# HUMAN RIGHTS VIS-À-VIS ENVIRONMENT

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## INTRODUCTION

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."

Principle 1 of the Stockholm Declaration[3]

Mankind is a part of natural world and their life depends on the incessant functioning of natural systems. The safeguarding of the environment is essential to the protection of other rights such as, right to health, the right to food and the right to life.[4] Thus, one can say that the rights of human to a life of dignity are inherently linked to the right to a clean, hale and hearty environment.

Over 2 million deaths per year and billions of cases of diseases are attributed to pollution.[5] People experience the harmful effects of environmental degradation, all over the world, which includes water shortage, depletion of fishery resources, natural calamity due to unsafe management and deforestation and disposal of toxic wastes and products.[6] Indigenous peoples suffer directly from the degradation of the ecosystems on which their livelihood depends.[7] Climate change is aggravating many of these harmful effects of environmental degradation on health and wellbeing of human and is also reason for new ones, which also includes an increase in intense weather events and an augmentation in spread of malaria and other vector born syndromes.[8]

The protection of the environment is similarly a vital part of human rights doctrine, as it is a *sine qua non* for several human rights such as the right to life and the right to health. It is scarcely required to elaborate on this, as any damage to the ecosystem or environment can ruin and damage all the human rights spoken of in the Universal Declaration and other human rights (UDHR) instruments. Therefore, humans have the right to start development projects and enjoy their respective benefits; there is a likewise an obligation to ensure that those endeavours do not damage the environment.[9] These facts undoubtedly show the close links between safeguarding environment

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[3] Stockholm Declaration, Principle 1, U.N. Doc. A/Conf.48/14, at 2-65 (5-16 June 1972).
[4] General Assembly of United Nations relative to *World Charter for Nature*, October 28 1982, A/RES/37/7.
[5] Human Rights and the Environment, Report by Division of Environmental Law and conventions
**6** House of Estates, Helsinki, Keynote speech at the *Human Rights and the Arctic*, September 29, 2017.
7 Wahyu Yun Santoso, Human Rights Approaches to Environmental Protection, April, 18 2018.
[8] V G Ranganath. *Environment as a Human Right: Legal Implications*, July 2014.
[9] G. Handl in A.C. Trindade (ed), Human Rights, Sustainable Development and the Environment (San José, 1992)

and the enjoyment of human rights, and also justifies an integrated approach to human rights and environment.

The UNHRC in one of its draft resolution on 'Human Rights and the Environment' articulated that "the protection of life-sustaining environment and ecosystems under the contemporary conditions of dynamic scientific and technological growth is of are very important for the protection of the humans and for promotion of human rights."[10]

However, in the last quarter of 20th century, the awareness arose that the reasons utilized for protection of the environment could also be promoted by setting it in the structure of human rights, which by then was strongly established as a matter of international law[11]. Because of several intricate issues that happen when these two disciplines work together, one can say to expect diverse views on how to approach ***'human rights and the environment'***.

In 1994, in the landmark case of *Lopez-Ostra v. Spain*[12], the European Court opened its door for the safeguarding of human rights against almost all sources of environmental pollution. The claim was associated to the indolence of the Lorca municipal authorities in connection with an act of nuisance caused by a waste treatment plant, which subsequently infringed the right to privacy, under Article 8 of the European Convention on Human Rights (ECHR). The Court decided that there was certainly a violation of Article 8 of the Convention, stating that the respective article lays a positive sense of duty of regulation and protection on state's part, so that state lenience of environmentally noxious activities may represent a breach.

In India, situation of several natural imbalances has been developed by numerous human-centric activities harming the environment which led to serious ramifications on a large scale. The Indian judiciary played a significant job to put the subject of environmental degradation under the framework of fundamental rights to provide solution to the victims of environmental harm.[13]

## Sustainable Development, Environment and Human Rights

Since its initial formulation, the concept or principle of sustainable development covers aspects of human rights, linking the protection of the environment on the one hand and the satisfaction of basic needs on the other. Despite the fact that Principle 1 of the 1992 Rio Declaration on Environment and Development places the human being "at the center of sustainable development

[10] Anonymous, *Links Between Human Rights And Environmental Sustainability*, November 2013.
[11] Dr. Ashish Shrivastava, Environment Protection And Human Rights in India: An analytically Study, January 1, 1970.
[12] Lopez Ostra v Spain 16798/90 [1994] ECHR 46 (9 December 1994).
[13] Need to Ensure a Healthy Environment for the Well-Being of Individuals, UNGA Resolution 45/94 (14 December 1990).

