

A HUMAN RIGHTS APPROACH TO ENVIRONMENT PROTECTION IN INDIA

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By

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DECLARATION

I declare that the dissertation entitled “A Human Rights Approach to Environment Protection in India” has been prepared by me under the guidance of Dr.Puneet Pathak, Assistant Professor, Centre for Environmental Law, School of Legal Studies and Governance, Central University of Punjab. No part of this dissertation has formed the basis for the award of any degree or fellowship previously.

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CERTIFICATE

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ABSTRACT

A Human Rights Approach to Environment Protection in India

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Human Rights and Environment protection have traditionally been envisaged as two distinct independent approaches intended for the well-being of humanity. Towards the last two decades, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights. It is evident by the outcome documents of international conferences, emerging international environmental law and its practices which considers the human rights framework is an effective means to achieving the ends of conservation and environment protection. However, the concept of sustainable development has tried to mitigate environmental problems to a great extent but the gradual application of human rights approaches to environment protection have proved to be more fruitful. As environmental law is in the process of evolving so, it needs to have a strong and well-defined structure for wide recognition. It goes without saying that the relationship of human rights and environment protection are indispensable as environment degradation leads to numerous human rights violations. The present study is intended to describe the interlinkage between environmental protection and human rights approaches by analysing instruments, initiatives taken by environmental and human rights bodies and the judicial pronouncement of various

tribunals. It also endeavours to search the linkage by analysing different kinds of stiff resistance against mega projects resulted environmental degradation, migration, unemployment and the violation of other human rights in India. Further, it describes the role of the Indian Judiciary in the development of Indian environmental jurisprudence by putting the issue of environment in the framework of fundamental rights. The credit for striking a balance between development and the environment goes to the judiciary by its own vibrant interpretation to meet the constitutional objectives.

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Name and Signature of Student

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LIST OF ABBREVIATION

ACHPR	:	African Charter on Human and People's Rights
ACHR	:	American Convention on Human Rights
ACMHR	:	African Commission on Human and People's Rights
AfCHPR	:	African Convention on Human and Peoples' Rights
AIR	:	All India Reporter
Art.	:	Article
CE	:	Council of Europe
CEDAW	:	Convention on Elimination on All forms of Discrimination Against
CHR	:	UN Commission on Human Rights
Com.	:	Committee
CRC	:	Convention on the Rights of the Child Discrimination
Doc.	:	Documents
ECHR	:	European Convention on Human Rights and Fundamental Freedom
ECHR	:	European Convention on Human Rights and Fundamental Freedom
ECOSOC	:	Economic and Social Council of the United Nations
Ed.	:	Edited
EPW	:	Economic and Political Weekly
ESC	:	European Social Charter
EUCM	:	European Commission on Human Rights
EUCT	:	European Court on Human Rights
GA	:	General Assembly of the United Nations
GA Res.	:	Resolution of the General Assembly of United Nations
GAOR	:	Official Record of General Assembly of the United Nations
HRC	:	Human Rights Committee
IACT	:	Inter-American Court of Human Rights
ICCPR	:	International Covenant on Civil and Political Rights
ICERD	:	International Convention on the Elimination of All Forms of Racial
ICESCR	:	International Covenant on Economic Social and Cultural Rights

ICLQ	:	International and Comparative Law Quarterly
IELRC	:	International Environmental Law Research Center
IIED	:	International Institute for Environment and Development
IJEL	:	Indian Journal of Environmental Law
ILO	:	International Labour Organization
JILI	:	Journal of Indian Law Institute
LEAD	:	Law Environment and Development Journal
MoEF	:	Ministry of Environment and Forest
NGO	:	Non-Governmental Organization
No.	:	Number
OAU	:	Organization of African Unity
OHCHR	:	Office of U.N. High Commissioner for Human Rights
OR	:	Official Records
Para.	:	Paragraph
Res.	:	Resolutions
Rev.	:	Revision
SAHRDC	:	South Asian Human Rights Documentation Center
SC	:	Security Council of United Nations
SCC	:	Supreme Court Cases
Sess.	:	Session
Supp.	:	Supplement
UDHR	:	Universal Declaration of Human Rights
UN	:	United Nations
UNC	:	United Nations Chronicle
UNDP	:	United Nations Development Programme
UNDP	:	United Nations Development Programme
UNFCCC	:	United Nations Framework Convention on Climate Change
UNHCHR	:	United Nations High Commissioner for Human Rights
UNTS	:	United Nations Treaty Series
WHO	:	World Health Organisation
		Women
UNEP	:	United Nations Environment Programme

UNHRC : United Nations Human Rights Council
UNESCO : United Nations Educational, Scientific and Cultural
Organization
UNGA : United Nations General Assembly

CHAPTER-1

Introduction

1. Framework of Study

Human rights and environmental protection are two of the main concerns of modern international law. After the establishment of the UN the main focus of the international community was on the protection and promotion of human rights. It was only in 1972 when the voice about environmental protection rose at the domestic level and became the global political agenda. The movement started from Stockholm declaration, 1972 and is still continue by international conferences such as Rio Conference, 1992, Jonnesburg Conference, 2002 and Rio+20 Conference, 2012 in which governments recognized the ecological interdependence of the world and acknowledged an urgent need to take action for the protection of the environment. Though the issue of environment protection came later to human rights on the global agenda but these two areas are interrelated, interconnected, mutually responsive. Both are concerned with the development and promotion of human well-being. To live in a healthy and quality environment is the fundamental or basic human right. While human rights are necessary to the overall development of human personality, material comfort, and the environment is necessary to safeguard the conditions conducive to such a personality development (Lal, 1995). Human rights and environmental protection are linked because both are required in order to achieve the highest quality of life for all.

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

toxic chemicals through careless hazardous waste disposal or industrial practices, utilization of pesticides for agricultural purposes.

Traditional international environmental law, that addresses the rights and obligations between states, has little to offer individuals harmed due to environmental damage. People whose health or livelihood is threatened by exposure to hazardous waste or the pollution of streams and rivers, depletion of ground water level, often have no recourse under international environmental laws. In addition, people harmed by environmental degradation are often ethnic minority groups, indigenous peoples, who are marginalized within their own countries and effectively excluded from political participation or redress under national laws (UNGA Res., 2997 (XXVII), 1972). Linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center. Articulating the fundamental rights of peoples with respect to the environment creates the opportunity to secure those rights through human rights bodies in an international forum as well as the national tribunals. In this regard, the contribution made by the Indian judiciary in the development of environmental jurisprudence and provide remedies to the victim of environmental harm by applying the right based approach to environmental protection is a clear example of how the framework of human rights can contribute in the protection of fauna and flora and the very existence of the humanity.

2. Statement of the problem

Linking human rights with the environment creates a rights based approach to environmental protection that places the people harmed by environmental degradation at its centre.

Area-1: Linkage between the environment and human rights.

Problem: Since the two approaches have a strong linkage and the wide-spread environmental degradation due to unsustainable development lead to the violation of a fundamental human rights.

Area-2: Growing recognition of the linkage amongst Environment, Development and Human Rights issues.

Problem: There is a growing recognition between environment and human rights in international instruments, judicial pronouncement of international and national tribunals.

Area-3: Right based approach to environmental protection adopted by Indian judiciary.

Problem: The Indian judiciary played a remarkable role to put the issue of environmental degradation in the framework of fundamental rights to provide remedies to the victim of environmental harm.

3. Background of the Study

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

The first approach is one where environmental protection is described as a possible means of fulfilling human rights standards. Here, the end is fulfilling human rights, and the route is through environmental law. The second approach states that the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection. This highlights the presently existing human rights as a route to environmental protection. The focus is on the existing human right. The third approach to the question of 'human rights and the environment' is to deny the existence of any formal connection between the two at all. According to this approach, there is no requirement for an 'environmental human right.' The argument goes that since the Stockholm Conference in 1972, international environmental law has developed to such extents that even the domestic environments of states has been internationalized and it is unnecessary to have a separate human right to a decent environment. However, there are many who oppose this view. They argue that there is in fact a benefit to bringing environmental law under the ambit of human rights. Environmental law has in many parts of the world, be it at the international or domestic level, suffered from the problem of

standing. Because of this barrier, it is often difficult for individuals or groups to challenge infringements of environmental law.

There has been a great deal of debate on the theoretical soundness of the idea of a human right or rights to a satisfactory environment (Boyle & Anderson, 1996). There can occasionally be a conflict between the established human rights and the protection of the environment. Nevertheless, clearly there is a *prima facie* rhetorical and moral advantage in making the environment a human rights issue (De Merieux, 2001). Whether international human rights law can contribute to environmental protection is an issue that remains to be conclusively resolved, but scholars have discussed the relationship between human rights and environmental protection at length. Dinah Shelton claims that human rights and environmental protection represent 'overlapping social values with a core of common goals' (Paula, 2010, p.19).

There has been a simultaneous increase in legal claims for both human rights and environmental goods, which is a clear reflection of the link between 'human' and the 'environment' and the dependence of human life on the environment. Both the environment and human rights law have some common points. Both disciplines have deep social roots and both have become internationalized.

The linkage between the environment and human rights may be traced in two ways, either one looks at the existing international human rights law in order to examine whether it provides environmental rights, or one can study international environmental law and looks for human rights norms within it. There is no explicit right to environmental quality in the core international human rights instruments i.e. UDHR, ICCPR and ICESCR. However, ICESCR mentioned the issue of the environment in relation to hygiene (ICESCR Art. 7). Under CRC, the issue of environment discussed in terms of prevention of disease and malnutrition (CRC Art. 24). These references relating to the environment attached to a particular issue and do not recognise the human right to a quality environment.

However, regional human rights instruments such as the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights make explicit references to the environment. The human rights treaty bodies and regional human

rights mechanisms have interpreted their respective human rights instruments in a manner that recognizes the environmental dimensions of protected rights (ACHPR, Art. 24).

The larger part of international environmental law is still belongs to the category of soft law. In the twenty years between the United Nations Conference on the Human Environment in 1972 and the U.N. Conference on Environment and Development, 1992 increasing attention has been paid to the impact of environmental problems on human rights (Lal, 1995). Even in 1972, the Stockholm Declaration stated the human right to adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being (A/Conf.48/14, 1972). The Rio Declaration on Environment and Development, 1992 included the concepts of sustainable development and the rights of future generations to a healthy environment. It states that human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature (A/Conf.151/5/rev.1, 1992).

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

Besides these conferences, some progress made in the form of resolutions, special reports and debate by human rights bodies and specialized agencies working in the area of environment and human rights in this regard. UNGA in its resolution in 1990 observed that environmental protection is indivisible from the achievement of full enjoyment of human rights by all (UNGA Res. 45/94, 1990).

One of the most encouraging steps in this direction has been the work in the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1994 the Special Rapporteur to the sub-commission proposed a set of draft principles providing for a stand alone environmental right, described as the right “to a secure healthy and ecologically sound environment” (E/CN.4/Sub.2/1994/9, 1994, p.

74-77). 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 (OHCHR, 2002). It is also observed the role of environmental protection as a pre-condition for the effective enjoyment of human rights. The United Nations Secretary General's 2005 report on the Relationship between Human Rights and the Environment concluded that 'since the World Summit on Sustainable Development (2002), there has been growing recognition of the connection between environmental protection and human rights'(E/CN.4/2005/96, 2005)

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

4. Need of the study

Despite the evident relationship between environmental degradation and human suffering, human rights violations and environmental degradation have been treated by most organizations and governments as unrelated issues. Just as human rights advocates have tended to place only civil and political rights onto their agenda, environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. As a result, the victims of environmental degradation are unprotected by the laws and mechanisms established to address human rights abuses. The main focus of the international community since the establishment of the UN has been on guaranteeing civil and political rights and environmental protection is relatively the younger branch of

international law. Environmental advocacy has also taken on a narrow scope, focusing principally on natural resource preservation.

All policies and programmes relating to environment protection are concerned with air, forests, and water and usually dealt with as an infrastructure issue or concern with a sector such as agriculture, forestry, or mining etc. Academia also generally addresses the environment from a strictly natural-resource approach. In fact, the environment and its relationship with human are generally not considered to be a human rights issue. Environmentalist and human rights activist treat the environment and human rights through separate frameworks and approaches. They are likely to be treated with a lower set of standards and priority than would be human rights concerns. These make the need to address the link between human rights and environment urgent. There is a great need to understand this relationship clearly and develop the necessary mechanisms, laws, and protection to guarantee socially and environmentally sustainable development. Linking Human Rights and the Environment gather a variety of contributions from human rights and environmental experts, who have given thought to the links between the environment and human rights and especially between the environment and human rights law. There is a great need to research the links between these two inseparable and interdependent areas of law and related issues and approaches, and more specifically the growing interrelationship between human rights law and the environment.

5. Significance of the study

The study conducted is substantially contributed in the field of the study and a step forward to the conceptual soundness of the linkage between human rights and environment protection by analysing the international, regional and national soft laws and hard laws as well as its interpretation by international, regional and national tribunals. It is also relevant in the context of unsustainable development pattern which is the main cause of environment degradation and lead to the violation of human rights. The study further analyses the right based approach adopted by the Indian judiciary to utilise the framework of fundamental rights for the protection of the environment and provides the remedy to the victim of environmental harm. The inclusion of human rights consideration in the policy and programme intended for the protection of the environment can better serve both the protection of human rights

and the protection of flora and fauna. Thus the present work is significant in the field of academic which would be further elaborated to link these two areas of international law and practice by some future researches and enrich this particular research area.

