

“Interface Between (Environment, Trade & Human) Rights”

**Pareena Singh
UIILS, Panjab University,
Chandigarh*

***Apoorva Kinra
UIILS, Panjab University,
Chandigarh*

In order to attain the sustainable development in our environment we need the reconciliation of the environment, trade and human rights. Individually, these rights are universally recognised but not all people are aware about the inter-relation of these rights. Therefore, the current paper focuses on the triangular relation between the three. Human Rights and Environmental Rights go hand-in-hand as no human right can be conferred on individuals without their being effective environmental rights. Trade has been a major component of the development of human society since the very beginning of civilizations but its impact on environment, positive as well as negative, was not highlighted until the 1970s. The civilisations did not recognise these rights from the very beginning. The recognition and the eventual emphasis on these rights was a gradual process. It took a lot of time for these rights to reach the scale where they are. The eventual understanding of the interrelation of these rights and taking action upon it took even more time. The involvement of environment in human rights has been enshrined in our constitution under many provisions such as Article 14, 19(1)(g), 21, 48(A), 51, 51(A) and 253 and has thus been recognised since the very beginning of the Indian Republic. The international recognition of trade rights and their interconnection was not recognised in the early constitution of the General Agreement Trade and Tarrifs but eventually during the 1970s, some light was shed on the interconnection. This paper aims to analyse the development of these rights and the eventual understanding of their interconnection.

KEYWORDS: Environment; Trade; Human Rights; GATT; UNEP; WTO

“The Role of Humans: Human beings are at the centre of concern for sustainable development.”

—Principle 1, Rio Declaration,
Conference on Environment and Development

1. INTRODUCTION

1.1 What is Environment?

‘Environ’, the French word which gave birth to the term ‘Environment’, literally means ‘Surrounding’. It consists of many variables which surround man as well as other living organisms such as microbes, light, air, water, soil etc. It can be said to consist of four interlinking systems namely the atmosphere, hydrosphere, lithosphere and the biosphere.

These four systems are in constant change and such changes are affected by human activity and vice versa.

Environmental Right towards healthy environment was started back in the independence era. Now there is the presence of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance.

1.1.1 Environmental Rights

Environmental Rights mean access to the unspoiled natural resources that enable survival including land, food, water, shelter and air. They also include more purely ecological rights, including the right for a certain beetle to survive or the right for an individual to enjoy an unspoiled landscape. They include political rights like rights for indigenous people and collectives, freedom of opinion and expression and also include the right to resist unwanted developments. It also includes the right to claim reparations for violating rights, including rights for climate refugees and others displaced by environmental disruption, to claim ecological debt, and the right to environmental justice. Most of these rights are well established and enshrined in various conventions. Some of them as well as the acceptance of some others is not legally recognised to which there are ongoing struggles of communities and indigenous people around the world.¹

1.1.2 Environmental Human Rights

The concept of Environmental Human Rights is present on our globe since time immemorial. United Nations Universal Declaration of Human Rights have upheld the principle that ‘human rights should be protected by the rule of law’.

Human rights and environment are inter-linked; human rights cannot be enjoyed without a healthy, safe and clean environment; and sustainable environmental governance cannot exist without the respect and establishment of human rights. This relationship has increasingly been recognised as the right to a healthy environment is enshrined in over hundred constitutions. Even after this, at least three people a week are killed protecting our environment rights, while many more are harassed intimidated, criminalised and forced out of their lands. Environment rights can be said to compose procedural and substantive rights. Substantive rights are also known as fundamental environment rights. In these, the environment has a direct affect on the existence or enjoyment or the right itself. Procedural rights constitute formal steps to be taken in enforcing substantive and legal rights²

¹ Idea taken from Environmental rights are human rights, Friends of the Earth International (Jan.22, 2020, 11:02), <https://www.foei.org/what-we-do/environmental-rights-human-rights>.

² Idea taken from What are environmental rights?, UN environment programme (Jan. 20, 2020, 11:09), <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>.