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concerns" and that he has the right to live a healthy and productive life in harmony with nature, there is no explicit proclamation of a "right to sustainable development" as such in the Declaration, nor of right to the reflected image, of right to a decent environment.

Although Principle 3 incorporates the "right to development", this amorphous concept encompasses not only the promotion of the economic development of States, but also the social and cultural aspects of human development included in the United Nations Covenant on Economic Rights. 1966[14]. Similarly, the 1986 United Nations Declaration on the Right to Development gave States the duty to "formulate appropriate national development policies aimed at the continuous improvement of the well-being of the entire population".

Realizing that the environment is equally part of this equation, the Rio Declaration (Principle 3) as well as the 1993 Vienna Declaration on Human Rights emphasise that 'The right to development should be rewarded so as to meet justifiably and equitably the developmental and environmental needs of present as well as future generations.[15] ' The Rio Declaration also establish both the sovereign States right to exploit their own resources 'pursuable to their own environmental policies' and their obligation 'to ensure that activities within their control of jurisdiction do not cause any harm to the environment of other States.

However, as a concept, sustainable development is due both to the right of human rights and to the sovereignty of States. Article 1 of the United Nations Covenants on Civil and Political Rights and Economic, Social and Cultural Rights of 1966 proclaims the right of all peoples to pursue their economic development and freely dispose of their natural resources.[16]

At the same time, treaties and regional declarations of human rights in Africa, Latin America and Southeast Asia also recognize the right to some protection of the environment, as well as the jurisprudence of the European Court of Human Rights. One example is that while recognizing that the right to pursue economic development is an attribute of the sovereignty of a state over its own natural resources and cannot be exercised legally without taking into account the potentially harmful effects on human rights or the environment of other states and boundaries. In the same way, neither the protection of the environment nor human rights necessarily exceed the right to economic development.

[14] World Health Organization, 7 million premature deaths annually linked to air pollution, WHO.INT (Mar. 25, 2014), available at: http://www.who.int/mediacentre/news/releases/2014/air-pollution.
[15] U.N. Secretary-General, A Life of Dignity For All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015: Report of the Secretary-General
[16] UN General Assembly's Open Working Group proposes sustainable development goals, New York, 22 July 2014, available at: https://sustainabledevelopment.un.org/content/documents/4538pressowg13.pdf.

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Resolution 2005/60 of UNHRC recognized the link between human rights, environmental protection and sustainable development. Among other things, it encourages all efforts to implement the principles of the Rio Declaration on Environment and Development, essentially in Principle 10, to contribute, among other things, with effective access to judicial and judicial procedures.[17] The implementation of Rio Principle 10 is the most important element here because, according to the Aarhus Convention, it recognizes the importance of public participation in decision-making in Rio de Janeiro in environmental issues, access to information and access to justice.

## Alternatives to connect human rights – environment protection

If ecological destruction and concomitant violations of human rights are already widespread in India, what is the solution? Do environmentalists advocate a total halt to development, a "return to the primitive way of life"?

The answers to these questions come from local communities that have not forgotten their roots, from government officials who deviate from the beaten track, from NGOs who dare to question the system, from individuals to whom our society unfortunately still thinks that they are crazy or romantic dreamers. In all these cases, the essence of the answer has been the marriage of ecological ethics and values and human rights. What has also been critical is that these responses have exploited the myth of the single answer, a kind of universal model that can be implemented anywhere.

The various alternatives are listed below, the **FIVE R'S**:

- **Resistance**

Large numbers of individuals are resisting the burden of inappropriate developmental projects and models, the exploitation of nature and of unprivileged classes. Such resistance can be traced a long way; the example of the Bishnoi community in Rajasthan, members of which died in large numbers years back in an effort to resist tree-felling by the king. They clung to the trees, even while the king's soldiers ill treated them mercilessly.[18]

Resistance to destruction is now widespread in India. A dozen foremost dams, which would have destroyed forests and villages, have been stalled or stopped by mass movements. Movements like

[17] John H. Knox, Linking Human Rights and Climate Change at the United Nations, 33 HARV. ENVTL. L. REV. 477 (2009).
[18] Kothari, A. 1998a. Environment. In Alternate Survey Group. Alternative Economic Survey 1991-1998: Seven Years of Structural Adjustment. Rainbow Publishers Ltd., Lokayan, and Azadi Bachao Andolan.'