6. Limitation of the study

The study confined to the debate on the relation between two areas of contemporary importance i.e. human rights and the environment. It focuses the relation between these two approaches and not only concern to the particular human right to a decent environment. Though this right is discussed during the study as a part of the human rights approach. During the discussion on the issue of human rights violation due to the environment degradation which is the result of development projects without considering the issue of environment and human rights, the study confined only to some of the incidents and controversies in India. Further, the work analyses selective case studies where the Indian judiciary particularly the judicial pronouncement of the Supreme Court and High Courts employed the framework of fundamental rights and other constitutional provisions for the protection of the environment and provide relief to the victim of environment harm.

7. Project of Study

The present research work is divided into five Chapters to evaluate the linkages between environment and human rights approaches. The First Chapter divided in two parts in which the first part provides the framework of the study and the second part described the project of the study. The first part starts with the general background of the work which provide the basic theme of the research area. It describes the statement of the problems and the main area on which the present research work will focus. The main areas are linkage between environment and human rights; growing recognition of the linkage in international, regional and national level; the right based approach to environmental protection adopted by Indian judiciary. Further it described in a concise form the background and need of the study, research questions and the methodology used in the present research work. It also provides the significance and the limitation of the study. The second

part of the chapter provides the details of each chapter in brief to understand the project of the study.

The Second Chapter provides the review of literature of the present research study in which the relevant materials have been discussed. The chapter divided into three parts. The first part analyses the relevant material focused on the theoretical debate of the linkage between the environment and human rights. The second part discusses the recent research which throws light on various present day activities which lead to violations of human rights. The third part talks about the relevant material which analyses the role of Indian judiciary in the protection of environment by applying the rights based approach.

The Third chapter analyses materials as well as the methodology used during the study. It discusses the various materials such as book, journals, online resources, various reports and international instruments used as the secondary source. Various judicial decisions of international tribunals national tribunals of different countries with special reference of the cases decided by Indian judiciary have been discussed as a primary source to show how these tribunals have interpreted various human rights instruments for the protection of environment.

The fourth chapter divided into the sections. The first section provides the theoretical soundness of the connection between environment and human rights. Further, it examines how the framework of human rights which is developed branch of international law facilitate the protection of the environment, another branch of international law which is still dominated by soft law and some part of it is still in the developing stage. An attempt has been made to link the two branches through an insight into the international environmental and human rights instruments, the judicial pronouncement delivered by international tribunals and the decisions of specialized agencies of the UN. The second section discusses the issue of development, environmental degradation and the infringement of human rights. In this regard, description has been given of different devastating activities which are going in the name of development like: mining and construction of mega dams and the like, which lead to serious environmental degradation and resulted in the violation of fundamental human rights guaranteed in the international human rights instruments. The gravity of the situation highlights through a study of selective environmental

movements happened in India as a result of the unmindful development move. The third section throws light on the constitutional mandates and judicial interpretation of such provisions intended to protect the environment and provide relief to the victim of environmental harm. Though, the Indian constitution does not specifically discuss the issue of environment in a great length but later on signing various international instruments gradually a plethora of laws were made in tandem with the international scenario. The move adopted by the judiciary in this regard is quite appreciable due to the fact that it gave a further push to the need to apply international principles in the country with urgent attention. Various environmental principles have been discussed at a later stage adopted from the international level and developed by the judiciary itself.

The last Chapter is the conclusion of the work which encompasses all the important issues discussed in the previous chapters to reach on a concrete conclusion that the concept of environmental protection is closely related to human rights protection and promotion. Failure to preserve a healthy environment has a clear and ever increasing effect on the enjoyment of human rights. Taking into account the absence of petition procedures in environmental treaties and international institutions, human rights organs are the only international alternative to hold states accountable for action or omission related to environmental protection.

CHAPTER-2

Review of Literature

The review of literature has been prepared in three different sections keeping the major points of the research in mind. Part: 1 of the review is related to the relation between human rights approach and the protection of environment. Part: 2 is related to the discussion in connection with development and environmental issues in the Indian perspective and sustainable development as well. Part: 3 is the evaluation of various Indian courts judgments with respect to the application of human rights law for the protection of environment. The following are the brief review of some of the present works:

1. Literature on relation between human rights approach and the protection of the environment

Boyle (2013) begin with the issue that for the protection of environment looking towards human rights document is a good initiative but now the time has come to talk of environmental rights directly. Further, he mentions that most of human rights treaties either make no explicit reference to the environment at all or uses very narrow terms related to the environment. Among human rights treaties only the 1981 African Charter on Human and People's Rights proclaims environmental rights in broadly qualitative terms.

Boyle (2012) states that it is self-evident that insofar as we are concerned with the environmental dimensions of rights found in avowedly human rights treaties – the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (AmCHR), and the African Convention on Human and Peoples' Rights (AfCHPR) – then we are necessarily talking about the 'greening' of existing human rights law rather than the addition of new rights to existing treaties. However, the relationship between human rights and environmental protection in international law is far from simple or straightforward.

Holmes (2010) in the beginning of his article states that the relationship between a safe and healthy environment and human rights has been on the global agenda from the Stockholm Conference, 1972 onwards. The very first article of the conference

states that man's natural and self-made environment is 'essential to his well-being and to the enjoyment of basic human rights and the right to life itself.' Further he goes into the details of the approaches to linking human rights and the environment. The first approach is to view a quality environment as an underlying precondition for the enjoyment of existing human rights. The second approach involves focussing on the procedural rights of people in relation to control over their environment, such as rights to participate in environmental decision-making and access to justice. The approach involves a substantive justiciable right to a certain quality of environment. Quiroz (2010) clearly outlines that human rights have inconsistently appeared in the discourse of environment and development from the Stockholm Conference, 1972 onwards. The Stockholm Conference making commitment towards ensuring adequate conditions of living and development march in the direction of linking human rights to environment protection. In fact, the Rio Declaration formulates a link between human rights and environmental protection largely in procedural terms (Principle 108). Despite this, conceptual integration of human rights is limited. Therefore, he suggest that by adopting a human rights based approach, the environmental model would improve its effectiveness by enhancing the ability to manage risks and improve environmental and development outcomes.

Cullet (1995) supporting the relation between the two mentions that international environment al law and human rights law have intertwined objectives and strive for better conditions of life on the earth. He further argues that preservation, conservation, and restoration of the environment are a necessary and integral part of the enjoyment of the rights to health, to food and to life including a decent quality of life. Thus, the close link clearly shows that the right to environment can easily be incorporated in the core of human rights protection whose ultimate purpose is the blooming of personality of all human beings. The tight separation between the different branches of international law is not conducive to positive interactions between environmental and human rights law.

Sabharwal (2005) in view of this discussion tries to find out common links between the human rights law and environmental law mentioning that both the laws have deep social roots and their nature is internationalized because their objectives towards the emancipation of whole humanity. Further, he talks of different human rights approaches to environment protection firstly, that environment protection is a means of fulfilling human rights standards. Secondly, that providing legal status of

human rights is an effective means of environment protection. Thirdly, the third approach is that there is no requirement for an environmental human rights as since the Stockholm Conference, international environmental law has developed to such an extent that even the domestic environment of states has been internationalized. Nijhwan (2013), feels that the environmental law in absence of hard law documents appears to be lagging in dealing with emerging environmental problems. Lastly, Paula (2010) admits this point that in the modern international law regime, human rights and environment protection are two main concerns. With the passage of time, international environmental law has followed stricter standards but it lacks effective enforcement mechanisms. So, the state cannot be held responsible for environmental degradation by an individual. The La Oroya case was the first to be admitted by the Inter-American Commission on Human Rights (IACHR) that specifically alleged that environmental degradation caused by the activities of a company could violate the rights to health, life, and personal integrity of the population of the region.

2. Literature on the discussion in connection with development and environmental issues in the Indian perspective

Anton and Shelton (2011) presents a detailed description of environment protection from the angle of human rights. In this regard, it talks of the application of Environment Impact Assessment (EIA) procedure to protect the rights related to the indigenous people who are residing in their own way. In view of environment protection and human rights, they have discussed various international environmental law principles like: Polluter Pays Principle, Public Trust Doctrine, and Inter-Generational Equity. The following principles have become effective tools to protect human rights under the environmental law regime. This is the very reason that these principles are being used to deliver justice to the affected people of man-made disasters in a just, fair and reasonable manner.

Kothari and Patel (2006) supplementing to the point at first, provides an idea of environment and human rights, then they discuss various side-effects of unregulated developmental issues at the cost of a sound environment framework. Further, they also discuss how the present serious environmental issues can be lessened following the method like: redefining developmental model taking into consideration

of EIA procedures.

Sharma (2009) discusses this point how the Tehri project was conceived by the Geological Survey of India in 1949 to fulfil multi needs and how various environmental formalities were overlooked by the government. Therefore, on the initiation of this mega project how the local residents measuring its devastating effects came forward to protest the move under the leadership of Sunderlal Bahuguna and finally set a milestone in the environmental movement area to protect their culture, livelihood and finally lives.

Koonan (2007) adding to the Tehri project controversy gives a detailed description on how the Plachimada controversy arose in 2003. He expresses his concern over the judgment delivered by the double judge bench of the Kerala High Court in favour of corporate houses in spite of severe protests on behalf of the local residents. In future, he hopes that the Supreme Court should while delivering the judgment should definitely consider the international principle like inter-generational equity.

Baxi (2010) supplementing to Plachimda issue adds that in wake of the Bhopal disaster a new jurisprudence of human solidarity has emerged. Further, he points out that the catastrophe badly affected nearly a quarter of a million human beings and killing more than 10,000 people that's why, the Judge Keenan describes it the world's largest peacetime industrial disaster. Finally, he hopes that Bhopal catastrophe marks the rise of new social movements in the context of so called ideology of developmentalism.

Sachs (2004) focusses on the aspects of environmental human rights, which came into existence when subsistence is dependent on the right to use natural resources. Before the Second World War, it was only states that could claim rights. The rights of persons were first recognized at the international level only with the Universal Declaration of Human Rights in 1948. In this regard, he mentions the Narmada Struggle as a striking point for environmental human rights.

Gearty (2010) on the same line mentions that human rights advocacy emerges as a social movement of the very first importance. In their commitment to change, their attitude to power and in their mode of organizing, human rights groups resemble the green and the environmental activists who have done so much to bring the need for environmental protection to public attention. Now the need of the hour is to study human rights issues and environment protection in tandem as both the laws have many more similarities.

Giorgetta (2002) puts forth the argument that sustainable development has emerged as a new concept balancing the concern of development and environment protection at the same time. Thus sustainable development has been successful in minimising the level of human rights violations. Further, the author adds when sustainable development is not properly and coherently addressed, no progress can be made towards reconciling the interests of the environment, human rights and development.

Shelton (2010) mentions that socio-economic development is a major cause of environmental degradation and puts pressure on environmental resources. At this crucial stage, sustainable development ensures that socio-economic developments must remain firmly attached to their ecological roots. Thus, it integrates environmental protection and socioeconomic development under the internationally recognized principle of intergenerational and intragenerational equity.

3. Literature on the judicial pronouncements delivered by the various Indian courts on the environment by applying human rights perspectives

Leelakrishnan (2007) tries to find out the root of environmental law in our ancient texts and mentions that India has a long tradition of protecting the environment. The texts like: Vedas, Upanishads, Smritis and Puranas talk of environment protection at a great length. Remaining in harmony with the nature was a part of dharma. The recognition of well-being of human beings at the international conferences like: Stockholman Conference, 1972 and Rio Conference, 1992 evoked the government of India to make laws that could protect the well-being of the people. In this regard, the Indian judiciary has played a seminal role and used public interest litigation as a convenient tool to create a new environmental jurisprudence in the country.

Nimukshakavi (2006) going ahead provides a detailed description of environmental jurisprudence development in India. It discusses the development of jurisprudential aspect of environment in a phased manner by the Indian judiciary. She asserts that the idea of environmental jurisprudence gained momentum after the Stockholm Declaration of 1972. Further, it has been tried to show that environmental jurisprudence is an outcome of the human rights notion of well-being and a dignified life.

Sahu (2008) also adds this point that the Supreme Court of India has made commendable efforts in developing environmental jurisprudence which has been criticized by a section of people mentioning it as “Garbage Supervisor”. The implementation of innovative tool of PIL has given a ray of hope among the poor masses and environmental concerns acquired the status of fundamental rights.

Divan and Armin (2005) tries to provide a solid base to environmental law concepts with the help of cases in details along with critical commentaries given after every discussion. It starts with the most diverse international conference (Stockholm Declaration) which influenced the Indian legislation to make a plethora of laws to mitigate the emerging challenges of the present time like: Global Warming and Ozone Depletion etc. Apart from this all, they have also discussed the future effect of policy implications that is to say what type of policy should be adopted to make the development process inclusive not exclusive. Thus, the reflection of human rights approach to environment can be felt in the future to come.

Thakur (1997) further discusses on environmental policy in India supported with landmark cases decided over a period of time by the Indian judiciary after the Stockholm Conference. It mainly gives a detailed account on how the acceptance of public interest litigation cases in a large number by the judiciary brought a ray of hope among the poor masses of the country. Thus, mass awareness as to environmental concerns awaken the people in general and civil society in particular which mounted pressure on the government to make appropriate environmental legislations to save the people from environmental hazards.

