999 SC 3345); against deforestation (*T. N Godavarman Thirumulpad vs. Union of India*, 2000 SC 1636, a case that has since then spawned dozens orders pertaining to forests in India); against mining in the Aravallis (*Tarun Bharat Sangh, Alwar vs. Union of India* 1992 SC 514, 516); against mining in the Dehra Dun hills (*Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh*, 1985 SC 652); against mining in adivasi lands of Andhra Pradesh (*Samatha vs. State of Andhra Pradesh*, 1997, a judgment with important consequences for acquisition or use of adivasi lands elsewhere too); on implementation of the Wild Life (Protection) Act 1972 (*WWF vs. Union of India*, WP No 337/95); on implementation of Coastal Regulation Zone measures (*Indian Council for Enviro-Legal Action vs. Union of India*, 1996(3) 579); on protection of the coastal area against destructive practices (*Prof.Sergio Carvalho vs. The State of Goa and Others*, 1989 (1) GLT 276); on the right of citizens to inspect official records (this was before the Right to Information Act came into force) (*Goa Foundation and Ors. vs. North Goa Planning and Development Authority and Ors.* 1995(1) GLT 181); against forest logging and other environmental aspects of Andaman and Nicobar Islands. The judgments in other cases have set important precedents and directions for the further development of policy, law and practice. For instance, the *Godavarman* and the *WWF vs Union of India* cases have led to the orders that no forest, National Park or Sanctuary can be dereserved without the approval of the Supreme Court, no non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act, 1980 had been obtained, New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

Some judgments not directly related to environmental cases, also have significant implications for the struggle to establish environment as a human right. Mention should especially be made of a number of cases in which the Constitutional Right to Life (Article 21) has been interpreted widely to include a series of basic rights that include environment and livelihoods. In *Francis Coralie vs. Union Territory of Delhi* (AIR 1981 SC 746), Justice Bhagwati observed: "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings." In *Shantistar Builders vs. Narayan Khimalal Totame* (AIR 1990 SC 630), the Supreme Court said: "Basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in." In *Olga Tellis case* (AIR 1986 SC 180) the Supreme Court observed "An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the

easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.... That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.” environmental crisis is causing enormous disruption of lives and livelihoods, threatening the collapse of its entire life-support system. The poor and unprivileged classes of humans and the other non-human species unfortunately have to bear the main brunt of these environmental problems. Ironically, the crisis is rooted deep in social, economic and political structures, more specifically in relations of inequity of three kind’s Intra-generational inequity, Intra-generational inequity, and Inter-species inequity. Inequities in the relations between people and countries have also allowed the imposition of unsustainable and destructive models of ‘development’. The process of ‘development’ has been characterized by the massive expansion of energy and resource-intensive industrial and urban activity, and major projects like large dams, commercial forestry, and mining and chemical-intensive agriculture. The resource demand for the economic progress of a minority of people has lead to the narrowing of the natural resource base for the survival of the economically poor and powerless. This has happened either by direct transfer of resources into cities and industrial complexes, or by the destruction of life-support systems for rural communities everywhere.

In *Re Noise Pollution (V)* [17] the cries of a rape victim for help went unheeded in the blaring noise of loudspeaker in the neighborhood. The victim committed suicide. Public interest litigation was filed. The court said that article 21 of the constitution guarantees life and personal liberty to all persons... it guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person’s life meaning full, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Any one who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbour’s or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to the degree and the surrounding circumstances, the place and the time.

In *Research Foundation for science Technology and Natural resources Policy v. Union of India and Another*[18] Dumping of hazardous waste, whether directions shall be issued for destruction of consignments with a view to protect environment and, if not, in what other manner consignments may be dealt with it was held, precautionary principles are fully applicable to facts and circumstances of the case and only appropriate course to protect environments is to direct destruction of consignments by incineration as recommended by Monitoring Committee

In *Intellectuals Forum, Tirupathi v. State of AP and others* [19] Leave granted. The present matter raises two kinds of questions. Firstly, at a jurisprudential level, it falls on this Court to lay down the law regarding the use of public lands or natural resources. In this case the Court has reiterated the importance of the Doctrine of Public Trust in maintaining sustainable development which has been declared as inalienable human right by UN General Assembly.

In *MC Mehta v. Union of India and others* [20]whether mining activity carried out in Villages Khori Jamalpur and Sirohi in District Faridabad in Haryana are in violation of the orders passed by this Court on 6th May, 2002 was in question. It was held, it does not appear that area in question falls under any category of prohibition for carrying out mining activity. But another aspect that remains to be examined is about impact of mining in the villages in question on environment, Merely on basis of photographs or plying of large number of trucks per day, a direction can not be made for stopping mining activity Monitoring Committee constituted in terms of directions in M.C. Mehta's case is directed to inspect the mining activity being carried on in 75.05 hectares in village Khori Jamalpur and in 50.568 hectares in village Sirohi in Faridabad district and report the impact. In *Karnataka Industrial Areas Development Board v. C. Kenchappa and others* [21] in consonance with the principle of 'Sustainable Development', a serious

endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

The advancement of the relationship between human rights and the environment would enable the incorporation of human rights principles within an environmental scope, such as anti-discrimination standards, the need for social participation and the protection of vulnerable groups. 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 and generation of concrete solutions for cases of abuses. Of course, one of the most important consequences is to provide victims of environmental degradation the possibility to access to justice. Given the occasional helplessness suffered by victims of environmental degradation, linking human rights and the environment brings such victims closer to the mechanisms of protection that are provided for by human rights law. Thus besides the human rights enactment judiciary basing on Constitutional provisions, protecting the basic human right to pollution free environment.

