
HUMAN RIGHTS PERSPECTIVE TO REMEDYING ENVIRONMENTAL DEGRADATION: A LEGAL ANALYSIS

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ABSTRACT

Health and Environment are two of the most important concerns of present times. The countries are racing against each other to develop themselves economically. However, development comes at the cost of environment. When the right to environment is compromised, so is our other human rights, most important being the right to health. The article establishes a relationship between economic development and environmental protection and determines how the right to health, imbibed under several international instruments can help in reducing the gap between the two important concerns. International Instruments such as UDHR and ICESCR have to be seen in concurrence with each other while realising a state's obligation to provide both economic development as well as the basic human rights to its people. In the hoard of competition, countries in order to boost their economies go on to relax several environmental regulations or safety standards for workers in order to attract foreign investment. This directly conflicts with the right to health. The focus also needs to be on how the right to environment is provided in a state's constitutional mechanism. The right to environment must be included as dependent and inter-related to other human rights. It is important to determine the scope and the extent of the right to environment when it comes to securing health services, providing access to development and trade, etc. Striking a balance among all these rights is incumbent so that fulfilment of one right does not go on to undermine the other. With the help of legal instruments existing globally, international conferences, regional charters and domestic regulations, the article will bring forwards the most appropriate and harmonious mechanism of how health, environment and development can flourish simultaneously.

Key Words: Health, Environment, International Instruments, Human Rights, Economic Development, Environment Protection

Introduction

The adverse impact of environment tends to interfere with several of our human rights like right to life and standard of living, right to health, right to access to clean air and water etc. The International Bill of Human Rights does not only recognize the right to live in a clean environment but also includes environment in fulfilment of various other dimensions of rights. As per the international instruments, the highest attainable standard of living is not possible without having a clean environment. The Right to Health is very much dependent on Environmental Protection. Therefore, remedying environmental pollution and minimizing the degradation of environment has a direct bearing on the enjoyment of our human rights. The basic right to life suffers when environmental pollution and accidents result in causing of illness, diseases, incapability and even death.

This article will discuss how economic development and environmental protection serve both a boon as well as a bane to the health and well-being of people. Right to health has been recognised globally by several international instruments. This right can therefore be utilised to establish a momentous relationship between the above stated variables. The right to health when studied with environmental rights can carve a way to deal with environmental degradation and help the state in designing favourable domestic laws for its people.

Recognition of the Right to Health

Industrial/ infrastructural Development and free trade has emerged out as a basic premise of globalization, and in this process it is obvious that a few individual rights would suffer. It is for this very reason that individual rights is regarded as one of the barriers to free global trade and development. This leads us to the need to balance the economic development and environmental protection, wherein international human rights standards have started to play a big role.¹ Right to Health is a particular individual right that can help in reducing the gap between the two important concerns. The states are obligated to guarantee this right and therefore all economic development plans are supposed to be undertaken in such a way that this right is secured.

Right to Health is one of the most important human rights recognized worldwide. In fact, the very right to live suffers a setback if one's health is compromised. A good mental and physical

¹ F. Michael Willis, *Economic Development, Environmental Protection, and the Right to Health*, 9 *Geo. Int'l Env'tl. L. Rev.* 195 (1996).

health is important to enjoy the basic right to life. The World Health Organization (WHO) defines health as "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity."² The definition highlights that health does not only mean absence of any illness, disease or infirmity in a body. It instead establishes that there must be a wholesome environment constituting of quality physical and mental well-being as well as favourable social factors. It is incumbent to understand the definition of health from this aspect as even if one is mentally and physically fit on one hand and on other hand the social and environmental conditions are of a deteriorating quality, it eventually affects the health and well-being of an individual. This is so as a human cannot live in isolation. He is directly and indirectly independent on external factors for his survival and if those factors are polluted, eventually suffers and individual's right to health. Therefore, it is important to provide a healthy environment to each individual. In this respect, the WHO Constitution declares that the "enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."³ This puts states under an obligation to ensure the enforcement of this right. The above declaration however falls short of determining the extent of state responsibility in this regard. This is because it is important to understand that while ensuring the right to health, the states do not only have to prohibit any act that infringes this right but also have to take affirmative action and programmes in order to ensure that this right is maintained and preserved for one and all. While talking about such affirmative actions, states do not have to provide good health services but in fact maintain the factors that have an impact on public health. So, this is where the concern of environmental pollution comes in as it directly has an impact on health. The duty of the state to preserve and protect the environment, purify the air and water, save natural resources and forests, examine and provide for proper waste disposal is of paramount importance and cannot be neglected by the state if it wants to ensure public health.

