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A Human Right to a Clean Environment?

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I. Introduction

Environmental degradation is one of the most severe problems human beings are suffering from. Many people do not have access to clean air and drinking water and experience health problems due to the increasing pollution. Yet, the existence of international environmental law is underrepresented in the international legal system.

This paper aims to examine whether a human right to a clean environment exists in international law. It mainly approaches this question from two different angles. At first, some main international environmental law documents will be introduced in order to display their status and find out whether they can justify environmental protection for humans. This part also aims to give a basic idea about international environmental law under the auspices of the United Nations, because environmental law seems to be underrepresented in the international legal literature. Hence, the part will be a little longer than the corresponding parts.

But international environmental law turns out to be very vague. About 200 treaties are registered under the United Nations environmental program register, and in total there are about 900 bi- and multilateral treaties.¹ Many of these treaties are “soft law” and do not seem sufficient to claim a human right to a clean environment. Thus, international human rights law will be discussed in the following step, with the aspiration to locate norms, which could serve as a legal basis for a right to environment. The paper will argue that several international human right norms can be applied for environmental protection. Especially the recent development shows that “environmental law and human rights reached a kind of maturity and omnipresence”².

¹ See Schreurs and Economy (1997), pp. 1-2.

² Anderson (1996a), p. 1. *Please note* that more than one essay from this edited book has been used. Unfortunately, only one essay is directly from the edition in the reference list. The other ones were only available in copies of the working papers. Hence, the page numbers seem to be confusing, because they do not refer to the edition of the book in the reference list. That is why the essay with the page numbers of book in the reference list is marked *italic*. The other ones have the page numbers from the working papers. Sorry for the inconvenience.

In a last step, it is intended to show at the example of Indian constitutional law and the jurisdiction of Indian courts that human rights norms can indeed be a reasonable basis for claiming a right to environment. The example India was selected, because most human rights cases occur in front of domestic jurisdictions, and at the same time India offers an interesting example to illustrate how national jurisdictions can deduce a right to a clean environment from existing human rights norms. It will be alluded how “insubstantial international environmental soft law” can affect the judges’ decisions.

II. A human right to a clean environment in international law?

There are two main ways one can approach the question whether a human right to a clean environment exists. Either one looks at the existing international environmental law in order to examine whether it provides human rights norms, or one can study international human rights law and look for environmental rights within it. At first, it is useful to give a short survey on some existing international environmental laws within the United Nations treaty register and search for norms containing human rights.

A. International environmental law

The main purpose of international environmental law is the protection of the environment per se.³ Some of the major objectives are the protection of the flora and fauna, the preservation of ecological balance and the conservation of the diversity of species. International environmental law imposes obligations on human beings and sets standards.

International environmental law is probably the youngest branch of international law. Although the first multilateral international environmental law convention – the *Convention for the Protection of Birds Useful to Agriculture* – was already established in 1902, the consciousness to develop a more effective and comprehensive regime only arose in the late

³ See for instance Kiss and Shelton (1991), p. 1 or Shelton (2001), p. 190.

1960s.⁴ The pollution of the atmosphere and of the seas, the loss of species, the danger of nuclear power, and the corresponding environmental, social and health problems are only a few among the aspects, which influenced the international community in aiming to create a legal and effective system,⁵ which at the end protects the human beings from an environmental disaster.

However, many environmentalists suggest that the purpose of environmental law is *ecocentric*.⁶ In other words, environmental issues – and finally the preservation of the ecosystem earth – are in the foreground. Obligations and duties are imposed on governments, companies, individual human beings or groups in order to reach these goals. The *Antarctica Treaty (1959)*, the *World Heritage Convention (1972)*, the *Convention on International Trade in Endangered Species (1973)* and the *World Charter for Nature (1982)* are some examples. These treaties do not exclusively exist for the benefit of human beings, but should protect the environment from exploitation.⁷ Nevertheless, it is not intended to debate whether environmental law is solely ecocentric or not, because this paper mainly aims to scrutinize whether a human right to a clean environment can be claimed from positive international law norms. Hence, here the *anthropocentric* approach, saying that “environmental protection is primarily justified as a means of protecting humans rather than as an end itself”⁸, is taken for granted.