1.2 What is Trade?

Trading is the basic activity involving buying and selling of goods and services, with compensation paid by a buyer to a seller or the exchange of goods or services between parties. It can be of two types namely national and international.

1.3 What are Human Rights?

Human Rights as the name suggests, are the rights in order to protect the living creatures namely humans. They are the rights inherent to all homosapiens, belonging to any nationality, sex, ethnic group, color, religion, or other status. Universal human rights are often expressed and guaranteed in the form of treaties, customary international law, general principles and other sources of international law. They lay down certain criteria in which the government has to act, in order to promote and protect human rights and fundamental freedom of individuals.³

2. (ENVIRONMENT & HUMAN) RIGHTS

It is our fundamental human right to live in an unpolluted environment and it is our fundamental duty to maintain purity of environment. Associating human rights and environment is an important sourcebook that investigates the unfamiliar domain that lies among natural and human rights enactment. People can guarantee major balance and sufficient states of life in a domain that allows an existence of pride and prosperity. There is a dire need to figure laws remembering the way that the individuals who contaminate or demolish the regular habitat are carrying out a wrongdoing against nature, yet are disregarding human rights also. Surely, wellbeing has appeared to be the subject that scaffolds holes between the two fields of ecological security and human rights. The progression of the connection between human rights and condition would empower joining of human rights standards inside an ecological extension, for example, hostile to separation measures, the requirement for social interest and the insurance of helpless gatherings.

2.1 Environment and Constitution of India

To protect and improve the hygiene of environment is in the hands of homo-sapiens which is now a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State.⁴

³ Reference taken from What are human rights?, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Jan. 20, 2020, 11:29), <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

⁴ CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF ENVIRONMENT WITH RELEVANT CASE LAWS (Jan. 22, 2020, 11:51), <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>.

Our Constitution includes certain provisions under the chapters of Directive Principles of State Policy and Fundamental Duties in order to live a life worth living for. For example, Article 14, 19(1)(g), 21, 48(A), 51, 51(A) and 253.

2.2 History

Environmental degradation and human rights was first placed on the international agenda in 1972, at the UN Conference on the Human Environment. Principle 1 of the ‘Stockholm Declaration on the Human Environment’ establishes a foundation for linking human rights and environmental protection, declaring that man has a ‘fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations’.⁵

As a result of the 1972 Conference, the United Nations Environment Programme (UNEP) was set up. In 1992, twenty years after the first global environment conference, the United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, took place from 3-14 June in Rio de Janeiro. The Conference aimed to help governments ‘rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet’ as, despite international efforts, environmental degradation had accelerated at an alarming rate. Three major agreements were concluded of which the Rio Declaration on Environment and Development is the most pertinent in the context of human rights and the environment.⁶

In September 2002, the World Summit on Sustainable Development (WSSD) was held in Johannesburg. The WSSD plan of implementation shows clearly that respect for human rights and fundamental freedoms are essential for achieving sustainable development. The plan stresses the importance of action at the national level for successful development. Key components of the plan include good governance, the rule of law, gender equality and an overall commitment to a just and democratic society.⁷

The majority of cases involving the right to a healthy environment in the Inter-American system are based in communal or indigenous rights rather than individual rights. The first environmental case was brought on behalf of the Yanomani Indians of Brazil⁸, where the Commission found that the state had violated its responsibility to provide adequate protection for the health and safety of the Yanomani in the construction of a highway and by neglecting to address hostilities between mineral prospectors and the Indians. The Commission found

⁵ HUMAN RIGHTS AND THE ENVIRONMENT, ICELANDIC HUMAN RIGHTS CENTRE (Jan. 22, 2020, 12:05), <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-in-relation-to-other-topics/human-rights-and-the-environment>.

⁶ Ibid.

⁷ Ibid.