Establishing the relationship between economic development and environmental protection in order to secure public health is two-fold. On one hand, the advancement in technology, infrastructure etc. which amounts to development means better job and income opportunities for people, good living conditions, medical facilities, accessible infrastructure etc. which definitely ensure better health facilities and individual well-being. On the other hand, while

² International Health Conference (2002), *Constitution of the World Health Organization 1946*, BULLETIN OF THE WORLD HEALTH ORGANIZATION (May 25, 2020, 7:00 PM), <https://apps.who.int/iris/handle/10665/268688> (hereinafter referred to as the WHO Constituion).

³ WHO Constituion *supra* Note 24.

designing and constructing these facilities, it is natural that a part of the environment will be destroyed, there can be hazardous waste effluents from medical and industrial units, there is impurity in air. All of these have an adverse impact on public health. So, the very economic development plans turn out to be hazardous for environment as well as individuals.⁴

Right to Health and International Instruments

The dual nature of Right to Health and the fact that it keeps both economic development and environmental protection as its two important determining factors (as discussed in the preceding section), has been reflected by various international instruments. Primarily, the United Nations Charter mentions the words 'social health'. It says that the member nations pledge to take action to achieve solutions to "international economic, social, health, and related problems."⁵ The Charter however did not establish the right to health and only recognised it as an essential right. This right got evidently established by the International Bill of Human Rights i.e. the Universal Declaration of Rights, 1948 (hereinafter referred to as the UDHR), the International Covenant on Civil and Political Rights, 1966 (hereinafter referred to as the ICCPR) and International Covenant on Economic, Social and Cultural Rights, 1966 (hereinafter referred to as the ICESCR).

Para 1 of Article 25 of UDHR states 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'⁶ This definition of UDHR guarantees both the basic protection of the right to health as well as the social security when the ability to make the basic amenities available for oneself or one's family is impeded. The UDHR by mentioning the latter clarifies that even in such situations the basic health standard must be maintained by guaranteeing social security.

The ICESCR advances the right to health in a positive direction. Article 12 of the Convention mentions that everyone has the right to enjoy the highest attainable standard of physical and

⁴ F. Michael Willis, Economic Development, Environmental Protection, and the Right to Health, 9 Geo. Int'l Env'tl. L. Rev. 199 (1996).

⁵ U.N. CHARTER ch. IX, arts. 55,56.

⁶ Universal Declaration of Human Rights, Dec. 8, 1948 G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 25.

mental health.⁷ The convention mentions both physical and mental health bringing in limelight that a good health is not just constituted by physical well-being. Even a mental disability is an indication of poor health. The Convention puts states under an obligation that all its individuals enjoy physical and mental health and there should be full realization of this right. In order to determine what would constitute the highest attainable standards of physical and mental health, the research has shown that this standard differs in different societies and states keeping their economical and aspirational programmes in view. However, some mere obligations that stay common in all the systems would be controlling epidemics, proper child health care and acute illness medication programmes, pre-natal and post-natal care, vaccination against certain diseases and of course industrial and environmental control for effective hygiene.⁸

The ICCPR which is also a part of the international bill of rights does not specifically mention the right to health. However a bearing on the right to health can be deduced from certain other rights that it mentions such as the inherent right to life, security of an individual and the right to freedom from torture.⁹

A brief reading of the weightage given to the right to health by the international bill of rights bring us to a conclusion that it is indeed state's responsibility to assure the realization of this right. However, there can be a collision if the international bill of rights is not read in harmonious interpretation with each other. To establish the same, if we consider the right to health as contained in UDHR, we understand that the state has to come up with economic development plans that can provide fulfilment of basic and advanced health facilities of the citizens. However, in doing so if the environmental concerns are done away with, it would mean that the environmental and industrial hygiene as interpreted in ICESCR is not realized. Without environmental hygiene in place, the ICESCR's highest attainable standard of health would not be achieved. So, while determining the right to health and state's obligations in that regard, both UDHR and ICESCR have to be seen in concurrence with each other.