Jaswal and Jaswal (2011) also provides a detailed account of the constitutional proviso as to environment protection and the role of the judiciary in pushing the agendum of sustainable development to cope with the complexities arising out the integration of environment protection and development pursuits. Examples have been put forward of the cases decided by the different courts in support of sustainable development. Thus, they feel that by doing so, the court has remained successful in reposing the faith of the people. Art form this all, a critical analysis of various Indian enactments like Air Act, 1981 and Water Act, 1974 have been discussed elaborately.

Tiwari (2011) also supplements the point mentioning that how the judgments delivered by the Supreme Court of India during 1990s through Public Interest Litigation played a vital role in nourishing the pillar of environmental governance.

Thus, the judgments gives an impression that environmental issues no longer be neglected as the environment constitutes the very basic element of life support system for human beings.

Lastly, Shastri (2008) begins with the point that human beings at the primary stage, therefore, worshipped the nature but increasing consumerism tendency among the technologically empowered people gave rise to environmental degradation in myriad ways. Moreover, he throws light on how the international community made a remarkable progress at the front of protecting environment. In the light of international covenants and conferences, it also tries to show how our judicial pronouncement keep pace with the international commitments. With the cases decided by various Indian courts in India have proved how they have shaped a wide scope of application of human rights law to environment law.

CHAPTER-3

Materials and Methods

1. Materials

The study has been done on the basis of available primary and secondary resources. The following materials have been used during the study:

1. Different law books relating to environmental protection have been consulted.
2. Various international and national law journals especially relating to environmental protection have been surveyed to establish the correlation between environmental protection and human rights.
3. Various resolutions, declarations which are in the category in the soft law have been studied for the purpose particularly resolutions of UNEP, UNGA, ECOSOC, HRC and other specialized agencies of the United Nations have been surveyed. In this reference, declaration, commitments and principles passed since the Stockholm Conference, 1972 to Rio+20 Conference, 2012 have also been studied.
4. Various international instruments relating to environmental protection and human rights which are in the category of hard law have been surveyed to trace out provisions which support the interlinkage between environmental degradation and its consequences to human rights violation.
5. The judicial pronouncement of international tribunals and national courts in general and Indian Supreme Court and high courts in particular have been collected and surveyed from online resources such as Manupatra, Hein Online and Westlaw etc.
6. Some regional instruments relating to the environment and Human Rights as well as judicial pronouncement by regional tribunals which are of immense help have also been used to make the study more concrete and authentic.

2. Research Methodology and Research Questions

In the present study, the analytical method of research has adopted and a systematic analysis is made regarding the significance of human rights approach to the protection of the environment. The research work is mainly doctrinaire in nature. The nature of the research topic is such that exhaustive materials on the topic are not available easily. Keeping this problem in mind, an attempt has been made to consider all points available in different law books, well researched articles, international instruments, regional documents and resolutions as well. The analytical method of research fit into the vast spectrum of materials available on different platforms. It also helped in developing a critical approach to find out facts and analyses in from a different perspectives. In fact, this research topic throws some very worth considering points to delve into the problems.

The ambit of the researches wide which is not feasible to complete it in such a limited time. It requires detailed time to work upon but considering time and resource constraints, attempt has been made to complete it only by the doctrinal method of research. The research topic includes the following broad areas into consideration:

1. To study the relation between human rights approach and the protection of the environment with the relevant international law and practices to understand the significance of human rights with respect to the environment.
2. To analyse selective unsustainable development activities posing threat to the environment and consequently the violation of human rights in the Indian perspective.
3. To critically examine the judicial pronouncements delivered by the various Indian courts on environment by applying human rights perspectives.

CHAPTER-4

Detailed Discussion

The chapter relating to detailed discussion is divided into three sections. The first section provides the theoretical soundness of the connection between environment and human rights. Further, it examines how the framework of human rights which is developed branch of international law facilitate the protection of the environment, another branch of international law which is still dominated by soft law and some part of it is still in the developing stage. An attempt has been made to link the two branches through an insight into the international environmental and human rights instruments, the judicial pronouncement delivered by international tribunals and the decisions of specialized agencies of the UN.

The second section discusses the issue of development, environmental degradation and the infringement of human rights. In this regard, description has been given of different devastating activities which are going in the name of development activities like: mining and construction of mega dams and the like, which lead to serious environmental degradation and resulted in the violation of fundamental human rights guaranteed in the international human rights instruments. The gravity of the situation highlights through a study of selective environmental movements happened in India as a result of the unmindful development move.

The third section throws light on the constitutional mandates and judicial interpretation of such provisions intended to protect the environment and provide relief to the victim of environmental harm. Though, the Indian constitution does not specifically discuss issue of environment in a great length but later on signing various international instruments gradually a plethora of laws were made in tandem with the international scenario. The move adopted by the judiciary in this regard is quite appreciable due to the fact that it gave a further push to the need to apply international principles in the country with urgent attention. Various environmental principles have been discussed at a later stage adopted from the international level and developed by the judiciary itself. The details of all three sections are contained herein.

Section-1: Linkage between Human Rights and Environment Protection

There is no denying fact that there are inherent relationships between the two disciplines of environmental law and human rights law as environment degradation leads to many human rights violations at an unexpected level. For instance, the right to life cannot be realized without basic rights to safe water, air and land (IIED, 2001). Whether international human rights law can contribute to environmental protection is an issue that remains to be conclusively determined but academicians or scholars of both fields have discussed the interlinkages between environmental protection and human rights at length. To answer this question, it is necessary to search out the provision in these two branches of law which reflect the relationship between the two disciplines. In this chapter, an attempt has made to find out the provisions relating to human rights in international environmental law and provisions relating to environmental protection as well as the right to a healthy environment in international human rights law.

1. Conceptual Discourse

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. Its striking example can be seen in the developing countries, where people are bound to face the hazardous results of environmental degradation, which are forcing people to suffer from incurable diseases, loss of livelihood, and displacement to another region. Overall, a new regime of environmental refugee is cropping up before the international community.

There are certain common points between both the laws i.e. environmental and human rights laws which have paved the way for creating a space for cooperation. Firstly, both environmental law and human rights law have the capacity to affect the people at a larger base due to its socially deepen root. Secondly, both disciplines are trans-boundary in nature that is to say that the environmental problem occurred at one place have the capability to affect the people of other parts as well leading to various human rights violations. In case of pollution, its influence can easily be realized in the form of environmental refugee. Lastly, to mitigate the problems of both the issues needs an integrated international co-operation as it is quite impossible to cope up with the problem single-handedly. Concerning the protection of

environmental rights, there is no consensus as to what kinds of approach should be followed. While having a close look at the approaches to environment protection, there are three major approaches which came up after a detailed discussions took place at different point of time.

The first approach emphasizes that existing human rights instruments i.e. UDHR, ICCPR, ICESCR and CRC etc. are sufficient enough to address the environmental problems, therefore human rights provisions should be interpreted in favor of environmental protection. According to this approach, the legal protection of human rights is an effective means to achieving the ends of environmental protection. This approach therefore, highlights the presently existing human rights as a route to environmental protection.

The second approach aims at framing environmental legislations and establishing institutions concerned. This approach views the emergence of a right to a healthy environment as a human right in the international sphere which emerged in the 1970s. Stockholm Declaration, 1972 established that all persons should have the right to live in a quality environment (A/CONF.48/14/Rev.1,1973). This idea continued to build momentum by 1990, the UNGA adopted a resolution stating that all individuals are entitled to live in an environment adequate for their health and well-being (A/RES/45/94,1990; E/CN.4/Sub.2/1994/9). In 1992, the Rio Declaration characterized the right to a healthy environment as an "entitlement." Principle 10 of the Rio Declaration establishes the right to information, participation, and access to justice, as well as the central role these rights play in the protection of the environment. Moreover, individuals have the right to effective access to judicial and administrative proceedings (A/CONF.151/26 (1992)).

The third approach which finds a middle path between the two above mentioned approaches, that is to say that both should be integrated so as to approach the problems in an efficient way. In this perspective, environmental protection is seen as part of the protection of human rights. Linking human rights to environmental harm allows individuals to use global and regional human rights framework when state violates human rights by allowing substantial environmental degradation. Within this framework, a person can allege that environmental degradation such as: contamination of water and soil, has affected certain rights guaranteed under international human rights instruments.

Human rights protection is strengthened with the incorporation of environmental protection because it extends human rights protection to provide remedy to the victim due to environmental degradation. According to Shelton, the third approach allows individuals to use international and regional human rights complaint procedure in case the state violates human rights by allowing substantial environmental degradation. Taking into account the absence of complaint procedures in international treaties and international environmental institutions, the framework of human rights is the only alternative to hold state accountable for action of omission related to environmental protection (Spieler, 2010).

Further, the approach is well recognised at the regional level human rights system. Regional human rights instruments recognize the right to healthy environment more clearly rather than international human rights instruments. There are two regional human rights instruments that expressly recognize the right to a healthy environment i.e. Art. 24 of the African Charter on Human and Peoples' Rights and in the Inter-American system, Art. 11 of the Protocol of San Salvador, 1988. The European Human Rights System, however, does not have a clause on the right to a healthy environment. Since the 1970s, the Council of Europe has proposed the inclusion of the right to environment to the European Convention on Human Rights several times.

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

In 1994, in the landmark case of *Lopez-Ostra v. Spain* the 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 (Giorgetta, 2002, p. 173).

Again in *Diego Cali & Figli Srl v. Servizi Ecologici Porto Di Genova SpA (SEPG)*, the European Court of Justice states that the prevention of pollution serves the interests of not only current, but also future generations, and remarkably makes reference to Principle 3 of the Rio Declaration and to the report of the WCED (Giorgetta, 2002, p. 194).

2. International Human Rights Instruments

The concept of Human rights can be defined as commonly understood as those rights to which a person is inherently entitled merely for being human which may not be renounced or forfeited. The expression 'human rights' signifies those basic, inherent and inalienable rights of man, without which existence becomes a nullity. They are inherent because they are present in the very nature of man. Human rights are inalienable because they are considered to be so sacrosanct that they cannot be withdrawn from an individual under any circumstance, by any Law of any authority, howsoever high.

The reference point of the above conception of human rights can be traced in the notion of 'natural rights' that was propounded in the 17th century by the philosopher John Locke who urged that certain rights are natural to individuals as human beings, having existed even in the state of nature before the development of societies and emergence of the state (Weston, 2000). The proponents of natural rights urged that "natural rights are rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religion or ethnic group" (Human Rights Web, 1997). All human beings irrespective of status and position in the society are entitled to some basic rights commonly referred as Human Rights to lead a dignified and respectable life including the right to a healthy environment.

The linkage between environmental degradation and internationally-guaranteed human rights is recognised either directly or indirectly in international and regional human rights instruments. The international bill of human rights which includes UDHR, ICCPR, ICESCR and its protocols is the core international human rights instruments. The UDHR and ICESCR are important instruments regarding environmental rights or in providing some fundamental rights that can be categorized in to modern days so called 'environmental rights'. A brief discussion of the provisions relating to environmental protection in international and regional human rights instruments has been discussed here:

❖ **Universal Declaration of Human Rights, 1948**

The Universal Declaration of Human Rights was adopted and proclaimed by the United Nations General Assembly on December 10, 1948. The Universal Declaration of Human Rights (UDHR) does not talk of environmental rights in very clear terms, but its focus on general well-being of the people appears to be including the concept of environmental rights too. It recognises the fundamental right to life, liberty and security of person (UDHR, Article 3) and everyone, as a member of society has the right to social security and is entitled to realization, though national effort and international co-operation and in accordance with the organization and resource of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (UDHR, Article 22).

Thus, UDHR puts a positive obligation on the state to strive for providing a safe and sound environment to realize the social, economic and cultural aspects of life. To that effect, the state shall take all possible measures to protect the environment. The other important provision in the UDHR proclaims similarly every one's right to just and favourable condition work (UDHR, Article 23). The realization of favourable conditions of work is possible with the protection of environment which must and should be ensured by the government. Likewise, the declaration also provides for every one's right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social service (UDHR, Article 25 (1)).

❖ **International Covenant on Civil and Political Rights, 1966**

The International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly on December 16, 1966 and came into force on March 23, 1976. Likewise, other human rights instruments, this covenant also does not contain any direct provision related to environment protection but its mandate contained in Article 6 (1) can be interpreted in favor of environmental protection also. The said article mentions that “Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life”. The term ‘Right to Life’ used in Article 6(1) has a wide scope of interpretation, it is confined not merely to survival but a life with dignity. All necessary materials should be made available for the fullest development of personality. The wordings used, on the one hand entitling the people to ask for a dignified life and on the other, obliging the state to fulfill their duty towards the people. Without a decent and healthy environment the rights recognized under the covenant cannot be fully realized.

Though the said provisions do not talk of environmental rights in clear terms, their broad interpretation definitely envisages the spirit behind environmental rights. The right to life for example is said to contain a clear prohibition on the state not to take life intentionally or negligently. The right to a fair trial could be invoked when the approval of logging operation is expected to have a harmful effect on the environment, and the rights to a fair hearing could help individuals fight the approval. Article 17 of the ICCPR could be invoked if environmental degradation or pollution affects the home or the privacy of an individual, i.e., to the extent that the state can be held responsible. Article 25 of the ICCPR, or the right to public participation is mentioned inter alia in Principle 10 of the Rio Declaration and can also be found in soft-law instruments like Agenda 21. Public Participation is the greatest potential to influence environmental decisions.