One has to keep in mind that environmental protection can negatively affect the short-term needs and objectives of human beings.⁹ States and individuals could be in a situation of disadvantage, if they neglect their economic development in favor of environmental

⁴ See Kiss and Shelton (1991), p. 33.

⁵ See Schreurs and Economy (1997), p. 1.

⁶ See Boyle (1996), p. 6.

⁷ See Boyle (1996), p. 6.

⁸ Sands (1995), p. 221. Mainly environmentalists and animal protectionists criticize the anthropocentric approach. For a detailed critique of the anthropocentric approach, see Redgwell (1996).

⁹ See also Shelton (2001), p. 191, who says that short-term costs make decisions in favor of environmental protection rather unpopular.

protection¹⁰. Especially in developing countries, the struggle of parts of the population against poverty is often considered as more important than environmental protection. States have to permanently develop their economic capability in order to remain competitive in the international market system. Moreover, the approval of the *Declaration on the Right to Development*¹¹ by the UNGA could limit any right to environment for human beings.

But even a human right to development would not make a human right to environment impossible, since it is normal in international law to balance contradictory but equitable norms. Thus, the international community has to balance between the right to development and right to environment.¹² Nevertheless, this is problematical for a human right to environment, because a right to development could negatively affect the priorities of the states and private actors, which both indeed are often biased towards the right to development. But if the states are able to equalize developmental and environmental aspects, then environment and development will not any more be contradictory but complementary. This idea is often summarized under the expression “sustainable development”.

The foundation for modern international environmental law was laid at the *United Nations Conference on the Human Environment* in Stockholm 1972. On this conference, the *Stockholm Declaration on the Human Environment*¹³ (*Stockholm Declaration*) was unanimously adopted, albeit legally not binding. Although the conference failed to proclaim an explicit human right to environment, this document shows the concern of the international community for environmental matters¹⁴ and, more importantly, set the agenda and framework for future discussions and initiatives.

It is worth to turn to the *Stockholm Declaration* a little more in detail, in order to examine whether it contains a human right to a clean environment. Especially two principles

¹⁰ See Kiss and Shelton (1991), p. 3.

¹¹ UNGA Res. 41/128 (1986).

¹² See for instance Anderson (1996a), p. 19 or Shelton (2001), p. 192 .

¹³ *Stockholm Declaration on the Human Environment* (16 June 1972), UN Doc. A/Conf.48/14/Rev.1 (UN Pub.73.II.A.14.) (1973). [Also in 11 ILM 1416 (1972)].

¹⁴ See Shelton (2001), p. 195.

talk very explicit of such a right. *Principle 1 of the Stockholm Declaration* contains the “fundamental right [for man] to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being”. Literally interpreted, this sentence has the quality of a human right. According to *Principle 7 of the Stockholm Declaration*, the states are required to take steps to prevent pollution of the environment by substances, which affect human health.

But as said before, the *Stockholm Declaration* was only the beginning of a new wave of environmental international law. Therefore, it is more expedient to turn to developments in the last decade to see whether there have been similar or even more crucial developments recently. In 1992, the *UNCED* was held in Rio de Janeiro. Although environment was, as the title of the conference suggests, also an issue, *UNCED* focused rather on development related subjects (mostly North-South related topics).¹⁵ Indeed, the term “human rights” is only used three times in the *Rio Declaration on Environment and Development (Rio Declaration)*.¹⁶ According to Diane Shelton, there is no explicit link between human and environmental rights.¹⁷ At best, *Principle 10 of the Rio Declaration* can be considered as participatory right.¹⁸ It suggests that environmental issues are “at best handled with participation of all concerned citizens”, and further requires the states to provide “effective access to judicial and administrative proceedings”.

Otherwise, the *Rio Declaration* rather focuses on the right to sustainable development, but with bias for development. A substantial and explicit right to a clean environment cannot be found. There is one more recent development, which could indeed lead to a right to environment in future. In 1989, a Sub-Commission of the United Nations Commission on Human Rights under the leadership of Mrs. Fatma Zohra Ksentini was assigned to study the

¹⁵ See Shelton (2001), p. 198.

