



Eco-Centrism and the Right to Development: Bridging the Dichotomy

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Abstract

The link between human rights and the environment in environmental law and governance has been a rather contentious one. On one hand, environmental norms can advance the pursuit of human rights and human welfare and on the other hand, they can be an impediment in the realisation of human rights. The interface between the human right to development and the eco-centric approach to environmentalism best highlights such paradigmatic tensions in the human-environment dualism. This paper explores the dichotomy between human rights and environmental norms, by evaluating the interaction between eco-centric appeals to environmental protection and the human right to development. It examines how the theoretical underpinnings of the eco-centric approach to environmental governance does not aid in the realisation of the human right to development and how the language of the latter creates resistance to that of the former. The paper also postulates an area of possible convergence by calling for a re-evaluation of these concepts.

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1. Introduction

The link between the human right to development and environment has been one of the most debated and discussed topics in the realms of human rights and environmental law. In the broad discussion of human rights, the relationship between the human race and environment stems from mankind's dependence on nature's bounty for their existence. History shows us that human beings relied on nature for their survival, sustenance and more importantly, for their welfare. As such, the very existence of human beings is presupposed by the entitlements they claim over natural resources and the environment as a whole.

In the context of the human rights framework, the relationship between human beings and the environment initially came to be reflected through the substantive content of individual rights enjoyed by man. However, the use of the primitive 'human rights' language was couched on a utilitarian narrative that reduced non-human aspects of the ecosystem to considerations of their short-term economic value to humanity. No doubt, the environmental human rights regime evolved later on to demonstrate a direct link between the concern for environmental protection and that of improving human well-being. But the former archaic view perpetuates a human-centric bias in human-environment interactions, which is believed to be the root of all environmental problems.¹ The rampant exploitation of environmental resources to meet human needs and the exercise of human rights imposed unprecedented pressure on the environment. For example, in the exercise of property rights to common pool resources, natural resource systems have suffered from over-exploitation and

¹ Prudence E. Taylor, *From Environmental to Ecological Human Rights: A New Dynamic in International Law*, 10 *GEO. INT'L ENVTL. L. REV.* 309, 338 (1998).

depletion.² The escalating human pressure on natural resources and eco-systems gradually had a cascading effect that resulted in the devastating changes to natural eco-systems.

To counter such unprecedented human-driven changes, environmental law stepped in and sought to manage the extent of human activity. Environmental legal interventions placed limitations on the manner in which human beings interacted with the environment – be it through conservation efforts, pollution control norms or compulsions to judiciously utilise natural resources. The need to protect the environment was primarily backed by concerns for human wellbeing. For example, the Stockholm Declaration on the Human Environment (1972) (which was the first global environmental treatise), exhibits a strong anthropocentric approach as it laid emphasis on the ‘human environment.’³ Similarly, successive international instruments such as the Rio Declaration (1992)⁴, the Johannesburg Declaration (2002)⁵ and Rio 20 Declaration (2012)⁶, all evinced human development as the crux of the matter. This meant that components of the environment which had no connection to human welfare or well-being, were excluded from the scope of these treaties.

Growing disaffections about the human-centric narrative of addressing environmental concerns eventually caused a paradigm shift towards an eco-centric approach. The idea of eco-centrism in

² Ojanen, M., Miller, D. C., Zhou, W. et al. What are the Environmental Impacts of Property Rights Regimes in Forests, Fisheries and Rangelands? A Systematic Review Protocol. 3 *Environ Evid* 19 (2014).

<https://doi.org/10.1186/2047-2382-3-19>.

³ Declaration of the United Nations Conference on the Human Environment, June 16, 1972, 11 I.L.M. 1416, principle 1.

⁴ Rio Declaration on Environment and Development, June 14, 1992, 31 I.L.M. 874, principle 1.

⁵ Johannesburg Declaration on Sustainable Development, Sept. 2, 2002, A/CONF.199/20, principle 2.