⁸ Case 7615

violations of the right to life, liberty and security, the right to residence and movement and the right to health under the American Declaration.⁹

Under the African system, the African Commission took a landmark decision in 2001¹⁰ with regard to the right to a clean environment. In a case where it was alleged that the Nigerian government had contributed to gross violations of human rights through the actions of its military forces and unsound environmental management related to exploitation of the Niger Delta, the Commission found that the Nigerian government had violated, inter alia, the right to a clean environment by directly contaminating water, soil and air, which harmed the health of the Ogoni people living in the area, and by failing to protect the community from the harm caused by oil companies. The Commission emphasised that the right to a clean and safe environment is critical to the enjoyment of economic, social and cultural rights. This right, it was held, requires a state to take reasonable measures to prevent pollution and ecological degradation, to promote conservation and to secure an ecologically sustainable development and use of natural resources.¹¹

2.3 Interface between (Environment & Human) Rights

As of late the connection between human rights and environmental rights has become an issue of enthusiastic discussion. The connection between the two underscores that a tolerable physical condition is a precondition for carrying on with an existence of respect and worth. All the more solidly, an average physical condition has to do with assurance against, for example, commotion irritation, air contamination, contamination of surface waters and the dumping of poisonous substances.

Environmental protection and human rights were seen as discrete zones by legislative establishments and non-administrative associations the same at both national and worldwide levels. The ecological issues in various districts of the world are currently being acknowledged as having significant human rights suggestions by the worldwide society with developing globalization.

Heading towards sustainable development is increasing the importance of human rights approach. The protection of human life in relation to life, health, culture and living standards is central to any social, environmental or economic programmes.¹² The right to life cannot be realised without the basic right to clean, water, air and land. A human rights approach allows

⁹ Supra 5.

¹⁰ The Social and Economic Rights Action Centre et al. v. Nigeria, Communication 155/96.

¹¹ Supra 5.

¹² Maria Adebawale Capacity Global, Chris Church ANPED, Beatrice Nduta Kairie Environment Liaison Centre International, Boris Vasylykivsky, Yelena Panina Eco-Pravo Kyiv, Environment and Human Rights: A New Approach to Sustainable Development, World Summit on Sustainable Development (Jan. 20, 2020, 11:36), <https://pubs.iied.org/pdfs/11016IIED.pdf>.

the quality of life of people, in particular the most vulnerable, to be integrated into environmental decision making.¹³

There are two main heads to human rights and the environment:

- i) The use of existing human rights, and
- ii) The need for new human rights for a safe and clean environment.¹⁴

2.4 Judicial Interventions

Due to the absence of a privilege to natural security in the 1948 UNDHR ecological issues have been raised unexpectedly, through the declaration of ensured rights, such rights that secure the respectability of people and their quick environment. Thusly ecological cases brought before the territorial human rights show controlling organs (particularly the European HR Commission and later the European Court of Human Rights) have been detailed as infringement of the following:

- The right to life.
- The right to respect for privacy and family life.
- The right to the peaceful enjoyment of property and
- The right to obtain information concerning risk to health and safety.¹⁵

The constitutional rights allowed are progressively being implemented by courts. In India for instance, a progression of decisions somewhere in the range of 1996 and 2000 reacted to wellbeing concerns brought about by mechanical contamination in Delhi. On account of Charan Lal Sahu v. Union of India¹⁶ the Supreme Court of India deciphered the privilege to life ensured by Article 21 of the Indian Constitution to incorporate the privilege to a healthy domain. On account of Subhash Kumar v. State of Bihar¹⁷ the court saw that the “right to life guaranteed by Article 21 of the Constitution includes the right of enjoyment of pollution – free water and air for full enjoyment of life”.

2.5 Conclusion

It is apparent that ecological and human rights are firmly related. The improvement of the connection between human rights and nature would encourage the converging of human rights principles inside an ecological scale. The human rights would be strengthened by the

¹³ Maria Adebawale Capacity Global, Chris Church ANPED, Beatrice Nduta Kairie Environment Liaison Centre International, Boris Vasylykivsky, Yelena Panina Eco-Pravo Kyiv, Environment and Human Rights: A New Approach to Sustainable Development, World Summit on Sustainable Development (Jan. 20, 2020, 11:36), <https://pubs.iied.org/pdfs/11016IIED.pdf>.

¹⁴ Ibid.