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the Narmada Bachao Andolan have raised basic questions about the appropriateness of mega-dams. Many such mass movements have joined along the networks like the National Alliance of People's Movements, and the Bharat Jan Andolan.[19] Several million small and traditional fisherfolk across India's coastline have protested against destructive trawling and industrial aquaculture, and managed to get policy changes that would severely restrict large-scale commercial fisheries.

## ➢ Revival

There is an incredible revival of environment-related traditions in many parts of India. This is not the fraudulent and dangerous kind that some political parties are espousing, but revival in terms of those aspects of our Indian traditions[20], those aspects of community knowledge and practices, which stood people in good stead for centuries, and are still relevant to today's crisis. It is a people-led revival, not to be confused with the so-called traditionalism inspired by political ambitions.

In the Garhwal Himalaya there is a group of farmers, called the Beej Bachao Andolan (Save the Seeds Movement). The Beej Bachao Andolan is reviving traditional practices of agriculture like *baranaja*, a multiple cropping system, which provided the household with many of the produce it required, while maintaining the fertility of the soil. It may not feed the market, and therefore is less 'lucrative' than, say, switching to soybean (which agricultural departments want farmers here to do). But soybean does not feed the local farmer. He/she gets more money from it, but that money as we know is not necessarily used for nutritional food for the children. BBA is therefore also reviving hundreds of varieties of *rajma* (beans), rice, wheat, coarse cereals, and other crops, in a bid to bring back a more stable, more nutritious, and more self-sufficient form of agriculture.

## ➢ Reconstruction

There is widespread reconstruction of the rural and urban society taking place, which is in a sense revival modified by new adaptations to new problems. One cannot always depend on traditions, because situations have changed, and many traditions themselves are inconsistent with concerns of human rights and ecological sustainability. Several communities and NGOs and officials are experimenting with a mix of old and new, in areas such as water harvesting, sustainable agriculture, forest regeneration, and fisheries.[21] Through this, areas which had become completely barren and dry, with severe drought situations year after year, have been reclaimed and brought back to life.

[19] Guha, R. Gadgil, M. What Are Forests For? in Fernandes, W. (ed.) 1996. Drafting a People's Forest Bill – The Forest Dweller-Social Activist Alternative. Indian Social Institute, New Delhi.
[20] Datar, C. 1998. Development: A Feminist Alternative for Equity and Sustainability. in Datar, C. (ed.). 1998. Nurturing Nature – Women at the Centre of Natural and Social Regeneration. Earthcare Books, Mumbai
[21] Kapoor, R. 2000. Ways and Ways to Sustainable Development. Humanscape (February, 2000)

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Such integrated development work, based on watershed management, is now spread over hundreds of villages across the country

The new National Wildlife Action Plan (2002) has also gone a certain distance in this respect. Unfortunately, recent court rulings have been somewhat detrimental with respect to securing community rights and responsibilities in conservation areas. A number of villages and people's movements have also tried to reclaim rights to water bodies and aquatic resources[22].

## ➢ Redefinition

A lot of redefining of terms and concepts is needed. The term development itself has seriously restricted and distorted. It is being redefined, to include a holistic expansion of the options available to people for improving their intellectual, cultural, material, and other well-being. And to include, very importantly, the concept of equity, that is to say, the availability of such options to all people, not just to a handful of urban and rural elite.[23] Today, 'development' for some (those of us who enjoy unbridled consumerism) means 'destruction' for many others, including many non-humans. Another term which is being questioned and redefined is productivity.

Over the last 30 years, agricultural productivity has meant single-output goals…the more the output of food grains, or milk, or wool, the more productive the system. Compare this with the goals of traditional agriculture, which, from the same farm, would try to optimise the output of grains, livestock produce, fodder, supplemental foods, etc.

## ➢ Reorientation

Finally, one needs a major reorientation of the mind itself, changes in attitude, in ethics, in the way humans look at nature and each other, the way they view labour vis-à-vis intellectual work, and so on. The attitudinal changes are very difficult, and this is where alternative education and awareness programmes are critical. This would like a radical amendment within the current instructional system itself.[24]

A prominent activist of Kashtakari Sanghatana, a group that has done excellent work on reviving the rights of adivasis living in the Dahanu region of Maharashtra, was recently complaining that the success they have had over the last 20 years in reviving adivasi pride in their own culture and practices, is being undermined within the last 3-4 years due to influences from the mass media and

[22] Sebastian, S. 2000. This River is Our River. Humanscape (October, 2000).
[23] Reddy, A.K.N. 1998. Development Conflicts – For a New Agenda. The Hindu Survey of the Environment 1998
[24] Sharma, M. 2000. Dalit Rights: Whose Ponds? Who Commands? Humanscape (October, 2000)

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formal education. Both these systems teach the adivasis that their own values and lifestyles are 'primitive', outdated, unfashionable, even uncivilised; they must fully cover themselves, if possible with a three-piece suit; they must learn English, or at least Marathi, and discard their own adivasi languages; they must entertain themselves with TV and video games, rather than with adventures in the forest and playing in the dust; they must think of other species.