⁶ United Nations Conference on Sustainable Development, 2012, available at

http://www.uncsd2012.org/content/documents/774futurewewant_english.pdf. (Last visited on Oct 13, 2021)

the legal discourse seeks to give a renewal to the complex relationship between humans and the environment. It places primordial importance on the interests and rights of the natural environment. In doing so, it transforms the dialogue to an environment-driven one. This however poses many challenges to the human endeavour of progress and development, particularly that of exercising the right to development. Understandably, protection and conservation of natural resources is an important issue. At the same time, the development and welfare of human beings is also an equally important feat. As the right to development stresses the need to align developmental policies with the human rights framework, eco-centrism calls for developmental policies to align with environmental rights framework. At this juncture, the relative weighing of environmental concerns and human right norms became critical and increasingly complex.

Given this backdrop, the present paper explores the dilemma between eco-centric environmentalism and the human right to development. With a focus on the Indian perspective, it discusses the concept and understanding of eco-centrism and gives a brief sketch of the right to development by outlining its meaning and scope, and the juridical contours of the right as interpreted by the Courts in India. The paper further invites attention to certain fundamental questions regarding the place of the eco-centric approach within the human rights framework, the extent to which the eco-centric approach can accommodate the right to development, the situations in which eco-centric approaches take priority over human rights and the cost at which the right to development can be enforced. In investigating these questions, it seeks to answer the larger question of whether the eco-centric approach in environmental law can facilitate or aid in the realisation of the right to development. Briefly put, this paper explores the following question: “If the right to development is the end, can eco-centrism be a means”?

2. The Eco-Centric Approach

The concept of eco-centrism emerged as an offshoot of the environmentalist movement to counter the prevalent anthropocentric approach that dominated epistemology, policy and environmental ethics.⁷ As the name suggests, eco-centrism advocates for placing ecological interests at the centre of human actions. It marks a radical shift from the traditional anthropocentric approach by calling for an evaluation of the human-environment relationship from an ecological context. In other words, it maintains the pre-dominancy of environmental or ecological interests in the human-environment dualism.

The basic premise of this philosophical approach is that all living and non-living components of the environment possess an intrinsic value⁸ and if preserved and protected, they would further help preserve and protect other forms of life.⁹ As Robyn Eckersley described it, "ecocentrism is based on an ecologically informed philosophy of internal relatedness, whereby organisms are not simply interrelated with their environment but also constituted by those very environmental interrelationship."¹⁰ This notion substantially deviates from the instrumental anthropocentric understanding of the human-environment relationship. The anthropocentric or human-centred approach presupposes the fact that man is associated with nature insofar as he has the ability to derive direct material benefit from it.¹¹ In other words, it perpetuates a consumerist culture, deeply entrenched in the

⁷ Vito De Lucia, *Competing Narratives and Complex Genealogies: The Ecosystem Approach in International Environmental Law*. *Journal of Environmental Law*, 27(1), 104, 91-117 (2014).

⁸ ROBYN ECKERSLEY, *ENVIRONMENTALISM AND POLITICAL THEORY: TOWARD AN ECO-CENTRIC APPROACH*, 49 (SUNY Press, Albany, NY, 1992).

⁹ Satish C. Shastri, *Environmental Ethics Anthropocentric to Eco-Centric Approach: A Paradigm Shift*, *Journal of the Indian Law Institute*, 55(4), 525, 522-530 (2013).

¹⁰ ECKERSLEY R. *Supra* note 7.

¹¹ Ted Benton, *Marx, Malthus and the Greens*. *Historical Materialism: A reply to Paul Burkett*, 8(1): 309-332 (2001).

utilitarian idea of human interests and needs.¹² Contrary to this, eco-centrism postulates that the value of nature is independent of the value attributed by human beings. This value is intrinsic i.e., inherent to a species by virtue of its very existence. The moral responsibility of humans to protect the environment thus stems from the intrinsic value of nature and not from their utility to human survival or welfare.