❖ **International Covenant on Economic, Social and Cultural Rights, 1966**

This International Covenant on Civil and Political Rights, adopted in December 1966 by UNGA also does not talk of environmental rights in clear terms but its purpose towards the overall development of human beings can be interpreted from the environment protection angle. The covenant (ICESCR) contains economic and social rights that are widely accepted as determining the substantive rights of individuals,

substantive in the way that they are capable of setting a certain standard of quality of environment. It recognizes all people's rights of self-determination by which they freely determine their political status and freely pursue their economic, social and cultural development (ICESCR, Article 1(1)). All people may for their own ends freely disposed of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation (ICESCR, Article 1(2)).

Moreover, its Article 7 imposes an obligation upon states to recognize the right of everyone to the enjoyment of just and favorable, safe and healthy conditions of work. Other provisions of the ICESCR are similarly impose obligation upon state parties to the covenant to recognize the right of everyone to an adequate standard of living including adequate food, clothing and housing, to the continuous improvement of living conditions (ICESCR, Article 11) and the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health (ICESCR, Article 12). The common spirit behind these all proviso is to ensure safe and sound environment to all. The state parties to ICESCR are obliged to undertake steps, to the maximum of its available resources with a view to achieving progressively the full realization of the rights in the covenant (ICESCR, Article 2(1)).

❖ International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the UNGA on 21 December 21, 1965 and entered into force on January 4, 1969. Likewise, other international human rights instruments, some of its points can be interpreted in favour of environment protection. For instance: Article 5 of the convention talking from the economic, social and cultural rights perspective enumerates issues related to a safe and sound environment i.e. just and favourable condition of work, the Right to housing, the right to public health medical care, social security. Without ensuring proper housing facilities, medical care the basic intent of a healthy environment can not be realized. As we all know that the meaning of the term environment is not just confined to the protection of natural resources but it also extends to the fullest development of one's personality.

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

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on December 18, 1979. This convention is aimed at ensuring safe and sound environment to the women community. It puts an obligation on all its state parties to take all appropriate measures to eliminate discrimination against women, in particular, the right to protection of health and safety in working conditions, including the safeguard of the function of reproduction (CEDAW, Article 11(1) (f)).

Further, its article 14 stipulates state parties obligation to take appropriate measures to eliminate discrimination against women in rural areas and to participate in and benefit from rural development and shall ensure to such women the rights to have access to adequate health care facilities, including information, Cultural affairs, Counselling and services in family planning (CEDAW, Article 14(2) (b)). It further recognises the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication (CEDAW, Article 14(2) (h)).

The use of specific terms like: health care facilities, and adequate living conditions clearly signify towards ensuring a sound environment to realize the dignity of life. In many parts of the world, the discriminations against women are pervasive because of their less participation in the system, inadequate exposure to educational programmes and patriarchal attitude of the society etc. Now, attempts are being made to provide an equal status to men in all respect through appropriate legislations across the world.

❖ **Convention on the Rights of the Child, 1989**

The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on September 2, 1990. In its preamble itself it has been mentioned that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance. Further, it mentions that the child for the full and harmonious development of his or her personality should grow up in a family environment in an atmosphere of happiness, love and understanding. The need to extend particular care to the child has been

stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children (CRC, preamble).

The Convention on the Rights of the Child (1989) also recognizes various rights which can be interpreted with respect to environmental protection. The Convention on the Rights of the Child (CRC): Right to be free from Discrimination (CRC Article 2), Right to life (CRC Article 6), Right to Health (CRC Article 24) and the right of Children of Minorities and Indigenous Population to enjoy their own culture (CRC Article 30). It refers to the aspects of environmental protection in respect to the child's right to health. If we look closely at the articles contained in the convention, two of its articles particularly article 24 recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Further article 27 have a particular focus on the child's overall development of a child.

❖ **ILO Convention concerning Indigenous and Tribal People, 1989**

The 1989 International Labor Organization Convention concerning Indigenous and Tribal people in Independent Countries and the Declaration on the rights of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities as prepared by the Working Group on Indigenous Population of the UN Human Rights Commission's Sub Commission on Prevention of Discrimination and Protection of Minorities in 1992. The ILO Convention contains various references to the lands, resources, and environment of indigenous people. The ILO Convention articles 4(1) and 7(4) are important for the protection and preservation of the environment of these groups. Indigenous people have real rights to resources that must be respected. The ILO Convention uses the term 'land' to cover the total environment of the areas which the people concerned occupy or otherwise use.

Article 13(2) Article 14(1) of ILO Convention concerning Indigenous and Tribal People, 1989 states that: The rights of ownership and possession of the people concerned over the lands, which they traditionally occupy, shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the people concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Under Article 7(1) of the convention, the people concerned shall have the right to decide their own principles for the process of development as it affects their lives, beliefs. Institutions, spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social, and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development, which may affect them directly.

3. International Environmental Law

International environmental law and human rights law both have the same objective to achieve dignity for all human beings living on the earth. The inclusion of an environmental dimension in the human rights debate has become necessary in view of the recognition of the pervasive influence of local and global environmental conditions upon the realization of human rights. In legal terms, the new linkages will come to enhance the protection in both fields as the protection of the environment will benefit from the established machinery whereas the human rights system will be enhanced by the inclusion of new interpretative elements until recently ignored.

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 wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations”. Almost 20 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 wellbeing. The resolution is an effort towards ensuring a better and healthier environment. The last three decades marked a series of progressive conferences and resolutions addressing the questions of development and environmental protection. These international agreements have

formulated what is now known as international sustainable development law. Let's have a look at the following international environmental law documents:

❖ **UN Conference on Human Environment, 1972**

This UN conference on Human Environment held in Stockholm from June 5 to 16, 1972 which can be referred as a milestone in the sense that it brought pressing issues of environment at the international level and further made a pathway to deal with environmental problems. It was attended by the by the representatives of 113 countries, 19 intergovernmental agencies, and more than 400 intergovernmental and non-governmental organizations, it is widely recognized as the beginning of modern political and public awareness of global environmental problems (Baylis & Smith, 2005). Indira Gandhi, then Prime Minister of India brought the interconnection of poverty and environment protection. Her focus was on the issue that poverty worsened the environment.

Later on, following this remarkable observation, attempts are being made to alleviate poverty and pressing environmental concerns in the light of sustainable development. The primary target of the conference was to address the rights of the human family to a healthy and productive environment (UNEP, 1972). The conference spurred international co-operation on the issue of the environment, and more than 100 countries began environmental ministries or agencies domestically as a result (Engfeldt, 2002).

❖ **The Brundtland Commission, 1987**

The World Commission on Environment and Development is popularly known as 'Brundtland Commission' which was appointed by Javier Pérez de Cuéllar, former Secretary General of the United Nations under the Chairmanship of Gro Harlem Brundtland in December 1983. In 1987 the commission published its report titled '*Our Common Future*', which came up with the new concept of sustainable development. The underlying philosophy behind this concept was to pursue economic growth without compromising with the environment. It tried to strike a balance between the two concepts as on the one hand, the economic prosperity is a must for developing countries to alleviate poverty and environment protection on the other is quite essential for the general well-being.

Development is not just about bigger profits and higher standards of living for a minority. It should be about making life better for everyone and this should not involve destroying or recklessly using up our natural resources nor should it involve polluting the environment. Therefore, the report asserts that development is essential to improving the quality of human life, yet development must be carried out in such a way that it does not compromise the ability of the planet to meet present and future needs (UNESCO, 2005).

The Brundtland Commission went a step further in the context that it not only focused on the human environment as it was heavily mandated in the Stockholm Conference but found out a middle path between environmental protection and development. Primarily, the idea that environmental protection and development are two distinct subjects which cannot be pursued at the same time.

❖ **Earth Summit, Rio de Janeiro, 1992**

The United Nations Conference on Environment and Development took place in Rio de Janeiro, Brazil from June 3 to 14, 1992. The Earth Summit sought to find ways to stop the destruction of irreplaceable natural resources. This involved an emphasis on the need to find and ensure a maintainable balance between social, environmental and economic needs. In addition, the summit raised the issue of how to promote awareness of and respect for the natural environment among the earth's citizens. One of the most promising documents of the summit was Agenda 21, a set of voluntary measures for governments to adapt in order to address the problems discussed at the Conference. Included in the agenda are efforts to combat poverty, change consumption patterns, check population growth, promote human health, protect the atmosphere, plan and manage land resources, combat deforestation and conserve biodiversity, among other facets of sustainable development.

The Rio Declaration also recognised the right to information, participation and remedies in respect to environmental conditions thus formed the focus of the world community. In addition to Principle 10, the Declaration also includes provisions on the participation of different components of the population: women (Principle 20), youth (Principle 21), and indigenous people and local communities (Principle 22). The Aarhus Convention under Article 1 requires that each party shall 'guarantee the rights' of access to information, public participation and access to justice in

accordance with the provisions of this convention. This reflects the right-based approach of the human-rights treaties, the operative provisions set out that the parties shall ensure that members of the public have access to information or to review procedure or shall apply the provisions concerning public participation.

❖ **Johannesburg Summit, 2002**

The World Summit on Sustainable Development (WSSD), 2002 took place in Johannesburg, South Africa, from 26 August to 4 September 2002. The Johannesburg Declaration expressed the commitment of world leaders 'to build a humane, equitable and caring global society cognizant of the need for human dignity for all. The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, desertification claims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating, and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life.

The world community at the summit recognizes that poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development are overarching objectives of and essential requirements for sustainable development and to ensure that our rich diversity, which is our collective strength will be used for constructive partnership for change and for the achievement of the common goal of sustainable development.

❖ **Rio+20 Conference, 2012**

At the recently concluded Rio+20 conference in June 2012, an attempt has been made to address all possible points which ensures respect for human rights capable of addressing the issues related to the environment. Rio+20 document itself affirms in its outcome document. The following points are mentioned herein:

1. We also reaffirm the importance of freedom, peace and security, respect for all human rights, including the right to development and the right to an adequate standard of living including the right to food, the rule of law, gender equality, women's empowerment and the overall commitment to just and democratic societies for development.
2. We reaffirm the importance of the Universal Declaration of Human Rights as well as other international instruments relating to human rights and

international law. We emphasize the responsibilities of all States, in conformity with the Charter, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Now, so far as the environmental law is concerned, it is believed in common parlance that the mechanism available with the environmental law for dealing environmental challenges are not so effective. The major conferences like: Stockholm Declaration and the Rio Declaration are solely soft law documents and thus legally not binding. Rio Declaration happened in 1992 focusses its attention more on sustainable development without talking of the right to environment in clear terms.

A lack of human rights approach to environmental protection clearly appears to be in the documents of international environmental law, if appears, they are not sufficient enough to strengthen the approach because their non-binding nature. The conferences like: UN Conference on Human Environment, 1972, The Brundtland Commission, 1987, Earth Summit, 1992, Johannesburg Summit, 2002, and the recently concluded Rio+20 Conference, 2012 have the intention to ensure a sound and safe environment for living a dignified life which is covered under the basic aspects of human rights.

At the Rio+20 conference, it has been unanimously accepted that the major concerns for human rights and the environment are the same therefore, the scope for linkages of the two laws are vast. At this juncture, the main aspect of worry is the institutional dimensions to carry the linkage forward which appear to be lagging behind. The UN Human Rights Council is currently debating ways in which to operationalize the linkage such as through the creation of a Special Procedure.

Further, the human rights and environmental linkage emphasizes the need for effective compliance with environmental laws as well as the need for effective mechanisms that hold public authorities accountable for their decisions. Thus, it is clear that the world community is trying to address emerging environmental problems keeping the ultimate objectives of environmental and human rights law i.e a dignified way of life and gradually finding ways to strengthen the institutional mechanism to make the linkage successful.

Section- 2: Environment, Development and Human Rights: An Indian Experience

It is no doubt that India reaped a lot of benefit out of rapid industrialization but have now resorted to environment protection because of the fact that damaging environment has many serious repercussions on a large scale. Some of serious repercussions like: Global Warming, drought, flood, environmental Refugees and migration, health issue, Ozone Depletion etc. have posed a serious challenge before the Indian community. In India, a state of natural imbalance has been developed by many human-centric activities such as: urbanization to accommodate a vast population, and industrialization to meet their necessities. At the same time, a lack of strong legislative measures worsens the situation. It is quite pertinent to mention that the country which was self-sufficient in terms natural resources now natural resources like water, air, forest, and biodiversity has come to a stage of threat (Kothari, 2006).

Development is an ever-growing process, its impact is also ever increasing leading to rapid deterioration in the environment condition. In the present scenario, the term 'Development' is meant to 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.

Therefore, the court in Dahanu Taluka Environmental Protection Group and Ors.v. Bombay Suburban Electricity Supply Co. Ltd. and Ors.¹ holds the view that the concerned Government should "consider the importance of public projects for the betterment of the conditions of living people on one hand and the necessity for preservation of social and ecological balance and avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a balance between the two conflicting objectives."