¹⁵ Idea taken from Right to Environment of Human Right, LawTeacher (Jan. 22, 2020, 12:18), <https://www.lawteacher.net/free-law-essays/human-rights/right-to-environment-of-human-right.php>.

¹⁶ 1990 AIR 1480.

¹⁷ 1991 AIR 420.

amalgamation of ecological concerns giving casualties of natural feebleness the chance of access to equity and empowering the development of the extent of human rights insurance and age of solid answers for instances of corruption. Associating human rights and the earth brings casualties of ecological corruption closer to the components of insurance that are accommodated by human rights. As we progressively perceive the genuine effect of a corrupted domain on human wellbeing and prosperity, we are better set to change our approaches and social practices to mirror our upgraded comprehension. Subsequently, we ought to have the option to secure human rights and human poise inside its more extensive social, monetary and social setting by attracting from and adding to the individuals who are effectively occupied with the ecological and general wellbeing fields. This ought to likewise encourage the individuals who are working in the natural and protection fields to build up a superior working association with those in the human rights field. This will in the long run lead to the verbalization of a progressively incorporated way to deal with managing financial and ecological issues, empowering the improvement of a practical model for the conservation of organic assets and regular biological systems, for the utilization and pleasure in both present and people in the future.

The requests for a protected contamination– free and solid condition, as coming surprisingly close to human rights, have to an enormous degree been proliferated by the creating nations of the south against the way of life of industrialized nations of the North, a culture coordinated at financial development dependent on large scale manufacturing, mass utilization and mass transfer of waste materials, all of which add up to an away from of the key privileges of the more unfortunate nations. One of the most significant results of consolidating human rights standards inside a natural extension is to give casualties of ecological corruption the probability of access to all adjust equity. Given the periodic vulnerability endured by casualties of ecological corruption, “connecting human rights and the earth carries such unfortunate casualties closer to the systems of insurance that are given by human rights law.” As we progressively perceive the effect of a contaminated and debased condition on human wellbeing and prosperity, we are better put to alter our strategies and social practices to mirror our improved comprehension. Subsequently, we ought to have the option to ensure human rights and human respect inside its more extensive social, financial and social setting by attracting from and adding to the individuals who are effectively occupied with the ecological and general wellbeing fields. In the long run this will prompt the explanation of a progressively incorporated way to deal with managing financial and ecological issues, empowering the advancement of a maintainable model for the safeguarding of organic assets and characteristic biological systems, for the utilization and pleasure in both present and ages yet unborn.

3. (TRADE & ENVIRONMENT) RIGHTS

World Trade Organisation (WTO) was formulated in 1995 with the fundamental goals of sustainable development and preservation of the environment. These goals can be seen in the Marrakesh agreement which established the World Trade Organisation. The Paris agreement

also requires a decisive departure from current emission and policy trends to cut green house gas emissions within a few decades and thus, providing a new picture to trade while protecting the environment. The relationship between trade and environment has evolved with time. The inclusion of environmental issues in the agenda of the World Trade Organization (WTO) at the Doha Ministerial in 2001 moved this relationship into the spotlight. However, this is by no means a new relationship and what was implicit has just been made explicit at the Doha Ministerial. The General Agreement on Tariffs and Trade (GATT) was the organisation that gave way to the constitution of the World Trade Organisation (WTO). The GATT was an agreement between many countries, whose overall purpose was to promote international trade by reducing or eliminating trade barriers. In the early stages of GATT, its major fundamental objective was to promote trade and not much emphasis was given to the link between the environment and trade. It was in 1970, that the impact of trade on the environment was recognised. Growing international concern about the impact of economic growth on social development and the environment led to a call for an international conference on how to manage the human environment. The 1972 Stockholm Conference was the response.¹⁸

3.1 General Agreement on Tariffs and Trade (GATT)

In November 1971, the GATT Council of Representatives agreed to set up a Group on Environmental Measures and International Trade (EMIT group), which would be open to all GATT members/ signatories. The decision also said group would only be convened at the request of GATT members. Therefore, it was in 1991 when the members of the European Free Trade Association asked for the EMIT Group to be convened. There were some new developments in both environment and trade in these 20 years. The EFTA referred to the upcoming 1992 United Nations Conference on Environment and Development (UNCED), and said GATT should contribute in the form of an EMIT group.