¹⁶ UN Doc. A/CONF.151/26/Rev.1 (93.I.8) (1993).

¹⁷ See Shelton (2001), p. 196.

¹⁸ See Boyle (1996), p. 12.

possibility for a human right to environment.¹⁹ In 1994, the *Ksentini Report* concluded that environmental rights are a part of the existing human rights.²⁰ The *Draft Principles on Human Rights and the Environment*, which are included in the annexure of the report, emphasize this.²¹ In particular *Principle 1* says that human rights and the environment are indivisible.

Boyle summarizes that from now on there is a “shift from environmental law to the [human] right to a healthy and decent environment”²². In his words, the *Ksentini Report* “greened” existing Human Rights,²³ meaning that existing human rights may already contain environmental rights. Thus, it is necessary to take a closer look at human rights treaties in order to examine whether humans can claim a right to a clean environment from its norms.

B. International human rights law

Do existing global and regional human rights treaties already contain environmental rights? Literally, they do not. But Anderson suggests that environmental rights should be deduced from other existing human rights, because human rights already have a strong institutional structure and could lead to an effective right to a clean environment.²⁴ Keeping in mind, that the *Ksentini Report* focused on the “interdependent, complement and indivisible”²⁵ relation between human rights and environmental rights, some specific human rights will now be discussed.²⁶ Only two regional human right treaties contain an identifiable right to environment, namely the *Art. 24 ACHPR* and *Art. 11 of the San Salvador Protocol to the ACHR*. *Art. 24 ACHPR* will be taken as example.

¹⁹ UN Doc. E/CN.4/Sub.2/1989/C23 (1989).

²⁰ See Boyle (1996), p. 2, or Shelton (2001), p. 232.

²¹ UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994) + Corr.1 (13 Sept. 1994).

²² Boyle (1996), p. 2.

²³ See Boyle (1996), p. 9.

²⁴ See Anderson (1996a), p. 4.

²⁵ Anderson (1996a), p. 3.

²⁶ See the Appendix for a table with human rights from various treaties, which could qualify as environmental rights, too. The table is subdivided in three parts, namely explicit human rights to environment, human rights to environment from civil and political rights and human rights from economic, social and cultural rights.

The *ACHPR* is the first international human rights instrument to adopt a right to environment. *Art. 24 ACHPR* is a so-called “third generation human right”.²⁷ Third generation human rights, also called solidarity rights, refer to “groups rather than to individuals, and require the Government and international agencies to co-operate with and assist those whose own resources are insufficient to achieve the necessary ends”²⁸. *Art. 24 ACHPR* entitles a right to environment, which should be ‘general’, ‘satisfactory’ and ‘favorable to development.

Although the right to environment for the African People is explicitly expressed in this article, it cannot be seen as an effective right to environment. The status of third generation rights is not definite yet. Merrills argues that *Art. 24 ACHPR* does not have the status of a human right due to its indeterminate character and context.²⁹ Anderson adds, that the interpretation of this article is rather narrow and refers at best to pollution.³⁰ And it has to be doubted, whether an effective system, ensuring that the parties of the treaties comply with the obligations, exists. As one can see, *Art. 24 ACHPR* is very indefinite. The *ACHPR* is generally criticized of being very vague.³¹ Hence, assuming that *Art. 24 ACHPR* has human right status is farfetched.

Although first and second generation human rights do not express explicitly a right to environment, they have a stronger institutional basis. Thus, it is useful to have a look at some of these rights, because, they could serve as legal basis for a right to environment, when teleologically interpreted in the environmental context.

Civil and political rights, also called first generation human rights, are “individual rights entailing freedom from arbitrary government interference or as guaranteeing participatory rights in civil society”.³² They protect individuals from unlawful action of the

²⁷ See Sieghart (1990), p. 376.

²⁸ Boyle (1996), p. 3.

²⁹ See Merrills (1996), p. 9.