In fact, indigenous people have been the worst sufferer in any part of the world due to the developmental moves like: ore extraction, setting up of industries, railways network, dams etc. because of their close association with nature for their survival. Dam projects, mining and rapid industrialization have affected the people in a large

¹(1991)2 SCC 539.

number. This is the very reason that the voice of resistance came up at all those places where such projects are either proposed and have been already established. The voice has become more vocal in the recent years because of increasing awareness and the support of the local grassroots organizations. The purpose of the chapter is to discuss the effect of unsustainable model of development on environment and the violation of human rights due to environmental degradation by selective issues in Indian perspective.

1. Mining Activities and the violation of Tribal Rights

The internal part of the country which are minerally rich become an easy prey to the mining operation. These areas remain the high priority areas as they are capable enough to generate a huge amount of revenue. India's rapidly growing economy needs a huge amount of minerals. Of course, such initiatives of the government provides many advantages to the rest of the population unlike the tribal who are largely dependent on the forest. The tribal and rich biodiversity are bound to suffer irreparable loss.

It is needless to mention that India's mostly mining rich states have the largest concentration of tribal people. Examples can be given to the states like: Orissa, Jharkhand, Chhattisgarh, which in the recent years have seen a large scale corporate loot scene in the country at an unprecedented scale. The mining activity across the country has many associated problems as well, for instance, the nearby areas gets converted into unproductive land because of its dusty and untreated water released into them and cause serious human rights violations. Its clear example are the states of Orissa and Jharkhand where the agricultural activity has badly affected about tens of thousands of hectares of land have been rendered completely barren and unproductive thus, the local people are forced to live in an environment which is quite detrimental to their health, livelihood and survival.

The above mentioned concerns have been highlighted by the Supreme Court in *Samatha v. Arunachal Pradesh*² mentioning that all relevant clauses in the Schedule and the Regulations should be harmoniously and widely be read as to elongate the Constitutional objectives and dignity of person to the Scheduled Tribes and ensuring distributive justice as an integral scheme thereof. The Court noticed that agriculture

²(1997) 8 SCC 191.

is the only source of livelihood for the Scheduled Tribes apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribal derive their sustenance, social status, economic and social equality, permanent place of abode, work and living. Consequently, tribes have great emotional attachments to their lands.

2. Constructions of Dams and Associated Problems

Problems related to major dams construction and its associated problems of migration and rehabilitation started throughout the world started during the 1970 with a view to increasing a large scale productivity. India, too following the world trend focused its more attention on the construction of mega dams to meet the challenges of higher productivity for being self-reliant in food production. This move of the government took a deep after the third five-year plan onwards.

Prime Minister Jawaharlal Nehru referred to dams as ‘the temples of modern India’ (Visvanathan, 1998). After independence, the government sanctioned several large-scale dam projects with the aim of making drinking water available to all and making India self-sufficient in food production. India is among what are called ‘big dam’ countries with 4291 dams, third only to China and the United States (Bandyopadhyay, Mallik, Mandal & Parveen, 2002).

On the one hand such construction brought unprecedented benefits on the other hand its side-effects are unimaginable. According to a rough estimate, it is believed that about 3 million people have been displaced by such major dams construction which is the guiding force behind environmental refugees. The displacement of people from one region to the other causes not only their livelihood problem but it also encompasses problems like: cultural identity, if once lost cannot be regained at any cost. Meaning thereby is social, cultural and economic problems are very often of such constructions.

To address these problems in an integrated manner, the government has not prepared any long term blueprint and comprehensive plan on how the people will be settled down, what steps have to be taken to ensure to reduce their social economic and cultural loss, and how they will be compensated in monetary terms. Several past experiences be it Narmada or Tehri suggest that either the government left the people at their own fate or, if actions were taken, they were fulfilled half-heartedly.

The recent move of the government on the 'Inter-linkage of Rivers' can be seen in this perspective too. The Supreme Court's judgment of February 27, 2012 finally disposes of two writ petitions of 2002 on the inter-linking of rivers (ILR).

In the normal course, a project goes through certain stages and procedures: formulation; examination/evaluation from various angles (techno-economic, environmental, ecological, financial, social, etc.) by the appropriate agencies, committees and ministries; statutory clearances under the Environment Protection Act, the Forest Conservation Act, and other Acts, and the necessary state government approvals; compliance with the procedures prescribed in the National Rehabilitation Policy; acceptance of the project by the Planning Commission from the national planning point of view; concurrence by the finance ministry from the budgetary and financial clearance angles; and finally a decision by the cabinet. Therefore, many environmentalists have raised objections as to such initiatives will disturb the ecological balance, irreparable damage to the rich biodiversity of the country and would cause displacement and its associated problems.

It is undeniable fact that the presence of large dams assured India of food independent country but at the same time this success has given a bolt to the environmental, social, economic and cultural aspects of the country. Roots of the opposition to dam projects can be traced back to the government's failure to rehabilitate displaced victims and to concerns about ecological sustainability.³ The kind of development model is being pursued by the government to fulfil just the aspirations of a sizeable section of the society jeopardizing the larger interest, that's why India has been a living example of witnessing severe criticism of the civil society and large scale protest by the people. Here, some of the landmark movements are being mentioned to understand the situation.

(a) Anti-Tehri Dam Movement

The name Sunderlal Bahuguna is a well-known name associated with the Tehri dam movement in our country. Considering the grim situation of changes in agricultural pattern, displacement and land alienation the local people participated in continuous protests with the noted environmentalist Sunderlal Bahuguna. After independence, the government of India to translate its irrigation policies into reality it started

³ (1997) 8 SCC 191.

constructing large dams across the country amongst them, one of the most ambitious was Tehri dam. The project was conceived in 1949 by the Geological Survey of India, though the dam was finally commissioned only in 1972, and work began in 1978. The dam submergence area is the Tehri town and 23 villages in the vicinity, while 72 other villages are partially submerged. Nearly 5,200 hectares of land is lost to the reservoir.

In the mid 1980s, the plan was abandoned for some time after the committee appointed by the government to review the project recommended ending it on environmental grounds (IRN Fact Sheet: Tehri Dam, 2002). By 1992, when construction of the dam was well under way, the opposition movement peaked, and it seemed for some time that the protestors might persuade the government to again halt the project.

The movement got its momentum by joining hands of the environmental activists, citizens concerned. concerned citizens (Sharma, 2009). Though the movement was not successful and the authorities pressed on with Tehri Dam, finally submerging most of Tehri and the proposed valleys in 2005. Whatever may be the outcome of the movement, but at least it invoked a sense of respect towards the nature, their survival and prepared a launching pad to start a movement.

(b) Narmada Bachao Andolan

Over the years, Narmada Bachao Andolan has emerged as one of the largest non-violent groups in the world. The Narmada Bachao Andolan, a movement initiated by the social activist Medha Patkar has been a matter of hot debate due to encompassing a large issues of social, economic and cultural perspectives. The project constructed around the Narmada river is expected to displace around 300,000 people because of its inter-state nature.

The people associated with the movement got a very positive response on behalf of the local people, as they knew about how the clearance to the project were given by the Ministry of Environment and Forest and how the government drew a huge funding from the World Bank. These all issues disclose the hard truth behind such moves. By demanding that the affected people be given voice, the NBA was instrumental in the World Bank's decision to withdraw its funding and participation from the project on the basis of human and environment concerns (Raj, 2000). NBA encourages the

adoption of traditional water harvesting systems in villages and improving dry farming techniques, which will also promote social and ecological harmony. As the last resort, NBA also advises improvement of the efficiency of existing dam projects (SAHRDC, 2008).

The Supreme Court of India ruled on the NBA'S litigation against the construction of the dam in 2000 judging that the project could go forward as long as resettlement and rehabilitation of displaced people was appropriate and effectively carried out. The judgment, while recognizing the economic and housing rights of the valley's inhabitants to be fundamental did not evaluate the environmental aspects of human rights.

It has also been heavily criticized for skirting any meaningful analysis of international or domestic law on human rights, or India's constitutional provisions on the same. The Supreme Court allowed the construction to go forward without any deep parsing of the complex and difficult social and environmental issues presented by the project. In other words, it discussed the importance of the human rights of the displaced without actually assessing whether or not it was lawful for the project to infringe these rights (Cullet, 2001).

(c) Silent Valley Project

This movement started off as a resistance to the move of Kerala Government's proposal to construct a dam across the river Kunthi in the silent valley. It was taken to be a viable alternative to the more expensive and polluting source of thermal power. However, environmental and citizens groups oppose it due to a threat that it may upset the delicate ecological balance of the biodiversity reserve inhabited by some rare species in the Silent Valley. It was argued that such a project would pose a serious threat to the nearly 50-million-year-old evolutionary history of the Silent Valley (Kumar, 2004). In addition, the river has traditionally been a source of drinking water for villagers and tribal inhabiting the region; activists have charged that diverting the water amounts to 'state-sponsored robbery of resource'.

International organizations such as the World Wild Fund for Nature (WWF) and International Union for the Conservation of Nature and Natural Resources (IUCN) mounted pressure on the government, leading to the shelving of the project in 1983

by Prime Minister Indira Gandhi. This movement met with success fairly early and one of the very rare instances where the state yielded to pressure and retracted.

3. Industrial Disaster

Throughout the world the development status of a country is measured in terms of industrialization. Industrialization is happening the world over at a rapid pace to achieve economic prosperity. Industrialization at the cost of over production and over exploitation of resources brought the devastating effects of nuclear radiations, industrial wastes, industrial accidents, brutal exploitation of forests, indiscriminate quarrying, pollution of rivers and water resources, rapid increase of air and noise pollution, global warming, ozone depletion.

The poor people who do not have adequate means to cope up with the problems arising out of industrialization become an easy prey to industrialization because of two reasons the first is that they are unaware of the laws and regulations and secondly, they do not have any alternative to work. Whenever any industrial disaster takes place they are bound to suffer physically, economically both. In spite of having a plethora of rules, regulations and guidelines most of the hazardous industries hardly follow them in true spirit. In the recent years, the government has also made the environmental regulations weak to fulfil the economic aspirations at the cost of good working environment.

(a) Bhopal Gas Disaster

The incident which occurred in Bhopal on December 2, 1984 at Union Carbide India Limited plant was one of the worst industrial disasters in the world in which, according to official sources 3000 people died. As of now, the death toll is still not clear but as per unofficial sources, it is estimated around 10,000 deaths. After the linkage of 27 tons of the deadly gas Methyl Isocyanate, about half a million people were exposed to the gas which resulted in unprecedented death toll and groundwater contamination and incurable diseases affecting thousands of people. Its devastating results are still being felt like organ disorder among the local people being born there. The travesty of the situation can be understood by the fact that tons of carcinogenic chemicals are still lying in the UCIL plant.

Bhopal Gas tragedy case can be seen as a failure of the Indian government as it gave priority to economic development at the cost of thousands of lives residing in

the plant vicinity. The government also remained failure in checking the mismanagement of the company in accordance with the laws and regulations of the country. The Supreme Court on February 14/ 15, 1989 reached the settlement mentioning that Union Carbide Corporation (UCC) was to pay 470 million US dollars as full and final settlement of all civil and criminal claims by the victims, further it justified saying: 'this court, considered it a compelling duty, both judicial and humane, to secure immediatereliefto the victims.' For the Bhopal gas victims despite sincere efforts made by various civil society organizations justice remain a far distant goal over the thirty years.

The saddest part of this incident is that even after the passage of 30 years the victims are still running from the pillar to the post in search of just and fair justice. It is appropriate to recall the words of Prof.UpendraBaxi: 'The broken world of Bhopal victims invites a jurisprudence of human solidarity' (Baxi, 2010, p 23) The Bhopal catastrophe marks the rise of new social movements in the light of the fact that the otherwise powerful trade union movements necessarily had to place industrial safety struggles over employment creation and sustenance.

(b) Plachimada Controversy

Plachimada, a small village in Kerala which is referred as the 'Rice Bowl of Kerala' in the common parlance came into the controversial scene after the Coca Cola Company established its bottling plant there which resulted in acute water shortage in the nearby area. The village comes under the jurisdiction of 'Perumatty Grama Panchayat'. The Coca Cola Plant was set up there in 2000. The controversy sparked in 2003 when the panchayat refused to renew the licence of the company considering the acute water shortage and large amount of pollution occurred in the locality resulted in a huge loss to the agricultural activity (Koonan, 2007).

A single judge bench of the Kerala High Court upheld the decision of the Panchayat.⁴ The division bench of the Kerala High Court reversed the judgment delivered by the single bench. The court following a narrow approach gave its decision in favour of the company's property rights to exploit the ground water rather considering the basic human rights of the people to have access to clean water and

⁴Perumatty Grama Panchayat v.State of Kerala, 2004 (1) KLT 731

the right to livelihood. The division bench further, refused to recognize the panchayat which exercised its power under the Kerala Panchayati Raj Act, 1994 by not renewing the licence of the Coca-Cola Company. Moreover, the division bench has not recognised that the groundwater belongs to the public. In fact, the bench has not taken the very well recognised international environmental law principle i.e. Public Trust Doctrine. The principle clearly says that the all natural resources are for the public use and the state has to take all appropriate measures to restrict the misuse of natural resources.