## Impact of Climate Change on Indigenous People

According to recent estimates, there are between 350 and 400 million indigenous around the world, two thirds of who will live in Asia[25]. The rights of indigenous peoples have featured prominently in the intergovernmental discourse on human rights over the past 30 years. During this period, normative development has constantly evolved towards greater recognition of the rights of indigenous peoples, which can only be described as remarkable. Some scholars argue that these rights in whole or in part, have already acquired the status of customary international law and, therefore, are legally binding. However, even a quick look at the treatment that indigenous states give to indigenous peoples shows that there is still a long way to go before indigenous peoples can enjoy these guarantees.

Indigenous peoples are among the first to deal with the direct consequences of climate change, due to their dependence on the environment and their resources and their close relationship with the environment.[26] Climate change exacerbates the challenges already faced by vulnerable indigenous communities, such as political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment. In particular, many are more sensitive to the effects of climate change because they live in or near disaster-prone areas. Here are some examples:

- In the high altitude areas of the Himalayas, the melting of glaciers, which affects hundreds of millions of rural people who depend on seasonal water flow, causes an increase in the amount of water. In the short term, but a long-term decline as glaciers and snow cover shrink.[27]
- In the Amazon, the effects of climate change include deforestation and forest fragmentation and, as a result, a greater amount of carbon released into the atmosphere, which exacerbates and creates new changes. The droughts of 2005 caused fires in the western Amazon. This is

[25] Asia Indigenous Peoples Pact, Indigenous People and Climate Change Adaptation in Asia' available at: http://ccmin.aippnet.org/ourpublications/article/1064/Adaptation%20and%20Indigenous%20Peoples.pdf at 2.

[26] Salick, Jan and Anja Byg. Indigenous Peoples and Climate Change. Tyndall Centre for Climate Change Research. Oxford: May 2007.

[27] Report of Intergovernmental Panel on Climate Change, Working Group 2: Climate Change Impacts, Adaptation and Vulnerability, 2007. Available online at http://www.ipcc.ch/ipccreports/ar4-wg2.htm.

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likely to happen again when the rainforest is replaced by savannas, which will significantly affect the livelihoods of the indigenous peoples of the region.

- The indigenous people of the Arctic rely on the hunting of polar bears, walruses, seals and caribou, reindeer husbandry, fishing and gathering, not just to feed them in order to support them. The local economy, but also as the basis of its cultural and social identity. Among the concerns of Indigenous peoples are the change of species and the availability of traditional food sources, the perceived reduction in weather forecasts and the safety of travel under changing ice and climate conditions, which pose serious human health problems and food security.

## CONCLUSION

Current environmental problems require new approaches. The link between human rights and environmental priorities is recognition that conservation cannot succeed without human development. This requires a series of different actions, at national and international levels, with inalienable human rights that form the basis of this action. Such an approach requires a new focus on governance and accountability, and provides the underlying principles to support this approach. The new rights set out in Principle 10 of the Rio Declaration will strengthen the role of civil society by enabling national and local organizations to play their role in that governance and to more effectively influence the use and allocation of resources.

The links between human well-being and resource exploitation are strong. These links should be openly addressed in order to provide a common basis in international law for all future actions in favour of sustainable development. Although rights issues have been divisive in the past, the multiplicity of national actions in this area suggests that this may be a basis for joint action. Even if there is no agreement on these key issues, it is important that a public debate takes place at the highest level so that all stakeholders can see where the agreements and disagreements exist.

Regardless of the perspective on the link between human rights and the environment, it is clear that failure to maintain a healthy environment has a clear, even increasing, impact on the enjoyment of human rights. Linking human rights with the environment is not only useful for the protection of the environment, but at the same time the human rights system would be strengthened by taking into account environmental concerns, thus enabling expand the scope of human rights protection in the field of the environment.

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