Building upon the concept of 'intrinsic value' of species, the eco-centric approach also resonates to an extent with the philosophical underpinnings of 'Deep Ecology'.¹³ Deep ecologists advocate bio centric egalitarianism, which goes one step further than the idea of intrinsic value of species and claims that all species are created equal, and have equal intrinsic value.¹⁴ It posits that non-human forms of life possess the same moral and ontological dignity as human beings. The World Charter for Nature also espouses this egalitarian value of all life forms by stressing on the 'consciousness of the intrinsic value of nature'.¹⁵

Although eco-centrism was initially conceptualised as a political ideology rooted in environmental ethics¹⁶, it has legal dimensions to it. The first dimension can be understood in the context of ecological justice, which advocates a sense of species egalitarianism.¹⁷ Species egalitarianism is the belief that all species hold equal moral standing and humans are not to be regarded as morally superior beings. It denounces any form of hierarchical

¹² Ronald E. Purser, Changkil Park & Alfonso Montuori, Limits to Anthropocentrism: Toward an Eco-centric Organization Paradigm? 20(4), *The Academy of Management Review*, 105,1053-1089 (1995).

¹³ Arne Naess, *The Shallow and the Deep, Long Range Ecology Movement. A Summary*, 16, *Inquiry*, 95-100 (1973).

¹⁴ ARNE NAESS AND GEORGE SESSIONS, *BASIC PRINCIPLES OF DEEP ECOLOGY*, (1984)

¹⁵ *World Charter for Nature*, G. A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, U.N. Doc. A/Res/37/7Annex (Oct. 28, 1982).

¹⁶ ROBERT FALKNER, *ENVIRONMENTALISM AND GLOBAL INTERNATIONAL SOCIETY*, 61, (Cambridge University Press, 2021).

¹⁷ David Schmidtz, *Are All Species Equal?* 15(1), *Journal of Applied Philosophy*, 57-67 (1998).

order of species or the dominance of one species over the other.¹⁸ This implies that in the case of conflicting interests, the needs or interests of the human race cannot automatically override those of nature. In contrast to the anthropocentric approach – which regards human needs and interests of exclusive importance – the eco centric approach regards man as a part of nature, and not independent of it. The World Charter for Nature also imbibed this notion, by recognising that the maintenance of essential ecological processes and life support systems is essential in the interests of subsistence and for the diversity of living organisms.¹⁹ Therefore, in the event of conflicting interests between human beings and other species, those of man will not necessarily prevail.

The second legal dimension is based on the extension of legal rights to the non-human world. The centrality of the rights-based approach to protecting the environment is the argument that all components of nature possess an inherent value, by virtue of which they enjoy certain legal rights.²⁰ This language of rights is followed by two corollaries - first, that all natural resources enjoy a distinct legal personality.²¹ As legal rights can be conferred only on those entities that have a separate legal personhood²², it is a logical assumption that rights of nature bring with it the cloak of legal personhood. Secondly, the rights of the environment implies that human beings owe a co-relative duty to guarantee, protect and respect these rights. Having established the implication of the granting rights to the environment, the next question that follows is what constitutes these rights. Thomas Berry, an eminent cultural historian, claimed that 'every component of the earth enjoys three

¹⁸ *Id.* at 62.

¹⁹ *See*, General Assembly Resolution on a World Charter for Nature, G. A. Res. 37/7, U.N. GAOR, U.N. Doc. A/RES/37/7 (1983).

²⁰ DR JUR. HARALD HOHMANN, PRECAUTIONARY LEGAL DUTIES AND PRINCIPLES OF MODERN INTERNATIONAL ENVIRONMENTAL LAW, 23 (London: Graham & Trotman Ltd., 1994).

²¹ Christopher D Stone, *Should Trees have Legal Standing: Towards Legal Rights for Natural Objects*, 45 So. Cal. L. Rev, 450-501 (1972).

²² JOHN WILLIAM SALMOND, JURISPRUDENCE, 181 (London: Stevens & Haynes, 1913).

basic rights - the right to be, the right to habitat, and the right to fulfil its role in the ever-renewing processes of the Earth community'.²³ However, these rights are limited and are enjoyed insofar as they fulfil the role in relation with other components.

3. The Indian Perspective on Eco-centrism

From an overview of the precepts of environmental law in India, it is axiomatic that the leading approach is that of anthropocentrism. The principles evolved by courts, the legislations formulated by the legislature and the measures undertaken by the executive have by and large been done, from an anthropocentric view. However, the dialogue on eco-centrism has made its way in the legal order, which is more evidently visible in the formulation of judicial decisions and case laws.