Therefore, we see that Plachimad struggle is a story of fight for the basic human rights of the local people for their survival. On the one hand the absence of a strong legislative measure pertaining to ground water the state remained failure in protecting the basic human rights of the people and on the other allowed the company to win the case at the Kerala High Court. This case is presently pending before the Supreme Court of India which has yet to be decided the case. It would be crucial to see whether the Supreme Court considers the basic human rights of the people and gives preference to the multinational company interest keeping aside the precautionary principle and public trust doctrine applied in many celebrated cases decided by itself.

(c) Koodankulam Nuclear Plant Controversy

The Koodankulam Nuclear Plant is situated in Tamil Nadu which has experienced severe protests on behalf of the local people considering its serious repercussions on them and the local surroundings. The project was conceptualized in 1988 with an agreement between India and the then Soviet Union, and finally got off the ground only in 1997. The worrisky aspect of this project is that the Nuclear Power Corporation of India Limited (NPCIL) in 2005 after receiving clearance to set up two Russian-designed reactors has intended to set up four more reactors without addressing the people's concerns of safety and not properly following the EIA procedures before undertaking any mega plan.

Despite severe protests against this all pitfalls of procedural implicational and neglect of security concerns, the government has followed the course of repression and intentional targeting of the local people. The government seems to go ahead with its own agenda keeping aside all the issues raised by the people. Here, it is clear that

the government has the priority to benefit the multinational companies and please corporate giants at the cost of the people's life and livelihood concerns.

Now, The term 'Development' can be seen from two perspectives, the first perspective is of inclusive approach and the second one is of exclusive approach. The 'Exclusive Approach' means that a model launched specifically targeting a particular section of the society whereas the 'Inclusive Approach' means that a model launched for all the people of the society for wholesome development. The present goal which is being speed up today is no longer inclusive due to the biased approach of the government. This is the very reason that the present world has seen different kinds of stiff resistance phenomena at a regular intervals.

The recent development in the Indian environmental law regime is the implementation of Environment Impact Assessment (E.I.A) which is mandatory for every major project to be undertaken with a view to assessing the loss occurred to social, cultural and economic aspects of the local people. The E.I.A Notification-1994, which was amended in 2006, 2009 respectively focusses more on the public participation in the decision making of environment clearance. More and more public participation helps the government to undertake alternative model of development, if the proposed model does not suit the local population. The accessibility to all the documents to the public strengthen the people's faith in the decision-making process. Public participation also is emphasized in Agenda 21. It expressly focuses on the importance of public participation in decision-making regarding environment policies. It has persuasive value for the governments to bring a framework that facilitate a direct exchange of information between the government and the public on environment issues.

In all the above mentioned cases, there was a stage when the resistance voice was quite feeble but with the passage of time, the increasing number of human rights defenders and NGOS working at the grassroots level have put forth their strong voice based on reasoned agreements. These all groups have started questioning the government policies and have pressurised to follow a win-win situation. The need of the hour is to follow ecological ethics and human rights values to sort out the problems creeping in.

If the approaches of sustainable development, alternative viable development and redefining of development are proceeded with, it should be expected that the problem would be sorted out at the earliest. The meaning of development should not

be taken just wellbeing in terms of material pursuits but in overall happiness among the people. The people living in our surroundings will have to change our attitude with respect to simple living and respect for nature. Therefore, the Supreme Court of India clearly holds its view in *Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and Ors.*⁵ recognizing the concept of sustainable development, the Court has observed as under: The concept of 'sustainable development' has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation.

Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's' test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest.

In *Essar Oil Ltd. v. HalarUtkarshSamiti and Ors.*⁶ while maintaining the balance between economic development and environmental protection, the court observed as under: Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate.

In the same vein, the 4th principle says 'man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive importance in planning for economic developments'. These two principles highlight the need to factor in considerations of the environment while

⁵(2009) 9 SCC 737.

⁶AIR 2004 SC 1834.

providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that 'economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life'.

4. Sustainable Development: An Integrated Approach

The word 'sustainability' is derived from the Latin 'Sustinere' to hold up. Sustainable Development is a pattern of resource use that aims to meet human needs not only to the present generation, but also for future generations. The term was used at the first time by the 'Brundtland Commission' describing that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.

The Stockholm Declaration happened in 1972 pushed the agendum of sustainable development to a little distance. The world Conservation strategy prepared by the World Conservation Union in 1980 after receiving advice and assistance from the UNEP and WWF gave further strength to the concept of sustainable development. The concept was well explained and defined in the report of the World Commission on Environment and Development 'Our Common Future' in 1987. The then Prime Minister of Norway, Ms. G.H.Brundtland chaired the commission and prepared a report named 'Brundtland Report'.

Thereafter in 1991 the WCU (World Conservation Union), UNEP and WWF for Nature jointly come out with a document titled 'Caring for the Earth' which is a strategy for sustainable living. Sustainable development would therefore, imply improving the quality of human life while living within the carrying capacity of supporting ecosystem (Singh, 1987).

In today's world, development has been an indispensable element to achieve excellence in all walks of life. The way and manner attempts bare being made to achieve the targets of development, therefore, now it has become difficult to imagine its manifold disastrous effects. The gravity of the situation can be seen over the north and south divide as to the disastrous effects of development. Developing countries (South Countries) have often been blaming the north for environmental degradation in their countries. The use of high level of chemicals in day-to-life in western countries is so high that it has affected the environment throughout the world and its

effect can be seen more especially which are technologically not quite developed. Thus, a field of co-operation needs to be created to mitigate environmental problems with effective measures. Developed countries should help developing countries by providing technological support to meet the challenges of abject poverty, lack of education etc.

Sustainable development encourages us to achieve economic prosperity along with protecting the environment in view of fundamental human rights. When sustainable development is not properly and coherently addressed, no progress can be made towards reconciling the interests of the environment, human rights and development as intergenerational and intergenerational equity is the central point of it.

The above view has been accepted by the Supreme Court also in the case of T.N. Godavarman Thirumalpad v. Union of India and Ors.⁷, the Supreme Court observed that it cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.

Environmentalists point out that poverty is also a major cause, precipitating a downward spiral in which poverty leads to environmental degradation, which leads to increased poverty. Impoverished areas lack proper sanitation, often filling rivers and waterways with waste. Underdevelopment makes the realization of sustainable development more pressing. In this regard the observation of the Supreme Court in the case of Chameli Singh and Ors. v. State of U.P. and Anr⁸. is worth praising where it holds the view mentioning that an organized society right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions

⁷(2002) 10 SCC 606.

⁸ (1996) 2 SCC 549.

which inhibit his growth. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities like road etc. so as to have easy access to his daily avocation.

The Rio Declaration, 1992 onwards all the international conferences are focusing to follow 'Sustainable Development' as the panacea to strike the balance between development and environment protection. The central theme of the Rio Declaration, 1992 was focused on how to integrate two important aspects of the modern world i.e. development and environment protection.

In India, this universal concept has on many occasions have been used to end many deadlocks. The courts in India have followed it in the the real sense. In the celebrated case of Indian Council for Enviro-Legal Action v. Union of India⁹, the Supreme Court described the principle of sustainable development in the following words: While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

Considering the situation all the world over the Supreme Court also looks a better future through the lens of sustainable development therefore, it observes in Vellore Citizens' Welfare Forum v. Union of India¹⁰, this Court acknowledged that the traditional notion of conflict between ecology and development is no longer acceptable and sustainable development is the answer.

It is correct that development is the necessity in developing countries to achieve a dignified life by eradicating poverty on the other hand, developed countries which are already developed in terms of material pursuits are in urgent need of improving the state of the environment. At the conference about 153 nations' representatives of the world put their heads together and came up with the most acceptable solution of

⁹(1996) 5 SCC 281.

¹⁰(1996) 5 SCC 647.

the problem that is Sustainable Development. Thus, we can say the sustainable development is the major success of the Rio Conference, 1992. Most of the nations reiterated their commitments saying that the development policies would be formulated in tandem with the uncompromising issues of environmental protection. This idea brought out in the case of *Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and Ors.*¹¹, deepens the notion of sustainable development where the court feels that whereas need to protect the environment is a priority, it is also necessary to promote development ...The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same.

If the idea like 'Sustainable Development' is followed in letter and spirit, the purpose of development and environment protection can be achieved without any contradiction between the two as it has economic, social and environmental dimensions as it is cross-sectoral in nature. A human right approach to the environment is a must to help to achieve objectives of environment and development at the same time under the most dynamic concept of sustainable development.

Section- 3: Right Based Approach to Environment Protection in India

The prevalent 'Anthropocentric approach' allowed human beings to be the whole and sole of the planet and gave the license to use natural resources for their own utilization only leaving the rest creatures in lurch. Several writings, which prove that in ancient India, every individual had to practice the dharma to protect and worship nature (Jariwala, 1992). A look at the environmental ethics of the olden times contained in 'Vedas', 'Upnishads', 'Smritis', and 'Purasas' discloses environmental harmony and conservation since sun, air, water and earth were considered as manifestations of divine personification (Shastri, 2008). The central point of these all texts is that man is not the owner of this earth only but other creatures are also equally entitled for the use of natural resources.

The rapid industrialization and economic activities after the independence seriously damaged the environment and consequently resulted the human rights violation. In the 1970s, the Indian Parliament started taking an active interest in formulating,

¹¹AIR 2006 SC1489.

policies and regulations to protect the environment. Indira Gandhi, the then Prime Minister of India attending the UN Conference on Human Environment, 1972 at Stockholm Sweden was a turning point in the environmental movement in India. In 1976, provisions relating to the environment were inserted into the Constitution that imposed responsibilities on both the state and citizens to protect the environment (Sahu, 2008).

Considering the importance of environment, the government of India established a full-fledged Ministry of Environment and Forest in 1985 to address the problem of pollution in the country from the Department of Environment which had been established in 1980. Thus, the ministry has now the responsibility to plan, execute, and monitor environmental programs. The ministry is also the nodal agency in the country for the United Nations Environmental Programme (UNEP). The Ministry of Environment and Forest works towards conservation and survey of flora, fauna, forests and wildlife, prevention and control of pollution, afforestation and regeneration of degraded areas and protection of environment in the framework of legislators.

In India, for an umbrella legislations like: The Environment Protection Act, 1986 (EPA) the credit must be given to the commitments made in 1972 at the Stockholm Conference to improve the status of environment to a satisfactory level. Marching side by the side of the Indian legislature, the Indian judiciary understanding the urgency of the matter, started accepting environmental cases by the tool of Public Interest Litigation (PIL) considering the fact that the effect of environment degradation are manifold on a large mass and its worst suffers are the poor of the country. Thus, the courts also set a new trends in the legal arena and reposed the faith of the people for their remedies.

Professor Upendra Baxi, who has often supported the judicial activism in India, has said that the 'Supreme Court of India' has often become 'Supreme Court for Indians' (Baxi, 2000, p. 157). By its liberal interpretation has elevated the right to live in a decent environment in the category of Article 21 of the constitution to realize the basic standards of life accessing pure water and air. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.¹² Thus, the rights to a healthy environment, to clean air

¹²Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.

and to clean water have been given the status of fundamental rights through judicial interpretation.

1. Constitutional Mandates

Looking closely at the Constitution of India, it appears that the constitutional framers at the time of making it did not think of the present day's serious effect of environmental degradation. The responsibility to maintain environment was left on the shoulder of the legislators according to the need. It was only in 1976 the 42nd Constitutional Amendment inserted some provisions relating to environmental protection without guaranteeing the the right to healthy environment as a fundamental right.

Aftermath the Stockholm Declaration, 1972 now India has seen a paradigm shift in the arena of environmental legislation. The major legislation in this regard can be mentioned of Environment Protection Act, 1986. A study of various instruments available in the constitution have been discussed below under the mentioned headings of fundamental rights, Directive Principle of State Policy, Fundamental Duties and Constitutional Remedies.

The right to a clean and healthy environment has been interpreted by the Indian judiciary to be a part of the right to life as guaranteed by Article 21 of the Indian Constitution.¹³ The Directive Principles of State Policy require the state to ensure that the health of citizens is protected and improved and that effort are made to 'protect and improve the environment and to safeguard the forests and wildlife of the country'.¹⁴ Apart from imposing obligations on the state, the citizens also have a constitutional duty of protection and improvement of the natural environment, including forests, lakes, rivers and wildlife.¹⁵

(a) Fundamental Rights

The constitution of India, under its Part III has conferred certain fundamental rights, out of which some are available only to its citizens whereas some of them are available to all persons. The six fundamental rights of Indian citizens are specified in Articles 14-32 of the Indian Constitution such as right to equality (Articles 14-18),

¹³Bandhua Mukti Morcha v. Union of India, AIR 1982 SC 802.

¹⁴Article 39(e), 47 and 48A of the Indian Constitution.

¹⁵Article 51(1) (g) of the Indian Constitution.

right to freedom (Articles 19-22), right against exploitation (Articles 23-24), right to freedom of religion (Articles 25-28), cultural and educational rights (Articles 29- 31) and right to Constitutional remedies (Article 32).

Article 21 is one of the most comprehensive articles of the constitution which reads as: 'No person shall be deprived of his life or personal liberty except according to the procedure established by law'. The Indian judiciary has interpreted the terms used in the very article i.e. 'life' and 'personal liberty' in wider ambit to fulfill the constitutional mandate. Gradually, the ambit of this right increased unexpectedly and even to such an extent that even environmental concerns have been given due place under its scope. The Supreme Court has also recognized the right to wholesome environment within the meaning of 'life' under Article 21 of the constitution.