Other than the International Bill of Rights, there are several Regional Human Rights instruments which have emphasized the Right to Health. The African Charter on Human and

⁷ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966

993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967), art. 12.

⁸ F. Michael Willis, Economic Development, Environmental Protection, and the Right to Health, 9 Geo. Int'l Envtl. L. Rev. 201 (1996).

⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967).

People's Rights for instance states just like the ICESCR that "every individual shall have the right to enjoy the best attainable state of physical and mental health."¹⁰ The American Declaration of the Rights and Duties of Man¹¹ follows the UDHR by mentioning the right to material well-being. This right is enhanced by The Additional Protocol of the American Convention on Human Rights which assures "the enjoyment of the highest level of physical, mental, and social well-being."¹² Just like the International Bill of Rights, the African Charter and the American Declaration make sure that the right to health is linked with economic development. This is because when the words 'highest attainable standards' are mentioned, it certifies that the states are responsible to not only provide the existing best standard of health services but also they are supposed to thrive to attain more advanced health protection methods. For this, the states would need to keep developing themselves more technologically, industrially and medically eventually focusing on economic development. Along with that these instruments aspire to secure well-being which is possible only when environment around is protected. The European Human Rights Instruments on the other hand is more limited in its declaration of right to health. The European Charter¹³ emphasizes on the protection of health by removing causes of illness and continuously improving in the field of health and medical facilities. The European Convention on the Protection of Human Rights and Fundamental Freedoms¹⁴ follows more of the ICCPR approach by not specifically talking about right to health per se but describing other rights whose fulfilment would be based on the realization of right to health. The European instruments therefore is more focused on associating right to health with economic development and the American and African instruments associate the right to health on both economic development and environmental protection.

Right to Health and Economic Development

The realization of the right to health depends on a lot of factors. This section would analyse how important the process of economic development is for proper realization of the right to health. After having talked about the international instruments, we get a notion that states have to provide effective programmes to improve health conditions. The UDHR and ICESCR has

¹⁰ African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217; 21 I.L.M. 58 (1982).

¹¹ American Declaration on the Rights and Duties of Man, Res. XXX, Final Act of the Ninth International Conference of American States (Pan American Union), Bogota, Colombia, Mar. 30-May 2, 1948, at 38.

¹² Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Organization of American States, November 14, 1989, art. 10, 28 I.L.M. 156, at 164 (1989).

¹³ European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89; Europ. T.S. No. 35

¹⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 312 U.N.T.S. 221 (entered into force Sept. 3, 1953).

cast a socio-economic duty on states to implement health advancement programmes. As already discussed, ICESCR aims at achieving highest attainable health standards by states. The same covenant in its Article 2 also obliges states to maximise their resources for full realization of the rights mentioned in the covenant.¹⁵ The mechanism of relating the right to health to economic development is based on two grounds:¹⁶

- First, how economic development can be a tool to better health standards primarily by focusing on improving the living standards of people and eliminating poverty. This also reduces the pressure created on environment resources due to poverty and poor living standards.
- Secondly, how economic development gives a boost to free trade in order to achieve full realization of right to health regionally as well as globally.