³⁰ See Anderson (1996a), p. 13.

³¹ See Churchill (1996), p. 13.

³² Boyle (1996), p. 2. The most important first generation human rights in the environmental context are listed in the appendix.

government. Exemplary, the right to life and the right to a fair trial, both with fundamental rights character, will be briefly discussed.³³

The main question in this context is whether the right to life imposes positive obligations on the state. Does the state have to provide adequate living conditions like better drinking water and air pollution controls, so that this fundamental human right is not negatively affected? The *United Nations Human Rights Committee* answers this question affirmatively. Churchill concludes that the right to life is theoretically applicable in terms of the environment, even though no successful case in the international courts has yet occurred.³⁴

Furthermore people have the right to a fair trial, in case the state acted harmful to the environment³⁵. But they have to prove that their own rights were affected. This is insofar important, because virtually every action of a state, which is detrimental for the environment and affects *any* of the peoples' rights as side-effect, can be addressed in front of national courts (and in some cases in front of international human rights courts, like the European Court of Human Rights in Strasbourg). It widens the possibility for legal proceedings in environmental related questions.

Now, some examples for environmental rights derived from economic, social and cultural human rights, also called second generation human rights, will be given. Second generation rights are “concerned with encouraging governments to pursue politics which create conditions of life enabling individuals, or in some cases groups, to develop equally to their full potential”³⁶. They impose standards on governments how to act. The most interesting rights in this context are probably the right to a healthy environment and the right to decent living conditions. Its dimensions have specifically been emphasized by the UNGA,

³³ In global human rights treaties, *Art. 6(1) ICCPR* and *Art. 14(1) ICCPR* are the legal bases, respectively.

³⁴ See Churchill (1996), p. 2.

³⁵ See Churchill (1996), p. 5.

³⁶ Boyle (1996), p. 2. The most important second generation human rights in the environmental context are listed in the appendix.

“recognizing that all individuals are entitled to live in an environment adequate for their health and well-being”³⁷.

If the rights to health and decent living conditions were fully implemented, the problems of pollution and environmental degradation would have been solved. But the right for health is very weak, because the state is only required to do the feasible with its available resources.³⁸ Same is relevant for the right to decent living conditions. Although the state could be responsible for improving environmental hygiene in preventing industrial pollution,³⁹ other human rights, like the right to development, will weaken this right, as shown above.

C. Appraisal

Thus far, it has been shown that environmental law itself is quite weak and does not provide a human right to development. The *Stockholm Declaration* and the *Rio Declaration* are solely soft law documents and thus legally not binding.⁴⁰ The Draft Principles of the *Ksentini Report* have not entered into force yet, regardless of the fact that their status would not be sufficient to grant a reliable human right to environment.

More appropriate is the approach to find environmental rights in existing human rights treaties. Human rights law provides some legal bases, which could be reinterpreted in favor of the environment. The best way to examine whether this has taken place is to study legal opinions, especially court verdicts. However, court verdicts in the international institutions dealing with environmental issues are rather rare.⁴¹ But “arguments for the protection of the environment as a substantive human right are almost certainly better addressed not in global terms, but in the context of particular societies and of their own legal systems”⁴², because most of the human rights cases take place in domestic jurisdictions. Hence, it should be

³⁷ Operative clause 1 of UN GA Res. 45/94 (1990).

³⁸ See Churchill (1996), p. 8.

³⁹ See Churchill (1996), p. 10.

⁴⁰ See Cassese (2003), p. 383.

⁴¹ See Churchill (1996), p. 2.

⁴² Boyle (1996), p. 15.

examined at the example of the Indian legal system whether it is possible to reinterpret human rights in favor of the environment at the domestic level.

III. Environmental justice in India?

Environmental rights in India do not really exist in written form. They were rather created from lawyers and activists from other available resources.⁴³ At first, the general provisions of the *COI* should be introduced before examining how the Indian Courts have decided on environmental related grievances. The following analysis will be limited on constitutional rights.