In *Attakoya Thangal v. Union of India*¹⁶ the Kerala High Court in a public interest litigation filed by local islanders seeking to protect fresh water resources on the Lakshadweep Islands. The petitioners apprehended that the government scheme to pump out groundwater on the island would cause saline intrusions in the fresh water table which would, in turn, imperil the potable water supply on the islands. The Kerala High Court commissioned an expert report which opposed the government scheme. Recognizing the importance of fresh water to the islanders and holding that the right to fresh water was an aspect of the fundamental right to life, the High Court prohibited the government from implementing the scheme until it was reviewed and modified by the Union Ministry of Environment and the Ministry of Science and Technology.

In *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. and Ors.*¹⁷ The court observed that every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to take recourse to Article 32 of the Constitution. In *Rural Litigation and Entitlement Kendra Dehradun v. State of Uttar Pradesh*¹⁸, the Supreme Court ordered for the closure of some of these quarries on the ground that these were disturbing the ecological balance and thereby violating the right to life under Article 21 of the local inhabitants.

¹⁶1990(1) KLT 580.

¹⁷AIR 1990 SC 2060.

¹⁸(1985) 2 SCC 431.

The first indication of the right to a wholesome environment may be traced in this case.

In *Subhash Kumar v. State of Bihar*¹⁹ the apex court holds the view that the PIL is maintainable for ensuring enjoyment of pollution free water and air, which is included in the right to live under Article 21 of the constitution. In *T.Damodhar Rao v. S.O.Municipal Corporation, Hyderabad*²⁰ the Andhra Pradesh High Court made it very clear that unbridled right to the owner to enjoy his piece of land is not absolute- may the state be the owner of the piece of land. This right of ownership is subject to the law of ecology and environment- as zoning laws. Any construction for residential purpose on the land allotted for a recreational park would upset the environmental balance of the area. Though the residential houses were constructed by the Income Tax Department, but it is the constitutional duty of the state to protect and improve the environment and not to cause environmental imbalance.

Article 21 of the constitution embraces the protection and preservation of Nature's gift without which life cannot be enjoyed. It was a case of the city of Hyderabad. Further, in *Andhra Pradesh Pollution Control Board v. Prof. M.V.Naidu*²¹. It has held that clean environment is not only a fundamental right but a human right also.

(b) Directive Principles of State Policy

The Chapter IV of the constitution of India contains Directive Principles of State Policy. Article 36 to Article 51 deals with the Directive Principles of State Policy. Some of them specifically deal with the various facets of human health and environment.

The following are some of the Directive Principles related to environment:

- A. **Article 47:** "The state shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties---."
- B. **Article 48-A:** "The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country."

¹⁹AIR 1991 SC 420.

²⁰AIR 1987 AP 171.

²¹AIR 1999 SC 434.

Directive Principles of the State Policy contained in Part IV of the constitution are not enforceable in nature as they are directives given to the states while formulating its policies to meet varied challenges. On many occasions, the apex court recognizing the importance of both DPSP and fundamental rights has clearly underlined that DPSP and fundamental rights are neither superior nor inferior to each other but they are of equal importance at their respective place.

In *Keshavananda Bharati v. State of Kerala*²² the Supreme Court holds the view that the fundamental rights and directive principles aim at the same goal of bringing about a social revolution and establishment of a welfare state and then can be interpreted and applied together. They are supplementary and complementary to each other. It can be said that directive principles prescribed the goal to be attained and the fundamental rights lay down the means by which that goal is to be achieved.

(c) Fundamental Duties

The government of India added fundamental duties to be observed by its every citizens to the Part IV of the constitution in 1976. Article 51-A (g) of the constitution of India casts a responsibility on every citizen to protect and improve the natural environment.

Article 51-A (g): “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, Lakes, rivers and wildlife and to have compassion for living creatures.”

In *M.C.Mehta v. Union of India*²³, the Supreme Court realizing the urgency and importance of protection and improvement of the environment directed the authorities to take urgent steps to tackle the acute problem of vehicular problem in Delhi. The court was distressed at the apathy of State administration when according to the white paper published by the government of India, the vehicular pollution contributed 70 % of the air pollution as compared to 20% in 1970.

In *Sachidananda Pandey v. State of West Bengal*²⁴, Justice Chinnappa Reddy of the Supreme Court holds the view that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A of the constitution---- and

²²AIR 1973 SC 1461.

²³(1998) 6 SCC 60.

²⁴(1987) 2 SCC 295.

51-A (g) which proclaims it to be a fundamental duty of every citizen of India 'to protect and improve the natural environment including forests, lakes rivers and wildlife and to have compassion for living creatures'. When the court is called upon to give effect to the Directive Principles and Fundamental Duties, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority.

2. Role of Indian Judiciary

With the passage of time, environmental pollution has reached to an alarming level. As environment is the very basic element of human survival, therefore its protection has withdrawn not only national attention but international attention too. Over a period of time, it has been observed that the courts have interpreted the laws in order to meet the constitutional objectives i.e. socio-economic justice. The socio-economic justice is gradually being realized through the interpretations of the court to go a step further. Judicial Activism can be seen as an important tool in this regard to fulfill the objectives. Two great legal luminaries namely 'Justice P.N.Bhagwati' and 'V.R.Krishnalyer' applying their foresighted vision applied the most effective tool of PIL in the form of judicial activism to access justice even to the deprived and indigent section of the society. In this regard, the statement of Justice Lodha is worth mentioning here as he rightly puts- 'Judiciary exists for the people and not for vice-versa.'

If all or any of the fundamental rights is infringed by a state action then the citizen or the person as the case may be may approach the Supreme Court under Article 32 or the High Courts under Article 226 having territorial jurisdiction in order to get their redressal. The Supreme Court and the High Courts can issue any order, direction, or writs including the writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. It is very interesting to note that Article 32 itself is a fundamental right and the courts has no power to refuse in its direction to grant appropriate remedy if the violation of any fundamental right is proved.

The idea of the Social Interest Litigation or Public Interest Litigation came from 'action popularis' of the Roman Jurisprudence which allowed court access to every citizen in matters of public wrongs. The Supreme Court by relaxing the process of 'Locus Standi' allowed Public Interest Litigation (PIL) to enable the poor,

downtrodden, under-privileged, and ignorant to be heard. In the *Mumbai Kamgar Sabha, Bombay v. Abdulbhai Faizullabhai and Ors.*²⁵ the Supreme Court of India made conscious efforts to improve the judicial access for the masses by relaxing the traditional rule of locus standi. Talking in respect of environmental matters, PIL has played a vital role in nourish the pillar of environmental law in India. A large number of environmental problems were brought before the courts through PIL and the courts have considered them on an urgent basis to ensure justice. This idea is evident in the case of *Ramsharan Autyanuprasi and Anr. v. Union of India and Ors.*²⁶ where the Court observed that the public interest litigation is for making basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice.

It has been found from Indian Supreme Court Case reports that out of 104 environmental cases from 1980-2000 in the Supreme Court of India, 54 were filed by individuals who were not directly the affected parties and 28 were filed by NGOs on behalf of the affected parties (Sahu, 2008). This is enough to indicate that through PIL attempts were made to access to justice having large mass effect. In one case concerning massive pollution of the river Ganga, the Court has published notices in the newspaper drawing the litigation to the attention of all concerned industries and municipal authorities inviting them to enter an appearance.²⁷

However, there are some people who do not like activism by saying that it has usurped the function of administration and legislative. Indeed, some critics of Supreme Court describe the Court as the 'Lords of Green Bench' or 'Garbage Supervisor' (Prakash & Sarma, 1998, p. 56). International legal experts have been unequivocal in terming the Indian Courts of law as pioneer, both in terms of laying down new principles of law and also in the application of innovative methods in the environmental justice delivery system (Sahu, 2008).

The reasons for the increasing concern of Court in governance arenas are varied and complex but one major factor has been failure of implementing agencies to discharge their Constitutional and Statutory duties. This has prompted civil society groups and the people to approach the Courts, particularly the Supreme Court, for

²⁵AIR 1976 SC 1455.

²⁶AIR 1989 SC 549.

²⁷M.C. Mehta v. Union of India, AIR 1988 SC 1037.

suitable remedies. Interestingly, the Court has also responded in a pro-active manner to address different governance problems (Baxi, 2010).

Unlike other litigations, the frequency and different types of orders/directions passed periodically by the Supreme Court in environmental litigation and its continuous engagement with environmental issues has evolved a series of innovative methods (Ramesh, 2002) in environmental jurisprudence. A number of distinctive innovative methods are identifiable, each of which is novel and in some cases contrary to the traditional legalistic understanding of the judicial function.

It is important to note that these judicial innovations have become part of the larger Indian jurisprudence ever since the Court has started intervening in the affairs of executive in the post emergency period (Das, 2001). The innovative methods like: 'Suo Moto action', widening the scope of constitutional provisions, application of international environmental law in the national jurisdiction to find a suitable solution, appointment of expert committees, spot visits, and appointment of 'Amicus Curiae' initiated in resolving environmental litigation, however, have been almost entirely dominating the environmental jurisprudence process for more than the last twenty years. The most important procedural innovation for environmental jurisprudence has been the relaxation of traditional process of standing in the Court and introducing the concept of Public Interest Litigation (PIL).

In *M.C. Mehta v. Union of India*²⁸, a cluster of tanneries at Jajmau in Kanpur were discharging their untreated effluents into the river Ganga. As a result of this, the water of the river Ganga became highly toxic and unfit for any use. The court ordered for the closure of the industries till they installed primary treatment plants to treat the toxic effluents and continue as long as the primary treatment plants were in sound working order. 'Justice Kuldeep Singh' declared in unequivocal terms that the closure of industries (tanneries) may bring unemployment and loss of revenue to the state, but life, health and ecology have greater importance for the people.

In *M.C.Mehta v. Union of India*²⁹, in this case the Supreme Court gave several directions upon the written petition filed by Mr. M.C.Mehta to save Taj Mahal from yellowing and decaying due to exhausts of chemical and gases from different chemical fertilizers and foundries and also the Mathura Refinery. The court directed

²⁸(1987) 4 SCC 463.

²⁹AIR 1997 SC 734.

the industries to shift away from Taj Trapezium or to switch over to gas as fuel. Industries were to be closed down unconditionally by Dec. 31st 1997.

In *M.C.Mehta v. Union of India*³⁰ popularly known as Sriram, Delhi gas Leak Case or Oleum Gas leak disaster, in which the Supreme Court was confronted with multidimensional and complex issues relating to environmental pollution such as concerning the true ambit and scope of Article 21 and 32 of the constitution, liability of manufacturers and the principle of damage etc. On behalf of those affected by Oleum Gas Leak, the Delhi Legal Aid Advisory Board and the Delhi Bar Association filed application for compensation in the original petition by M.C Mehta. Preliminary objections raised by the counsel of Sriram Fertilizers Company, on the Locus Standi of the above two organizations to move to the court. The court further allowed two procedural relaxations: A letter addressed to an individual judge could form part of a writ petition, and it was not necessary that the letter must be supported by an affidavit. The liberalized standing rule has thus enabled a number of public spirited citizens, social action groups and associations etc. to come forward with important environmental issue.

In *Municipal Council, Ratlam v. Vardichand*³¹, the court holds the view that where there exists a public nuisance in a locality due to open drains and heap of dirt, the Magistrate can require the Municipality under Section (133) CrPC to abate the nuisance. No plea of financial assistance could be taken by the Municipality. A citizen can always bank upon Section 133 of the CrPC for the removal of the nuisance of pollution. It is of greater significance in view of the fact that the Water Act and the Air Act do not provide for the affected parties a right to prosecute violators of the provisions. Another significant point is that corporate bodies like companies and corporations can also be held responsible for pollution nuisance under these provisions. The court observed that 'whenever there is a public nuisance, the presence of Section 133 CrPC must be felt and in any contrary opinion is contrary to the law.

³⁰(1986) 2 SCC 176.

³¹(1980) 4 SCC 162.

3. Key Environmental Principles

In absence of a concrete base of environmental law provisions, some of the visionary judges like: 'Justice V.R. Krishna Iyer' and 'Justice Bhagwati' delve into international instruments and accordingly applied the provision taken from there to deal with the emerging issues of environmental law in the country. Though Article 253 of the constitution enables the parliament to make any law for the whole or any part of India for implementing any treaty, agreement or convention but due to the sloth legislative process, it was quite difficult for them to wait for a sufficient legislation to deal with the emerging issues. The judiciary has used specific environmental principles upon the interpretation of the Indian statutes and the existing international documents.

'Inter-Generational Equity principle' talks of the point that the benefit of natural resources should be enjoyed by the people belonging to the present generation and the future generation as well. The over-used of natural resources by one generation may cause a suffrage for the other generation. Principles 1 and 2 of the 1972 Stockholm Declaration refer to this concept. Principle 1 states that Man bears solemn responsibility to protect and improve the environment for the present and future generations. Principle 2 states that the national resources of the Earth must be safeguarded for the 'benefit of the present and future generations through careful planning or management, as appropriate'. Principle 3 of the Rio Declaration, 1992 also states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

In *State of Himachal Pradesh v. Ganesh Wood Products*³², the Supreme Court invalidated forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development. The court also noted in *Indian Council for Enviro-Legal Action v. Union of India*³³, that the principle would be violated if there were substantial adverse ecological effect caused by industry.