The Right is the most affected in poor countries, underdeveloped countries with lack of infrastructure and other public services. Poverty is the biggest issue that the whole world is fighting against. Unfortunately, it is a never ending phenomenon present across boundaries. Millions of people all over the world live in poor and unhygienic conditions. Not only are they more prone to diseases and illness but they also die of no food and malnutrition. They cannot afford the basic protection against acute diseases, they do not get natal care, they are not aware of vaccination programmes. Illiteracy combined with poverty is the biggest epidemic present in developing countries engulfing the poor and deprived ones. Now, with economic development comes better health and medical facilities. State governments endeavour to reach to ground levels with basic medicine supplies and vaccines. They create awareness about hygiene and education. More projects coming up in a country means generating employment and income opportunities for the low strata people. It cannot be denied that a country's economic progress and development brings social changes in the well-being of its citizens wherein they participate in the development process and derive benefits that emerge out of the developed projects.¹⁷ It appears that the right to development and the right to health go hand in hand utilising and benefitting each other.

¹⁵ International Covenant on Economic, Social and Cultural Rights, *supra* Note 29, art.2.

¹⁶ Jashaswi Ghosh, Economic Analysis of Environmental Laws and Regulations, 2 *Env't L. & Soc'y J.* 75, 82 (2014).

¹⁷ F. Michael Willis, Economic Development, Environmental Protection, and the Right to Health, 9 *Geo. Int'l Envtl. L. Rev.* 201 (1996).

The above discussion has brought a clarity to the proposition that economic development is an integral part towards fulfilment of the right to health in an effective manner. In order to develop economic strategies of a country and bring the best resources to build the health sector, it is incumbent that the market barriers are broken globally. Free trade will allow the countries to exchange the best services and resources amongst themselves and progress towards the ultimate realization of the right to health. So, even if the poor countries are unable to manufacture the best products for good health, they can engage in exporting them from other countries and make them accessible to their citizens. Free trade also encourages investment by foreign countries in poor countries and help them in technological advancement.¹⁸ It comes across as a win-win situation for all. And the societies can achieve the most progressed standard of health.

Right to Health and Environmental Protection

The focus on economic development for protecting the right to health is more of an aspirational measure. However, in the process of development, free trade, construction and other related activities, there can be a lot of interference with the natural environment. It cannot be denied that the health of people living in cities with too many industries, development projects also suffers hugely because of heavy pollution. Therefore, protecting the citizens from adverse impact of environmental hazards as well as protecting environment from degrading is a protective measure that states must take in order to ensure the right to health. In the hoard of competition, countries in order to boost their economies go on to relax several environmental regulations or safety standards for workers in order to attract foreign investment. This directly conflicts with the right to health. F. Michael Willis mentions in his research that how even the United Nations in its report on Environmental Perspective to the year 2000 and beyond has recognised this concern and stated that “despite technological advancements, the environmental basis for further improving the situation is deteriorating.

There are numerable instances of lack of access to clean water, poor sanitation and other environmental deficiencies that ultimately leads to widespread disease and death, ill-health and intolerable living conditions in various parts of the world.”¹⁹ Therefore, environment protection is extremely important in order to protect the right to health. If the risks mitigating environment

¹⁸ Jashaswi Ghosh, *Economic Analysis of Environmental Laws and Regulations*, 2 *Env't L. & Soc'y J.* 75, 82 (2014).

¹⁹ F. Michael Willis, *Economic Development, Environmental Protection, and the Right to Health*, 9 *Geo. Int'l Env'tl. L. Rev.* 201 (1996).

are not tackled efficiently, if environmental degradation is not stopped and nature does not get restored, the right to health cannot be guaranteed. In fact the basic requirements like clean water, clean air, healthy sanitation which has a direct bearing on the state can only be assured if the environment is clean. The environment regulations therefore are to be designed in accordance with the right to health, keeping the economic analysis in loop. That is how we establish a direct link between environment pollution, economic analysis in order to mitigate the pollution and human rights (primarily right to health) on which economic analysis would be based.