In India, despite the elaborate environmental legal framework, there is no legislation that expressly defines the term 'eco-centrism'. The courts, however, have not shied away from outlining the contours of this concept in the course of judicial decision making. For example, in the case of *T. N. Godavarman Thirumulpad v. Union of India*, the Supreme Court for the first time elucidated this concept by observing both narratives of 'intrinsic value' and 'egalitarianism of species.' In line with the popular 'intrinsic value' narrative, the court noted that - The eco-centric approach to environment stresses the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Eco-centrism supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth.²⁴

On the lines of egalitarianism of species, the Court renounced the morally dividing line between human and non-human species by observing that "eco-centrism is nature centred where humans are

²³ Thomas Berry- *The Great Work, Our Way in to the future*, 5, (New York: Harmony/Bell Tower,1999).

²⁴ Radhakrishnan J., *T. N. Godavarman Thirumulpad v. Union of India*, 2012 (116) AIC 214, ¶20.

part of nature"²⁵. It categorically stated that "human interests do not take automatic precedence and humans have obligations to non-humans independently of human interest. Therefore, eco-centrism is life-centred, nature-centred where nature includes both human and non-humans."²⁶

The observation of the Supreme Court in the *T. N. Godavarman Thirumulpad v. Union of India*²⁷ has been a trailblazer, setting a strong precedent for successive cases. It clearly paved the way for discussions on recognising the intrinsic value of nature. But beyond this, the eco-centric discourse in India has also been understood by recognising the rights of nature and by attributing the status of legal personhood to non-human components of the environment. For instance, in the context of the animal rights discourse, the rights-based narrative of eco-centrism advocates for the protection of species²⁸ and prevention of unnecessary pain and suffering.²⁹ In the case of *Narayan Dutt Bhat v. Union of India and Ors.*,³⁰ the Court, noted that the animals as sentient beings are entitled to bodily integrity, honour and dignity. It further declared the entire animal kingdom including avian and aquatic as legal entities have a distinct persona with corresponding rights, duties and liabilities of a living person.³¹ Evidently, the rights-based language has been construed in evoking a sense of environmental consciousness and

²⁵ *T. N. Godavarman Thirumulpad v. Union of India*, (2012) 4 SCC 362, ¶14.

²⁶ *T. N. Godavarman Thirumulpad v. Union of India*, (2012) 4 SCC 362, ¶14.

²⁷ *Centre for Environment Law, WWF-I v. Union of India & Ors.*, 2013 8 SCC 234; *Sansar Chand v. State of Rajasthan*, (2010) 10 SCC 604, *Goa Foundation v. Union of India*, O. A. 26/2012. (NGT: 18.07. 2013).

²⁸ *A. Iyappan v. The Chairman, Tamil Nadu State Coastal Zone Management Authority and Ors.*, App. No. 2/2017 (06.10.2017 - NGT).

²⁹ *Animal Welfare Board of India v. A. Nagaraj*, (2014) 7 SCC 547.

³⁰ *Narayan Dutt Bhat v. Union of India and Ors.*, 2018 (3) RCR (Civil) 544, ¶ 84.

³¹ *Narayan Dutt Bhat v. Union of India and Ors.*, 2018 (3) RCR (Civil) 544, ¶ 99.

affording respect for the honour and dignity of the environment.³² Apart from the animal rights regime, the attempt to grant rights to non-human components of nature has been witnessed with non-living resources as well. In the case of *Lalit Miglani v. State of Uttarakhand and Ors.*,³³ the Court declared the Gangotri and Yamunotri glaciers, along with other natural components as separate persons in the eyes of law. Similarly in the case of *Court on its Own Motion v. Chandigarh Administration and Ors.*,³⁴ the Punjab and Haryana High Court declared the Sukhna Lake as a separate legal entity for the purposes of its survival, preservation and conservation, since the large-scale illegal construction in the catchment area, prevailing until then, had taken an extensive toll on the ecosystem in and around. In the case of *Mohammed Salim v. State of Uttarakhand*,³⁵ the Uttarakhand High Court granted the rivers Ganga and Yamuna, along with their streams and tributaries, the status of juristic persons with corresponding rights, duties and liabilities. However, the order was stayed by the Supreme Court on technical and administrative grounds. Interestingly, a nuanced development of the Indian judiciary under the eco-centric approach is the recognition of the 'best interests of the species' standard. Formulated in the case of, *Centre for Environment Law, WWF-I v. Union of India & Ors.*,³⁶ this proposition simply means that the action/decision that will best serve the species in question must be given priority. In a way, the language of the 'best interests of the species' connote a sense of primacy for the species in question. However, there is a contradiction in applying this standard within the eco-centric approach. A pertinent point to note with this idea is the exception that is carved to serve human interests. In the case of