A. A constitutional right to environment?

Human Rights in India are guaranteed as fundamental rights under *Part III* (Art. 12-35) of the *COI*. Since India has become a member of the *ICCPR* and *ICESCR* on 27 March 1979, human rights should be in accordance with international human rights law.⁴⁴

Interesting to note is that whereas the rights guaranteed through the *ICCPR* are in *Part III* of the *COI*, the rights of the *ICESCR* are not in *Part III*. They are rather included in *Part IV* of the *COI* (Art. 36-51: Directive Principles of State Policy), and hence legally not directly enforceable for individuals and groups,⁴⁵ which takes them the immediate status of fundamental rights. Du Bois concludes environmental protection to be rather in *Part IV* than *Part III* of the *COI*,⁴⁶ which makes the direct application through individuals actually problematic.

The distinction between *Part III* and *Part IV* of the *COI* is particularly interesting. The drafting committee of the *COI* initially wanted *Part IV* to belong to the fundamental rights section.⁴⁷ Fundamental rights are the rights for all individuals, while Directive Principles of

⁴³ See Anderson (1996a), pp. 21 and 25.

⁴⁴ See Agarwal (1992), p. 479.

⁴⁵ See Agarwal (1992), pp. 479-81.

⁴⁶ See Du Bois (1996), p. 2.

⁴⁷ See Abraham (1999), p. 18.

State Policy define the frame, in which the legislation and decisions from the authorities can act. But one person's right can be another person's duty. The Indian Supreme Court decided in 1980 that *Part III* and *Part IV* of the *COI* were complementing. Whereas *Part IV* imposes obligations on the state, *Part III* is the control mechanism.⁴⁸ Therefore, citizens can theoretically demand the state to fulfill its duties, as if it were their fundamental rights.⁴⁹ In *Koolwal v. Rajasthan*, the Rajasthan High Court even decided in favor of environmental rights, although no injuries to the population were alleged in the particular case.⁵⁰ This shows how serious Indian courts take environmental issues.

The dimension of this interpretation of the *COI* for environmental rights can be understood with the following interpretation. *Art. 48A COI* says:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Here, the duty to protect and improve the environment is imposed on the state. Additionally, *Art. 51A (g) COI*⁵¹ says:

It shall be the duty of every citizens of India – [...]

g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

Normally, human rights should protect against arbitrary action of the state. But the protection of the environment is a fundamental duty not only of the state, but also of every (legal) person, says *Art. 51A (g) COI*. Many environmental crimes are committed not only by the state, but by private actors. The constitutional right to environmental in India could therefore also be indirectly claimed against private. In other words, the state has to prevent

⁴⁸ See Abraham (1999), pp. 19-20. He cites *Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1506*. *Art. 51A and Art. 48A* were introduced in the *COI* 1976, pursuant to the *Stockholm Declaration*. See Vashishth (1999), pp. 13-4.

⁴⁹ See also Du Bois (1996), p. 2. He takes reference to *Subhash Kumar v. State of Bihar AIR 1991 SC 420*.

⁵⁰ See also *Koolwal v. State of Rajasthan, AIR 1988 Raj 2, 3, para 2*. The High Court of Rajasthan decided that “*Art. 51A* gives a right to the citizen to move the Court for the enforcement of the duty cast on State instrumentalities, agencies, departments, local bodies and statutory authorities [...]” See also *Anderson (1996b)*, p. 217, who takes special reference to this case.

⁵¹ *Art. 51(A)* is the only article belonging to *Part IV(A)* of the *COI* (“*Fundamental Duties*” [of every citizen]).

that private persons damage the environment, because the rights of other citizens could be affected.

How can citizens claim environmental rights? Other than many states, the right to fair and legal procedures belongs to the fundamental rights section in India. The right to a remedy, granted by *Art. 32 COI*, gives “individuals the right ‘to move to the Supreme Court by appropriate proceedings’ for the enforcement of fundamental rights”.⁵² A similar right on the state level to approach the High Courts exists under *Art. 226 COI*.⁵³ *Art. 226 COI* is even wider than *Art. 32 COI*, because *Art. 226 COI* “may be invoked not only for the enforcement of a fundamental right but for ‘any other purpose’ as well”.⁵⁴ Hence, individuals can enforce in the High Courts that the State adheres to *Part IV of the COI*.