Relationship between Environment and Right to Health established by International Conferences

The two important rights, the right to health and right to environment have been referred at the international platforms to be existing in concurrence with each other. The principle that the protection of environment is mandatory to meet the obligations of the right to health has been recognised especially on all international forums related to environment. The 1997 International Court of Justice hearing of the case of *Gabcikovo-Nagymaros*²⁰ is important when it comes to the separate opinion given by Vice-President Justice Weeramantry wherein he had stated how protection of the environment is vital for the promotion of contemporary human rights like right to health, right to life itself. Environmental degradation can undermine all these human rights and the interferes with an individual's autonomy and freedom to enjoy one's life.²¹ What would constitute to be those environmental conditions that would influence drafting of laws and policy on human health and well-being? Several international conferences on environment have talked about this. The researcher would highlight few important environmental conferences that have established relationship between the right to health and environment.

The first time that the countries came forward to address the environmental problems was in 1972. It was the United Nations Stockholm Conference on the Human Environment (hereinafter Stockholm Conference). The principle issue of the Stockholm conference was to address the potential conflict between economic development and environmental protection. And this was more of a concern for the developing countries. Why? The first world countries

²⁰ *Gabcikovo-Nagymaros Project (Hungary/Slovakia) Judgment*, 1. C. J. Reports 1997

²¹ Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 *Macquarie Journal of International and Comparative Environmental Law* 36, 37 (2012).

in earlier decades had exploited the resources in order to develop themselves. The concern for environment protection was not recognized until then. And now, when the countries which were colonised when the first world countries were busy exploiting resources had now become free, even they wanted to climb the ladder of development. But now, we had environmental concerns, climate issues, global warming and other alarming issues which were kind of putting a restraint on exploitation of natural resources. This was slowing down the process of development for the developing countries. Therefore, the concerned countries had to come up together on a platform where the framework between environmental protection and economic development could be structured. Noteworthy is Principle 1 of the Stockholm conference²² that links the human rights principles of freedom, equality, dignity, well-being and health with environment of quality. It casts an obligation on the states to protect and also improve the environment for present as well as future generations. It was the first platform that recognised that right to health is dependent on states' duties to protect environment and prevent environmental health hazards.²³ Principle 21 of the Stockholm conference that states have a responsibility that while exploiting their own resources according to their environmental policies, they do not tend to cause any damage to environment of any other state beyond their jurisdiction.²⁴ The Stockholm conference therefore brought an awareness of the impact of environment on health and its interlinkage with economic development. It tried to balance both and led to signing of several international agreements between countries on use and exploitation of environmental resources.

However, the milestone was the 1992 conference known as the United Nations Rio Conference on Environment and Development held at Rio De Janeiro, Brazil. It laid a lot of emphasis on environmental law and policy. Principle 1 of Rio Declaration recognises the importance of a healthy and productive life for humans and it must be in harmony with nature.²⁵ But the Declaration mentions this particular provision as an entitlement for humans and not as a right. The conference however led to the discussion pertaining to Sustainable Development. The concept of Sustainable development was brought at this conference by the World Commission on Environment and Development (also called the Brundtland Commission), created by the

²² A/CONF.48/14/REV.1 - Report of the United Nations Conference on Human Environment

²³ Edith Brown Weiss, *The Evolution of International Environmental Law*, 54 *Japanese Y.B. Intl. L.* 5, 1-27 (2011).

²⁴ A/CONF.48/14/REV.1 - Report of the United Nations Conference on Human Environment

²⁵ Rio Declaration on Environment and Development, Jun. 13, 1992, 31 *ILM* 874 (1992)

United Nations General Assembly.²⁶ This commission in its “General Principles Concerning Natural Resources and Environmental Interferences, declares that all human beings have the fundamental right to an environment adequate for their health and well-being.”²⁷ The commission has recognised the co-existence of the right to environment and the right to health and their inter-dependence on each other. The Rio conference led to coming up of private business sectors and non-governmental organizations in designing and abiding by those environmental policies and standards that help achieve sustainable development in the long scenario. The Rio declaration is overall known for the following:²⁸

- development that it has brought in linking the International Environmental law with human rights law,
- implementation of international environmental agreements and
- voluntary formation of environmental codes by not only states but also private sectors.