**Conclusion:** It is apparent that environmental and human rights are inextricably linked. As we increasingly recognize the serious impact of a degraded environment on human health and well being, we are better placed to adjust our policies and cultural practices to reflect our enhanced understanding. As a result, we should be able to protect human rights and human dignity within its broader social, economic and cultural context by drawing from and contributing to those who are actively engaged in the environmental and public health arenas. This should also facilitate those who are working in the environmental and conservation fields to develop a better working relationship with those in the human rights arena. This will eventually lead to the articulation of a more integrated approach to dealing with socio-economic and environmental problems, encouraging the development of a sustainable model for the preservation of biological resources and natural ecosystems, for the use and enjoyment of both present and future generations.

Thus a study of International Human rights law, Constitutional provisions and chronological analysis environmental mission of the courts has been undertaken in order to explicate the development of the ideology of environment as being part of the Human right is justified from the above discussion. Therefore it is evident that the mandate of life saving environment is the basic Human right.

### References:

1. A term coined by the ecologist Raymond Dasmann. The contrasting term is 'biosphere people', those who command resources from anywhere in the world, and are not dependent on local natural resources for their survival. Most dwellers in industrial countries, and urban dwellers in other countries, would be in this category.
  2. Ashish Kothari, Anuprita Patel, Environment and Human Rights An Introductory Essay and Essential Readings NATIONAL HUMAN RIGHTS COMMISSION Faridkot House, Copernicus Marg, New Delhi 110 001, India
  3. *ibid*
  4. Michael J. Kane, Promoting Political Rights to protect the Environment, The Yale Journal of International Law, Volume 18, Number 1, pgs.389-390
  5. Y.K.Sabharwal, Chief Justice of India,
  6. See, for example, A.Boyle and M.Anderson (Eds)., Human Rights Approaches to Environmental Protection ( Oxford, 1996).
  7. Margaret DeMerieux, "*Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms*" 21 (3) Oxford Journal of Legal Studies 521 (2001).
- <sup>7a</sup>. Law Society India Vs Fertilizers and Chemicals Travancore Ltd, AIR 1994 Ker 308 at 321.

<sup>7b</sup> Dr. Nagendra Singh, '*Right to Environment and Sustainable Development as a principle of International law*', Journal of Indian Law Institute, Vol. 29 (1987) p. 290.

<sup>7c</sup> Environmental issues are best handled with the participation of all concerned citizens, at the relevant level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communication and the opportunity to participate in decision making process, states shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative processing, including address and remedy, shall be provided.

<sup>7d</sup> Principles of Rio Declaration

<sup>7e</sup> David A. Taylor, '*Is Environmental Health a Basic Human Right?*', Environmental Health Perspectives, V.112(17); Dec 2004

<sup>7f</sup> UN Commission of Human Rights, Final Report of the Special Rapporteur, UN DOC.E/CN.4/Sub.2/1994/9, 6 July 1994, p. 74

8. See *Yanomami v. Brazil*.

9. See Shyam Divan and Armin Rosencrantz, *Environmental Law and Policy in India: Cases, Materials and Statutes*.

10. Subhash Kumar v. State of Bihar (AIR 1991 SC 420/ 1991 (1) SCC 598.

11. (1998) 9 SCC 589. In *K. Ramakrishnan v. State of Kerala* [AIR 1999 Kerala 385] the court held that smoking in public places causes positive nuisance.

12. *M.C. Mehta v. Union of India* (1991) AIR SC 813 (Vehicular Pollution Case); (1992) Supp. (2) SCC 85; (1992) Supp. (2) SCC 86; (1992) 3 SCC 25.

13. Armin Rosencrantz et al, in 'Region/country report: South Asia: India' (1993) Yearbook of International Environmental Law, vol. 4. 415-419.

14. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180: In the Court's view, 'Deprive a person of his right to livelihood and you shall deprive him of his life.....Any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by article 21.'

15. 1990(1) SCC 520

16'Precautionary Principle' as interpreted by the Supreme Court means that the required environmental measures should be taken by the State and statutory authorities and the lack of scientific certainty cannot be a ground for postponing such measures where there are serious threats to ecology. That the State and statutory authorities must anticipate, prevent and address the causes of environmental degradation and the 'onus of proof' is on the industry to show that its actions are environmentally benign. 'Polluter Pays Principle' as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damage to the environment.

17. *Noise Pollution Vs In Re* {(2005) 5 SCC 733/Pr 10}

18. *Research Foundation for science Technology and Natural resources Policy v. Union of India and Another* SC 2005

19. *Intellectuals Forum v. State of A.P.* (2006) 3 SCC 549

20. *MC Mehta v. Union of India* 2006 SC

21. *karnataka Industrial Areas Development Board v. C. Kenchappa and others*