Addressing the High Courts is unbureaucratic and involves hardly any costs,⁵⁵ because public (or social) interest litigation has become a common feature in India. Under public interest litigation, the Courts facilitated the enforcement of environmental rights. Not only can letters and telegrams from individuals or interest groups be transferred into writ petitions, the court also acted on own initiative.⁵⁶ To say it more clearly, the court inaugurated cases in the name of its citizens, particularly because on the one hand the awareness of environmental rights is not necessarily given, and on the other hand it is impossible for many people in India to address courts and enforce rights. Baxi summarizes, that this nouvelle mechanism has made extra-ordinary remedies possible for the people, and the Courts have now become institutions for all Indians, since they begin to act when political institutions fail to comply with statutory or constitutional law and thus impinged against fundamental fights.⁵⁷

⁵² Anderson (1996b), p. 209.

⁵³ See Anderson (1996b), p. 209-10.

⁵⁴ Divan and Rosencranz (2001), p. 129.

⁵⁵ See Anderson (1996b), p. 224.

⁵⁶ See Anderson (1996b), pp. 210-1.

⁵⁷ See Baxi (1985), pp. 289-90. It should be mentioned that this procedure does not comply with Montesquieu’s doctrine of the division of power, because the Supreme Court begins to create law, what is actually the task of the legislative power.

This short excursion in Indian Constitutional Law was particularly important, because it provided evidence that environmental rights can be enforced under its provisions. The unique procedural remedies⁵⁸ enable to address environmental issues as human rights abuses under the High Courts and the Supreme Court.

The question now is how Indian courts have decided on cases relating to substantial environmental rights. Some cases, dealing with the right to life (*Art. 21 COI*) in terms of a clean environment, will be discussed.

B. The practice of Indian courts

In the chapter dealing with the legal bases for a human right to environment in the international perspective, the right to life of *Art. 6(1) ICCPR* was brought up. In India, the jurisdiction of the Supreme Court widened the scope of the right to life in *Art. 21 COI* and included the right to a wholesome environment.⁵⁹ One of the most explicit and most cited cases in this regard is *Subhash Kumar v. State of Bihar*. The Supreme Court ruled that “Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court”, and the “Right to live is a Fundamental Right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life”. The court even went that far in saying that a petition for *Art. 21 COI* in connection with *Art. 32 COI* can be invoked by “social workers or journalists”.⁶⁰ In other words, any third person, doubtful that the environmental conditions at some place are sufficient to live a life in dignity, can call upon the courts.

This decision of the Supreme Court is revolutionary, because it set a precedent. In case there is an allegation that natural resources are polluted, the High Court or Supreme Court can be induced to investigate and eventually issue a writ petition. The authorities *and* private

⁵⁸ This right can be compared with the right to a fair hearing by independent bodies of *Art. 14(1) ICCPR*, which was discussed earlier in the international perspective.

⁵⁹ See Divan and Rosencranz (2001), p. 49.

⁶⁰ *Subhash Kumar v. State of Bihar AIR 1991 SC 420, 424, para 7.*

persons will have to act in compliance with minimum environmental standards.⁶¹ Interesting to note is that the Supreme Court uses international “soft law”, earlier discussed in order to emphasize its decision.⁶² Hence, international environmental law, albeit vague, has an influence on the interpretation of rights through Indian Courts. The Supreme Court has decided similarly in other cases related to the right to life.⁶³

Art. 21 COI has proven to be a substantial legal basis to claim environmental rights, and its application was widened by the Indian jurisprudence during the years. For instance, the Kerala High Court decided to include the right to potable water under *Art. 21 COI*.⁶⁴ Thus, some Indian judges are aware that something like a right to environment exists, albeit not explicitly, and have uniquely acknowledged this through court verdicts. Anderson summarizes that “probably more than any other jurisdiction on Earth, the Republic of India has fostered an extensive and innovative jurisprudence on environmental rights”⁶⁵.