The UN held a Conference on the Human Environment in Stockholm in 1972. In 1971, during the preparations, the Secretariat of the General Agreement on Tariffs and Trade (GATT) was asked to make a contribution. Therefore, the Secretariat prepared a study under its own responsibility. Titled as “Industrial Pollution Control and International Trade”, the study focused on the implications of environmental protection policies on international trade. It reflected the concern of trade officials at the time, that such policies could become obstacles to trade as well as constitute a new form of protectionism.¹⁹ The GATT Director-General Olivier Long presented the study to GATT members. He urged them to examine the implications of environmental policies that might be on international trade. A number of GATT members suggested that a mechanism be created in GATT for the implications to be examined more thoroughly. The EMIT group was a resultant of the following reports and the implications highlighted in it.

¹⁸ Early years: emerging environment debate in GATT/WTO, WORLD TRADE ORGANISATION (Jan. 25, 2020, 21:52), https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm.

¹⁹ Ibid.

Between 1971 and 1991 trade flows had become more and more widespread and with the environment policies having an increasing impact on trade, a number of discussions followed suit. During the Tokyo Round of trade negotiations from 1973 to 1979, participants took up the question of the degree to which environmental measures, regulations and standards could form obstacles to trade. The Tokyo Round Agreement on Technical Barriers to Trade (TBT), also known as the “Standards Code”, came into effect. It called for non-discrimination in the preparation, adoption and application of technical regulations and standards, and for them to be transparent. During the Uruguay Round (1986–1994), trade-related environmental issues were once again taken up and modifications were made to the TBT agreement. In 1982, a number of developing countries expressed concern that products prohibited in developed countries on the grounds of environmental hazards, health or safety reasons, continued to be exported to them. At the 1982 GATT ministerial meeting, members decided to examine the measures needed to bring under control the export of products prohibited domestically. This led to the creation of a Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances in 1989. A dispute between Mexico and United States in 1991 put the spotlight on the interaction and link between environmental protection policies and trade. The case concerned a US proscription on tuna imported from Mexico, caught using “purse seine” nets which caused the incidental killing of dolphins. Mexico appealed to GATT on the grounds that the impediment was inconsistent with the rules of international trade. The panel ruled in favour of Mexico. The report of the panel was not adopted. However, its ruling was heavily criticised by environmental groups who were of the opinion that trade rules were an obstacle to environmental protection.

In 1987, the World Commission on Environment and Development produced a report entitled “Our Common Future”, also known as the Brundtland Report, in which the term “sustainable development” was first time conceived. The report identified poverty as one of the major causes of environmental degradation, and argued that greater economic growth, in which increased international trade played a major role, could generate the necessary resources to combat what had become known as the “pollution of poverty”. The constitution of the EMIT was followed by further developments in environmental forums.

The 1992 UN Conference on Environment and Development (UNCED), also known as the Rio “Earth Summit”, drew attention to the role of international trade in poverty alleviation and in combating environmental degradation. The programme of action adopted at the conference also addressed the importance of promoting sustainable development through international trade. The preparatory work for the summit had itself influenced developing countries in their approach towards discussing trade and environment issues in the EMIT. The environment and trade were to be interlinked more explicitly in the constitution of the

multilateral trading system that was to be signed in 1994 namely the World Trade Organisation (WTO).²⁰