³² *Jayanti Das v. State of Odisha*, 2020 (1) CLR (SC) 245.

³³ *Lalit Miglani v. State of Uttarakhand and Ors.*, WP No. 140/2015 (Decided on 30.03.2017 - Uttarakhand H.C.) ¶ 65.

³⁴ *Court on its Own Motion v. Chandigarh Administration and Ors.*, 2020 (4) RCR (Civil) 1, ¶ 173.

³⁵ *Mohammed Salim v. State of Uttarakhand*, 2017 (2) RCR (Civil) 636, ¶19.

³⁶ *Centre for Environment Law, WWF-I v. Union of India & Ors.*, 2013 8 SCC 234.

Animal Welfare Board of India v. A. Nagaraj,³⁷ the Supreme Court has expressly stated that "...every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity" Therefore, the doctrine of necessity in relation to human needs qualifies the best interests of the non-human species, which consequently dilutes the eco-centric approach.

4. The Right to Development: Meaning and Scope

The right to development has been one of the most contentious and debated rights in the human rights dialogue.³⁸ Originally conceived as a right of individual states while restructuring the international economic order³⁹, the 'right to development' was re-visualised into human rights framework under the category of third generation human rights.⁴⁰ In fact, from the very conception of international human rights law, the right to development found formal articulation in the text of multiple treaties. References to and affirmations of this right were made, albeit indirectly and contextually.⁴¹ However, it was only with the adoption of the United Nations Declaration on the Right to Development (1986)

³⁷ Animal Welfare Board of India v. A. Nagaraj, (2014) 7 SCC 547, ¶51.

³⁸ Jack Donnelly, 'In Search of a Unicorn: The Jurisprudence and Politics of the Right to Development', 15 Cal. W. Int'l L. J. 473 (1985), SUBRATA ROY CHOWDHURY ET AL., THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW, 27 (Martinus Nijhoff, Dordrecht 1992), ARJUN SENGUPTA, RIGHT TO DEVELOPMENT AS A HUMAN RIGHT, (2000).

³⁹ Nienke van der Have, *The Right to Development and State Responsibility Can States be held to Account?* 2 SHARES Research Paper 23, ACIL 2013-06, (2013).

⁴⁰ Karel Vasak, 'A 30-Year Struggle, The Sustained Efforts to Give Force of Law to The Universal Declaration of Human Rights', 29 (UNESCO Courier 1977).

⁴¹ See, Universal Declaration of Human Rights, UN GA Res. 217A (III), UN Doc. A/810, 10 December 1948, arts. 26 and 28; International Covenant on Civil and Political Rights 91996), 999 UNTS, No. 14668 (entered into force 23 March 1976) art. 1; International Covenant on Economic, Social and Cultural Rights 999 UNTS 3 (entered into force 3 January 1976) (1966) art. 1.