IV. Conclusion

International environmental law does not really offer a basis for a human right to environment. The declarations and resolutions, either not in force or with soft law status, are not substantial in its nature. Thus, for logical reasons, it was rather reasonable to turn to international human rights law in order to find out whether its norms cover environmental questions. It was shown that international human rights laws could be theoretically

⁶¹ In *M.C. Mehta v. Union of India* (1987) 4 SCC 463, 478, para 14, (also known as the “Shiram Gas Leak Case”), the Supreme Court pointed out that there has to be a minimum environmental standard for industries (in this case a tannery). Yet, there is no definition of “minimal environmental standard”, which leads to the assumption that environmental standards in India are rather low, as the reality suggests. This case is a good example for suing the state for not having acted against *private* polluters.

⁶² *M.C. Mehta v. Union of India* (1987) 4 SCC 463, 467, para 4. The Supreme Court refers to the Stockholm Declaration and underlines the engagement of Prime Minister Indira Gandhi in the negotiation process.

⁶³ See for example *Virender Gaur v. State of Haryana*, 1992 (2) SCC 577, 581, para. 7: “Environmental, ecological, air, water, pollution etc. should be regarded as amounting to violation of Article 21. [...] it would be impossible to live with human dignity without a humane and healthy environment”. Another good example is *T. Damodar Rao v. The Special Officer, Municipal Cooperation of Hyderabad*, AIR 1987 AP 171, 181, para 24: “The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting violation of Art. 21 of the Constitution”. For a wider list of references, see for instance Divan and Rosencranz (2001), pp. 49-51, esp. 51.

⁶⁴ *Attakoya Thangal v. Union of India* 1990 (1) KLT 580, 583, para. 7. See *Anderson* (1996b), p. 215, for other examples.

⁶⁵ *Anderson* (1996b), p. 199.

reinterpreted in favor for a human right to environment. Since human rights abuse cases rather take place in national courts, it was supposed to demonstrate with the example of Indian courts, one of the extreme cases,⁶⁶ that the theoretical protection of a right to environment with the anthropocentric human right approach is possible in practice.

Indian courts have repeatedly recognized a human right to environment. Especially the own activism of judges has to be acknowledged.⁶⁷ But although India has a very sophisticated jurisprudence in terms of environmental rights, they are still many problems behind. A possible right to environment, together with public interest litigation, cannot prevent that many people are heavily affected through environmental degradation without any possible remedy. The Indian courts can never handle all the existing environmental delinquencies. The reality is rather sobering.

Further, as discussed in the general part, the right to development can limit the right to environment. This is also happening in India. The right to development limits the application of the right to environment.⁶⁸ Although there is “no judicially recognized right to development”⁶⁹ so far, some decisions of Indian courts imply a balancing between these two aspects.⁷⁰ In India, the question of economic growth and the aim of becoming a developed nation are on top of the policy agenda. Environmental issues are rather neglected.

Nevertheless, the Indian example on the one hand proves that a right to environment fits in human right norms, and on the other hand gives hope that other jurisprudences acknowledge it in the same extent. In that case, pressure could be exerted on the legislative powers to create an explicit right to environment. Policies, which see environment and development not contradictory but rather as complementary forces for sustainable

⁶⁶ See Du Bois (1996), p. 1. He argues that Indian courts have taken a “maximalist” approach in regard to the environmental jurisprudence.

⁶⁷ See also Du Bois (1996), pp. 1 and 6.

⁶⁸ See Anderson (1996a), pp. 19 and 21.

⁶⁹ Anderson (1996b), p. 220.

⁷⁰ See for instance *Kinkri Devu v. Himachal Pradesh AIR 1988 HP 4, 6. para 4*: “[...] State keeping in view the need for industrial growth and development [...]”. *9, para 9(1)* points out the balancing aspect: “[...] need of maintaining a proper balance between the tapping of the mineral resources for the development and industrial growth on the one hand and ecology, environment etc. on the other [...]”.

development, could be enhanced and thus improve both the environmental condition and the economic situation of the people.