The precautionary principle emphasised by the United Nations Commission on Environment and Development (UNCED), held in Rio de Janeiro in the year 1992, signifies a preventive approach. It states that in order to protect the environment, the

³²AIR 1996 SC 149.

³³(1996) 5 SCC 281.

precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation. The Precautionary Principle is threefold. Firstly, it requires the government and other authorities to foresee, prevent and arrest causes of environmental degradation. Secondly, where the threat is evident, a lack of scientific proof or certainty should not become the reason for the state not to take action to prevent any damage to the environment. Lastly, it is the responsibility of the industry or corporation or developer to prove that action taken is not harmful to the environment.

The 'Polluter Pays' Principle of international environmental law means that polluters have to be responsible for the consequences of the pollution and damage caused by them. They must control and remedy the cause of such pollution, pay compensation for the damages caused, including costs for restoration of the environment, rather than forcing other states or future generations to bear such costs. This has also been adopted by the Indian Supreme Court as a rule of law that must be applied to polluters within India. The polluter is responsible for compensating and repairing the damage caused by his omission. This is the quintessence of the 'Polluter Pays Principle'. In *M.C Mehta v. Kamal Nath*³⁴, the apex court issued a direction to restore the environment and ecology when the court found that the flow of the river was diverted for eco-tourism.

The 'Principle of Absolute Liability' means that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.³⁵ Thus, those industries that cause pollution and ecological damage are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil, and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. The Supreme Court has interpreted the principle of polluter pays to mean that the absolute liability for damage caused to

³⁴(1997) 1 SCC 388, p. 415.

³⁵*Indian Council for Enviro-Legal Action v. Union of India*, 1996(3) SCC 212

the environment extends not only to compensate the victims of pollution but also to the cost of restoring the environment.

In formulating absolute liability, the apex court held that the compensation should be commensurate with the magnitude and capacity of the polluting industry.³⁶ The Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industry by interpreting the scope of the power under art 32 to issue directions, or orders, 'which ever may be appropriate', in 'appropriate proceedings'.

Another principal of international environmental law is the Doctrine of Public Trust. Accepting public trust doctrine as a part of common law, the Indian courts have applied this explicitly in various cases, the first one in 1997 in M.C Mehta v. Kamal Nath and others.³⁷ In this case, the apex court did not hide its ire in extending facilities by permitting a motel to deviate the flow of a river and using forest for non-forest purpose. Approving the doctrine of public trust for the first time and imposing on the motel the responsibility of restoration of environment and ecology of the area, the Supreme Court observed:

"Our legal system-based on English Common Law- includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership".³⁸

The public trust doctrine therefore furnishes a theoretical framework to the courts in deciding those cases relating to the environment where a major community resource has been directed towards purposes and uses other than those for common enjoyment and benefit.

It is evident by analysing the judicial pronouncement that the right based approach applied by the Indian judiciary is the right step in the protection of environment. The judiciary has played a vital role in the development of environment jurisprudence

³⁶AIR 1987 SC 1086.

³⁷(1997) 1 SCC 388.

³⁸(1997) 1 SCC 413.

specially by interpreting the constitutional provisions and national laws in terms of international environmental law and international human rights law through the tool of Public Interest Litigation and the liberalization of the rule of 'locus standi'. The liberal interpretation of the constitutional provisions specially Article 21 of the constitution to realize the basic standards of life accessing pure water and air. By applying the right based approach the judiciary also set a new trends in the legal arena and reposed the faith of the people for their remedies in case of the violation of human rights due to environmental degradation. A citizen has the right to have recourse to Article 32 of the Constitution if anything endangers or impairs that quality of life in derogation of laws.³⁹ Thus, the rights to a healthy environment, to clean air and to clean water have been given the status of fundamental rights through judicial interpretation.

³⁹Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.

CHAPTER-5

Conclusion

Since the development of the concept of international community or the world order, almost all the international policies and programmes are revolved around two issues i.e. human rights and environmental protection. One started its recognition in the second half of the 20th century and the second emerged later in the last quarter of the same century. Both are interrelated, interconnected and mutually responsive as both are intended to the well-being of human being. The Safe and healthy environment is the pre-condition for the enjoyment of fundamental human rights.

Considering the weak regime of International Environmental Law, to mitigate or approach all environmental problems quite efficiently, International environmental law and human rights law were integrated as both the laws, in general talk about the well-being of humanity providing a dignified lifestyle. The reason behind this integration is that the environmental law regime will take the advantage of already established framework of human rights whereas human rights framework will also get strength by the inclusion of human rights elements. The close link with these rights clearly shows that a right to environment can easily be incorporated into the core of the human rights protection which ultimate purpose is the blooming of the personality of all human beings in dignity. In accordance with international law theory, all human rights represent universal claims necessary to grant every human being a decent life that are part of the core moral codes common to all societies (Cullet, 1995).

The link between human rights and environment protection has been recognized in the outcome documents of all conferences relating to environment since Stockholm Conference, 1972 to Rio+20, 2012. However, the Stockholm Declaration stressed that man is both creature and moulder of his environment. It was not until the 1992 Earth Summit in Rio de Janeiro that a framework for environmental and human rights emerged, in the form of the Rio Declaration and in the Agenda 21 Plan of Action. In fact, the Rio Declaration formulates a link between human rights and environmental protection largely in procedural terms (Principle 108). It states that human beings are at the centre of concerns for sustainable development and that they are entitled to a

healthy and productive life in harmony with nature. It recognized the concepts of sustainable development and the rights of future generations to a healthy environment (A/Conf.151/5/rev.1, 1992). Further, the WSSD, 2002 also retreated the concept in the Johannesburg Declaration (A/CONF.199/20, 2002). The final outcome document of the Rio+20 Summit, 2012 also reaffirmed the importance of the human rights, particularly the rights to health, food and safe drinking water.

However, the relationship between human rights and environmental protection in international human rights law is far from simple or straightforward. Some major human rights instruments like: UDHR, ICCPR and ICESCR contain no explicit mention of a human right to a healthy environment. It is under the protection of some existing human rights such as: the right to life, the right to health and the right to privacy that claims related to a right to a healthy environment. This recognition regarding the linkage was first envisaged in binding regional human rights instruments (AHPRC, Article 24). Despite this, the conceptual integration of human rights and environment is limited. So, attempts have been often made to look into international human rights documents to find environmental rights to preserve environment as they are well established laws because of their binding nature. Thus, a wide interpretation of human rights provisions in favor of environment can protect the environment in a better way.

The current development pattern and the kind of lifestyle that we have adopted are degrading the environment at a large and consequently, violate the basic human rights of the masses in general and specific sections of the society in particular. A high growth rate of population, rapid urbanization, large scale poverty, uncontrolled exploitation of natural resources have now become common phenomena in our day-to-day life responsible for environmental disorders thus, days are not far ahead when the whole humanity will become a victim of its own dangerous initiatives. In the wake of liberalization drive in the early 1990s, economic efficiency took the center stage and ecology was completely neglected, leading to today's crisis.

Natural and manmade environment both are essential for the wellbeing and to the enjoyment of basic human rights-even the right to life itself. At this stage, the Stockholm Conference set a benchmark for the need of environmental regulation in the world over following which in India various legislative and administrative initiatives has taken and

the Indian judiciary also became pro-active in environmental matters as part of its concern for the protection of human rights. So, sustainable development concept described in Brundtland Report, 1987 emerged as a balancing tool between manmade environment and natural environment keeping all the essential aspects of life with basic human rights intact.

In India, a state of natural imbalance has been developed by many human-centric activities such as the industrialization, urbanization and the large scale exploitation of natural resources damaging the environment led to many serious repercussions on a large scale including Global Warming, drought, flood, environmental Refugees and migration, health issue, Ozone Depletion etc. such as urbanization to accommodate a vast population, and industrialization to meet their necessities. At the same time, a lack of strong legislative measures worsens the situation. It is quite pertinent to mention that the country which was self-sufficient in terms natural resources now natural resources like water, air, forest, and biodiversity has come to a stage of threat (Kothari, 2006).

India is witnessed to a large superstructure, mega dams, and large industrial units which have the potential to oust millions of people in one stroke without taking into account their social, economic and cultural aspects of life. A large number of people became the direct victim of mega project forced to migrate, loss of cultural identity, their land, employment and forced to live in the degraded environment. The approach which is being followed by the government is exclusive in nature means without taken into account the interest of those affected.

This is the very reason that the present world has seen different kinds of stiff resistance phenomena at regular intervals. The voice has become more vocal in the recent years because of increasing awareness and the support of the local grassroot organizations. Narmada Bachao Andolan, Anti-Tehri Dam Movement, Silent Valley Project, Bhopal Gas Disaster, Plachimada Controversy, Koodankulam Nuclear Plant Controversy are some of the major movement to protect the environment and the human rights of the society concerned. If the approaches of sustainable development, alternative viable development and redefining of development are proceeded with, it will protect the environment without hampering the development.

The Indian judiciary played a remarkable job to put the issue of environmental degradation in the framework of fundamental rights to provide remedies to the victim of environmental harm. In 1976, provisions were inserted into the Constitution that imposed responsibilities on both the state and citizens to protect the environment (Sahu, 2008). The Indian judiciary has also considered sustainable development as a basic mantra of striking a balance between the environment and development through this universal agendum. 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 Constitution in the world that responds to the problem of environment. By the 42nd Constitutional Amendment happened in 1976 and judicial interpretation down the years the law of the constitution developed the environmental jurisprudence in India. The broad meaning given to the right to life guaranteed under Article 21 of Indian Constitution in the case of Menaka Gandhi¹ 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.² is one of the earliest cases where the court dealt with issues relating to the environment and ecological balance. Further in Francis Coralie case³ 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 case⁴. In Subash Kumar⁵ case, the court observed that right to life guaranteed by Article 21 include the right of enjoyment of pollution free water and air for full enjoyment of life.

¹(1978) 1SCC 248.

²(1985) 2 SCC 431.

³(1981) 1 SCC 608.

⁴(1990) 1 SCC 613.

⁵AIR 1991 SC 420.

The similar spirit has been expressed in the recent case of N.D.Jayal v. Union of India⁶, the Supreme Court has declared that 'the adherence to sustainable development is a sine qua non for maintenance of symbiotic balance between the right to development and development'. This concept is "an integral part of life under article 21".

There is a long list of cases in which the Supreme Court recognized the right to healthy environment as part of human right jurisprudence and provides remedy to the victim of environmental harm. It is evident by analyzing the judicial pronouncement that the right based approach applied by the Indian judiciary is the right step in the protection of environment. The judiciary has played a vital role in the development of environment jurisprudence specially by interpreting the constitutional provisions and national laws in terms of international environmental law and international human rights law through the tool of Public Interest Litigation and the liberalization of the rule of 'locus standi'.

Whatever perspective one adopts regarding the link between human rights and the environment. It is clear that failure to preserve a healthy environment has a clear and even increasing effect on the enjoyment of human rights. The linkage of human rights to the environment not only helpful to protect the environment but at the same time the human rights system would be strengthened by the incorporation of environmental concerns, enabling the expansion of the scope of human rights protection in the area of environment. Following are some sensible suggestions to make use of the human rights framework for the better protection of the environment:

Suggestions:

1. The quality of human rights in conditioned by the human being is relationship with the surrounding ecology. Threats to the environment compromise mankind's well-being and the full enjoyment of fundamental human rights. The kind of luxurious and unsustainable lifestyle adopted by developed nations is also responsible for the deterioration of our environment. As the issue of environmental pollution does not recognise the political boundary, the world's poor are forced to pay the price for the selfishness of others. The human rights

⁶(2004) 9 SCC 362.

approach can stop this happening. By focusing on equality and respect for individual dignity, an insistence on attention to human rights has the effect of forcing all decision-makers to look outside their own circle, to see the human as well as the global consequences of their actions.

2. The Indigenous population often suffers the brunt of environmental harm and have least access to justice and has no role in the decision making process. This particular fact must be taken into consideration while making policies and programme for the protection of the environment as well as at the time of allowing and development activities in the area of such population.
3. The scientific community can contribute to the theoretical soundness of the right to a healthy environment by providing data regarding the impact of environmental degradation on human health and the environment as a whole.
4. In the Indian perspective, the right to healthy environment should be incorporated in part III of the Constitution on the line of the recommendation made by the Commission on the review of the working of the Constitution, 2000.
5. With regard to the linkage between human rights and environment, regional human rights bodies and domestic court are working well but it is not appropriate to leave such an important and vital right to judicial vagaries. Judicial interpretation has its limitation. The right to healthy environment should be included in the hard law.
6. Linking human rights to environmental harm allows individuals to use global and regional human rights complaint procedures when states violate human right by allowing substantial environmental degradation. Of course, one of the most important consequences is to provide victim of environmental degradation the possibility to access to justice. Human rights protection will be strengthened with the incorporation of environmental protection because it extends human rights protection to an area previously overlooked.

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Declaration

I declare that all the changes suggested by the external examiner in the dissertation entitled "A Human Rights Approach to Environmental Protection" submitted by me for the award of degree of LL.M. in the Center for Environmental Law has been incorporated in the dissertation.

(Name and Signature of the student)

Date:

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School of Legal Studies and Governance

(Name and Signature of the Supervisor)

Date:

Center for Environmental ;Law

School of Legal Studies and Governance

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