(hereinafter 'UNRD') that 'development' was expressly assured as a human right.⁴²

The UNDRD envisages the human right to development as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."⁴³ This view highlights the following implications; First, it espouses the right to development as an individual and collective right. Secondly, it recognises development as a process to which human beings are legally entitled. Thirdly, it recognises the right as an overarching right through which all other human rights and fundamental freedoms are ensured. In other words, it is viewed as an all-encompassing right that guarantees the ultimate goal of human welfare. Fourthly, the UNDRD has conceptualised human development from a broad perspective and in a holistic manner. It is not restricted to economic or political matrices alone, but extends to cultural, social and humanitarian dimensions.⁴⁴ Furthermore, the right to development is not merely addressed in light of securing access to basic human needs,⁴⁵ but also goes one step beyond in affirming the need for constant improvement of human well-being.⁴⁶

Since the adoption of the UNDRD, the substantive content of the right to development has undergone a sea of change and expansion. The broad language of the UNDRD in conceptualising the right has development has given rise to new ideas. This being stated, there is still a lack of consensus on its meaning and implication.⁴⁷ As the normative content of the right basically

⁴² U.N. GAOR, 41st Sess., Supp. No. 53,183, U.N. Doc. A/RES/41/128 (1986).

⁴³ *Id.* at art. 1(1).

⁴⁴ *Id.* at art. 6(3).

⁴⁵ *Id.* at art. 8.

⁴⁶ *Id.* at art. 2(3).

⁴⁷ Arne Vandebogaerde, *The Right to Development in International Human Rights Law: A Call for its Dissolution*. 31(2) *Netherlands Quarterly of Human Rights* 187-209, (2013).

implies the right to anything and everything that furthers human welfare, the meaning of the right is fraught with substantive indeterminacy and over expansiveness. However, one fact is unequivocally assured that right to development is human-centred. As it is clearly a right to “a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value”⁴⁸ it is and will be understood with the human race as the focal point.

5. The Right to Development in India

Although the idea of this right was initially conceived in the international realm, overtime states have embodied this notion within their legal framework. The Indian legal framework also incorporates the right, even though the same has been not expressly recognised within any legislative text in India.

The right to development in India is rooted in the constitution. If this right is understood in the broad sense as conceived by the UNDRD, one can say that Constitution of India also guarantees this right, albeit indirectly. The constitutional mandate for the right to development can be understood in the development of unenumerated fundamental rights. The Courts in India, through a catena of cases, have recognised the right to development through various facets. For instance, in the case of *Samata v. State of Andhra Pradesh*,⁴⁹ the Court noted that development is a facet of the right to life under article 21, and as an inalienable right it helps man to “realise arise in the standard of living, to improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity.” Similarly, in the case of *Madhu Kishwar v. State of Bihar*,⁵⁰ the Supreme Court recognised the right to development as an enabling right that guarantees the implementation, promotion and protection of other civil, political, economic, social and political rights.

⁴⁸ Arjun Sengupta, *On the Theory and Practice of the Right to Development*, 24(4), H. R. Quat., 868, 837–889 (2002).

⁴⁹ *Samata v. State of Andhra Pradesh*, AIR 1997 SC 3297, ¶76.

⁵⁰ *Madhu Kishwar v. State of Bihar*, [1996] 5 SCC 125, ¶7.

In terms of the exact meaning and contours of the right to development, there is as much ambiguity in India, as there is at the international level. Courts have time and again attempted to infuse some clarity by defining the scope of the right. For example, in the case of *N. D. Jayal and Anr. v. Union of India and Ors.*,⁵¹ the Court stated that:

The right to development cannot be treated as a mere right to economic betterment but includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' wellbeing and realization of their full potential.

But beyond this, there is not much clarity on the precise indices of the right to development. Owing to its broad connotation, the right remains to be an aspirational right, a putative right—which is generally accepted in the legal order but still in the abstract.⁵²

6. Eco-Centricism and Right to Development: Understanding the Dichotomy

Having understood the sum and substance of the human right to development and the eco-centric approach, the question for deliberation remains to be whether the eco-centric approach can help realise the right to development. It is argued that the answer to this lies in the negative, for reasons discussed hereinafter.

Firstly, a cursory understanding of the normative content of eco-centrism indicates that it creates certain frictions in achieving the right to development. A truly radical eco-centric approach to environmental decision-making, that is, an approach that seeks to protect the environment at all costs, is practically superfluous for the purpose of realising the right to development. At the very basic

⁵¹ *N. D. Jayal & Anr. v. Union of India & Ors.*, 2003 Supp (3) SCR 152, ¶24.