V. **Appendix: Possible legal bases for environmental rights in international human rights treaties**

A. **Explicit environmental rights**

Type of Right	Treaties
Right to “general satisfactory” environment	Art. 24 ACHPR
Right to “healthy” environment	Art. 11 of the “San Salvador Protocol” to the ACHR

B. **1st generation human rights (Civil and Political Rights)**

Type of Right	Treaties
Right to life	Art. 6(1) ICCPR Art. 2(1) ECHR Art. 4(1) ACHR Art. 4 ACHPR
Prohibition against cruel, inhuman or degrading treatment	Art. 7 ICCPR Art. 3 ECHR Art. 5 ACHR Art. 5 ACHPR
Right to equal protection against discrimination	Art. 7 UNDHR Art. 4 ICCPR Art. 25 ACHR Art. 3(2) ACHPR
Right to an effective remedy by competent national tribunals for acts violating fundamental rights	Art. 8 UNDHR Art. 13 ECHR Art. 25 ACHR Art. 7(1)/26 ACHPR
Right to receive information	Art. 9(1) ACHPR
Right to a fair and public hearing by an independent and impartial tribunal in the determination of rights and obligations	Art. 10 UNDHR Art. 14(1) ICCPR Art. 6(1) ECHR
Rights to protection against arbitrary inference with privacy and home	Art. 12 UNDHR Art. 17 ICCPR Art. 8(1) ECHR Art. 11 ACHR
Prohibition against arbitrary deprivation of property	Art. 17 UNDHR Art. 1 of the 1 st Protocol to the ECHR Art. 21 ACHR Art. 14 ACHPR
Rights to take part in the conduct of public affairs	Art. 25 ICCPR Art. 23 ACHR Art. 13 ACHPR

C. 2nd generation human rights (Economic, Social and Cultural Rights)

Type of Right	Treaties
Entitlement to realization of economic, social and cultural rights indispensable for dignity	Art. 22 UNDHR Art. 26 ACHR Art. 22 ACHPR
Right to a standard of living adequate for health and well-being	Art. 25 UNDHR Art. 11(1) ICESCR
The right to the highest attainable standard of health (contains environmental and industrial hygiene)	Art. 12 (1)/(2)(b) ICESCR Art. 11 ESC Art. 16(1) ACHPR
The right of all people to freely dispose of their national wealth and resources	Art. 1(2) ICESCR Art. 1(2) ICCPR Art. 21 ACHPR
Safe and healthy working conditions	Art. 7(b) ICESCR Art. 3 ESC
Protection of children against social exploitation	Art. 10(3) ICESCR Art. 17 ESC
Right to enjoy benefits of scientific progress and its applications	Art. 15(1)(b) ICESCR
Right of peoples to self-determination and pursuit of chosen economic and social development	Art. 20(1) ACHPR

Source: Own composition according to Sands (1995), pp. 224-230.

VI. Abbreviations

ACHPR	African Charter for Human and People's Rights
ACHR	American Convention on Human Rights
AIR	All India Reporter
AP	Andhra Pradesh (State in South India)
COI	Constitution of India
ECHR	European Convention on Human Rights
ESC	European Social Charter
HP	Himachal Pradesh (State in North India)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILM	International Legal Materials
KLT	Kerala Law Times
Raj	Rajasthan (State in North-West India)
SC	Supreme Court (of India)
SCC	Supreme Court Cases
UNCED	United Nations Conference on Environment and Development
UNDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly

VII. References

A. United Nations Primary Documents

(sorted by document type)

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UN Doc.A/CONF.151/26/Rev.1 (93.I.8) (1993)	Rio Declaration on Environment and Development
UN Doc. E/CN.4/Sub.2/1989/C23 (1989)	United Nations Human Rights Committee Decision to study the possibility of a human right to environment
UN Doc. E/CN.4/Sub.2/1994/9 (6 July 1994) + Corr.1 (13 Sept. 1994)	Draft Principles on Human Rights and the Environment
UNGA Res. 41/128 (1986)	Declaration on the Right to Development
UNGA Res. 45/94 (1990)	Need to ensure a healthy environment for the well-being of individuals

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