At the regional level, the African Charter of Human and People's Rights provides that the environment should be in such a condition that it is favourable for the development of humans.²⁹ The Additional Protocol to the American Convention on Human Rights provide for the right to live in a healthy environment.³⁰ The European Convention on Human Rights has no explicit mention of the right to environment but the other rights mentioned provide for a link between human rights and environment protection.³¹ All these international and regional agreements on environment protection talk about protecting the fundamental rights of all people i.e. right to health, right to life, right to environment, right to clean water and air amongst a few. These are also important as they build a pressure on the countries to follow policies designed for environmental protection lest they try to risk the natural resources in the process of giving more weightage to industrialization and development.

²⁶ Edith Brown Weiss, *The Evolution of International Environmental Law*, 54 Japanese Y.B. Intl. L. 5, 1-27 (2011).

²⁷ F. Michael Willis, Economic Development, Environmental Protection, and the Right to Health, 9 Geo. Int'l Envtl. L. Rev. 201 (1996).

²⁸ Edith Brown Weiss, *The Evolution of International Environmental Law*, 54 Japanese Y.B. Intl. L. 5, 1-27 (2011).

²⁹ African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217; 21 I.L.M. 58 (1982) art. 24.

³⁰ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Organization of American States, November 14, 1989, art. 10, 28 I.L.M. 156, at 164 (1989), art.11.

³¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 312 U.N.T.S. 221 (entered into force Sept. 3, 1953).

Right to the Environment or Environmental Rights?

When we talk about environment and rights related thereby, there are two notions of these rights that exist internationally. First, the fact that a good quality of environment is important for the realization of other rights. This means that other human rights as discussed in the above segments like right to health, right to life etc. are dependent on the good condition of the environment. The relationship between environmental protection and other human rights have been well established in the preceding sections. The second notion is environment as an entitlement to humans.³² This approach provides the right to healthy environment to the people. Since the first approach is already discussed, this section will deal with the second approach in detail.

Right to environment for this section would remain independent of other human rights. This right would mean an entitlement to ask for a healthy environment to live in. This right can be referred to as a right to healthy environment, right to clean environment, right to decent environment etc. This rights has been propagated to be included independently and specifically in international human right instruments for the following reasons:³³

- It would make the states more responsible towards securing and improving environment.
- It would give the victims of environmental hazards more certainty of relief. They would be able to approach international forums if their domestic laws fail them.
- It would place the right to environment on an equal footing with the other human rights ending all the potential conflicts.

We know that there has been a global recognition of this internationally. The 1972 Declaration of the United Nations Conference on the Human Environment recognized that to live in an environment of a quality that allows to live with dignity, secures one's well-being is a fundamental right. Simultaneously, it also places a responsibility on each individual to protect the environment not only for the present generation but also for the future generation.³⁴ The

³² Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 Macquarie Journal of International and Comparative Environmental Law. 36, 37 (2012).

³³ John H. Knox, *It is time for the United Nations to recognise the human right to a healthy environment*, UNIVERSAL RIGHTS GROUP (Jun. 6, 2020, 1:00 PM), <https://www.universal-rights.org/by-invitation/it-is-time-for-the-united-nations-to-recognise-the-human-right-to-a-healthy-environment/>

³⁴ A/CONF.48/14/REV.1 - Report of the United Nations Conference on Human Environment.

United Nations' Draft Principles on Human Rights and the Environment directly mentions the right to a secure, healthy and ecologically sound environment.³⁵

It is not debatable that the environment that we live in should be free of any harm, the consumption of the resources should not be hazardous, but is it possible to seek the right to a healthy environment in isolation? Let us see the problems that would arise if right to environment is granted in isolation. Few of the problems are enunciated below:

- If right to a healthy environment independent of any other rights is granted, even a small damage to the environment would mean a violation of this right. The claim for relief would be alone for damaging the environment without having to contend the violation of any other right.³⁶
- If this is allowed to happen, the whole discussion about balancing the need of development and environmental concern would fall miserably. Any development would bring some changes, some exploitation of environmental resources and that would automatically become a violation of the right to environment.
- It can affect and undermine other human rights like right to a standard of living, right to develop since right to life includes other ambits for its realization as well.³⁷ Right to life is not solely depended on the existence of a good quality environment.
- It will become difficult for the courts while adjudicating that which right should be given more prominence. For instance, it is important to establish pharmaceutical industry for securing the right to health but if the construction of the industry goes on to harm the environment, the courts will be at a difficult position in deciding which right should be allowed to dominate. This will start creating contingencies, different interpretations by different judges and will vary from case to case basis.