3.1 World Trade Organisation (WTO)

Towards the end of the 1986-1994 Uruguay Round, attention was once again drawn to trade-related environmental issues, and the role of the soon-to-be-created World Trade Organization (WTO) in the promotion of the interface between environment and trade. As a result, the preamble to the Marrakesh Agreement Establishing the World Trade Organization, emphasizes on the importance of working towards sustainable development. Subsequent to the formation of WTO, 2002 World Earth Summit on Sustainable Development, Johannesburg, South Africa and 2005 United Nations World Summit, New York, United States of America, highlighted the growing interaction of trade and environment. The commitment of WTO members to the environment can also be seen in the general procedures and policies of WTO. The rules, with their fundamental principles of non-discrimination, transparency and predictability, help set the framework for members to design and implement measures to address environmental concerns and put a step forward in the path of environmental protection. The WTO also supports sustainable development and the environment through its various committees. One such unique committee is the Committee on Trade and Environment (CTE). There are other important WTO bodies as well, for example, the committee administering the Technical Barriers to Trade Agreement is where governments share information on actions they are taking and discuss how some environmental regulations may affect trade. The current Doha Round of negotiations gives members a chance to achieve even more efficient allocation of resources on a global scale through the continued reduction of obstacles to trade. For example, the Doha Round is the first time when environmental issues have featured explicitly in the context of multilateral trade negotiations and its overarching objective is to enhance the mutual support of trade and environment. Members are working in order to liberalize trade in goods and services that can benefit the environment and also the member countries by enhancing trade. They are also discussing ways to maintain a harmony between WTO rules and the specific trade obligations in various agreements that have been negotiated in order to protect the environment from further degradation.

3.2 Environmental Disputes in GATT/ WTO

Under the GATT six panel proceedings involving the environment were completed, out of which only three were adopted. In 1995, the WTO's dispute settlement procedure took over from GATT and there have been three proceedings since then under it.

The first adopted was on 22nd February, 1982 and was brought up by Canada against the United States on the Prohibition of Imports of Tuna and Tuna Products from Canada. The

²⁰ Idea taken from Early years: emerging environment debate in GATT/WTO, WORLD TRADE ORGANISATION (Jan. 25, 2020, 21:52), https://www.wto.org/english/tratop_e/envir_e/hist1_e.htm.

second one was brought up by the United States against Canada on the Measures Affecting Exports of Unprocessed Herring and Salmon and was adopted on 22nd March 1988. The third case was also brought up by USA but against Thailand and was adopted on 7th November 1990 on the Restrictions on the Importation of and Internal Taxes on Cigarettes.

The other three cases were not adopted. The first one out of these was brought up by Mexico against the United States and was circulated on 3rd September 1991. It was in relation to Restrictions on Imports of Tuna also called as the “tuna-dolphin” case. The second one is known as the “son of tuna-dolphin” case and was brought up by the European Union against USA. It was circulated on 16th June 1994. The last case under GATT was brought up by EU against USA and was circulated on 11th October 1994 and was on the Taxes on Automobiles.

Only three proceedings have been held under the WTO and all three of them have been adopted. The first was adopted on 20th May 1996 and was brought by Venezuela and Brazil against the United States on the Standards for Reformulated and Conventional Gasoline. The second one was also brought up against the United States and was brought up by India, Malaysia, Pakistan and Thailand. It was in relation to the Import Prohibition of Certain Shrimp and Shrimp Products. The last case was brought by Canada against the European Communities on the Measures affecting asbestos and asbestos-containing products and was adopted on 5th April 2001.

4. CONCLUSION

The growing awareness regarding the environment and its protection is what lead to the realisation of its interface with the various other factors. Out of these factors, this paper has aimed to highlight the interface of the environment with trade and human rights. The correlation between trade, human rights and environment was first highlighted during the Conference on the Human Environment in Stockholm in 1972. It was then that human rights with respect to environment and the impact of trade on the environment and vice versa was discussed for the premier time. Since then various summits have been organised by the United Nations and other organisations which have tried to understand the interface deeper. The consciousness that the human rights of individuals could only be secured and promoted in a sound and healthy environment further lead to various pronouncements by organisations such as the United Nations Human Rights Commission in the path of a sound and secure environment that would further lead to protection of human rights conferred on the population. At the same time, various provisions of the Indian Constitution as well as judicial pronouncements also provide an interface between the environment and human rights. Similarly, the interrelation between trade and environment was also promoted by the pronouncements of various organisations of which the prominent ones are General Agreement on Tarrifs and Trade and World Trade Organisation.