For this very reason, experts suggest to include the right to environment as dependent and inter-related to other human rights. It is important to determine the scope and the extent of the right to environment when it comes to securing health services, providing access to development and trade etc. There are around 90 countries which have a constitutionally protected provision

³⁵ Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 Macquarie Journal of International and Comparative Environmental Law. 36, 37 (2012).

³⁶ Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 Macquarie Journal of International and Comparative Environmental Law. 36, 37 (2012).

³⁷ F. Michael Willis, *Economic Development, Environmental Protection, and the Right to Health*, 9 Geo. Int'l Envtl. L. Rev. 201 (1996).

right to a healthy environment but most of them recognize that this right should be interdependent on other rights.³⁸ Other countries have a constitutional provision for the environment but they have not mentioned it as a right. For instance, India has mentioned protection of environment in its Directive Principle of State Policy (DPSP) and under the Fundamental Duties. A few examples of states which have indeed recognized the right to a healthy but not in isolation would give a better understanding of what needs to be achieved. The Argentine constitution for instance uses the words 'right to a healthy, balanced environment'. It further goes on to state that the environment should be fit for overall human development aiming towards sustainable development wherein the productive activities should be such that though they satisfy the current necessities, they do not deprive the future generations of it.³⁹ This provision strikes almost a perfect balance between environment, development and realization of other human rights. Another instance of this balance can be found in the Brazilian constitution which provides for an entitlement to an ecologically balanced environment which is essential for a healthy life.⁴⁰ This demonstrates that the point where environment starts interfering with our healthy state of living, a violation takes place.

At the global level, the balance can be seen in The United Nations' Draft Principles on Human Rights and the Environment which proclaims the right to a secure, healthy and ecologically sound environment also includes that this right is dependent on other human rights, including civil, cultural, economic, political and social rights and they cannot be seen in divisible to one another.⁴¹ Regional agreements like The Additional Protocol to the American Convention on Human Rights in Area Economic, Social and Cultural Rights also proclaim the right live in a healthy environment and to have access to basic public services.⁴² The African Charter on Human and Peoples' Rights mention that everyone has the right to a general satisfactory environment favourable to their development.⁴³ These are an example where the provisions

³⁸ What are your Environmental Rights, UN ENVIRONMENT PROGRAMME (Jun. 6, 2020, 1:20 PM), <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what-0>

³⁹ Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 Macquarie Journal of International and Comparative Environmental Law. 36, 37 (2012).

⁴⁰ Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 Macquarie Journal of International and Comparative Environmental Law. 36, 37 (2012).

⁴¹ Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights and Environmental Protection*, 8 Macquarie Journal of International and Comparative Environmental Law. 36, 37 (2012).

⁴² Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Organization of American States, November 14, 1989, art. 10, 28 I.L.M. 156, at 164 (1989).

⁴³ African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217; 21 I.L.M. 58 (1982).

though mention the right to environment, also state that existence and interdependence of other rights, access to public services and development is important and must go hand in hand.

Conclusion

The human rights aspect remains incomplete without discussing the true value of the right to environment. The realization of this right is dependent on other factors like health, life, development, work etc. Developing countries struggle between economic growth and development vis-à-vis environmental preservation. The balance approach is nothing but Sustainable development.

Striking this balance is extremely important as it helps in determining how the rights should weigh against each other so that one is not undermined in fulfilment of another. In fact, all the right together should aid in full realisation of each other. Human Rights like Right to Health and Right to Life strengthen the importance of environmental protection. These rights have brought the appreciation of environmental concerns to the global level and therefore emerged several principles and technologies including economic efficiency in order to improve the state of environment and guarantee to the people that without a good quality environment, achievement of other human rights is not possible. Such efficiency and consciousness is what the human rights instruments seek to achieve.