⁵² Anna-Lena Wolf, *Juridification of the Right to Development in India*, 49(2), *Journal on Law and Politics in Africa, Asia and Latin America*, 176, 175-192 (2016).

level, the realisation of the right to development implies fulfilling the basic needs of human beings, let alone meeting the highest standards of human welfare. It is a universally accepted truth that man needs food, clothing and shelter for sustenance. The fulfilment of these needs invariably requires the utilisation of environmental resources. The consumption of resources is therefore a requirement to meet the objective of sustaining and improving human life. To say otherwise, is to negate the fundamental core of the human-environment interaction. Some critics have even gone so far to claim that a degree of anthropocentricity is necessary since humanity is the only species that has the consciousness to recognize the morality of rights.⁵³

Secondly, the incompatibility of the eco-centric approach with the right to development can be attributed to its utopic and idealistic orientation that side-lines the practical realities of human-nature inter-dependence. It has been argued that the philosophy behind eco-centrism is just "litmus test for greenness, rather than developing practical political programme."⁵⁴ In other words, it is more concerned with strengthening the theoretical base of conservation efforts, without understanding the true practical dimensions. The law of nature postulates an inter-dependence between species, where each species plays a specific role in the earth community. As such, some species have a role in facilitating the developmental endeavour of other species, including human beings.⁵⁵ The rigid eco-centric approach neglects this arcadian understanding of the ecology and calls for a blanket sacrifice for the sake of environment rather than quality-of-life solutions to environmental problems.⁵⁶ Instead of questioning whether development should be re-evaluated to accommodate

⁵³ Prudence Taylor, *From Environmental to Ecological Human Rights: A New Dynamic in International Law*, 10 *GEO. INT'L ENVTL. L. REV.* 309, 352 (1998).

⁵⁴ Norton Bryan, *Toward Unity Among Environmentalists*, (1991).

⁵⁵ Thomas Berry- *The Great Work, Our Way in to the future*, 5, (New York: Harmony/Bell Tower, 1999).

⁵⁶ Stephen Kaplan, *Human Nature and Environmentally Responsible Behavior*. *Journal of Social Issues*, 56(3), 491-508. (2000).

environmental concerns, it lays down a blanket assertion that development by itself is the cause of ecological crisis. Such a view is counterproductive as it merely leads to a theoretical impasse with no balanced practical solution. Even the Supreme Court noted in the case of *T. N. Godavarman Thirumulpad v. Union of India & Ors.*,⁵⁷ that “The nuances of ecological sensitivity are such that excessive rigidity on this count could defeat the very purpose of the exercise, which seeks to strike a balance between preservation of our ecological endowments and the needs of development.” This very argument has also been a point of criticism against the sentiments of the deep ecology movement, particularly with regard to the principle of biocentric egalitarianism. While the idea of deep ecology is laudable for reorienting the human-nature relationship, critics have claimed that the idea of biocentric egalitarianism makes little sense in practically actualising the belief that all species are equal.⁵⁸ Since it does not allow for a hierarchical grading of intrinsic worth of species, it fails to explain the dependence of humans on the natural environment for basic needs. Thus, these claims lack adequate backing from a practical perspective of the human-environment interaction.

Thirdly, the notion of ‘intrinsic value’ of natural resources, when disjointed from human association, has little or no compelling force in enforcing the human right to development. The eco-centrists’ proposition of ‘intrinsic value’ basically implies that the natural world has a right to exist for itself, irrespective of the value (economic or otherwise), human beings have for it. But this notion has been criticized as mere “subjective sentiments that have no role to play in the real world dominated by instrumental rationality.”⁵⁹ ‘Development’ as contemplated in the context of a human right, is primarily espoused on use and non-use values of nature. Use values refer to those values of natural resources that have direct

⁵⁷ *T. N. Godavarman Thirumulpad v. Union of India & Ors.*, (2013) 8 SCC 234.

⁵⁸ P. S. Elder, *Is Deep Ecology the Way?* 15(2), *Alternatives: Perspectives on Society, Technology and Environment*, 70-73 (1988).

⁵⁹ Joseph R Des Jardins, *Environmental Ethics: An Introduction To Environmental Philosophy*. 146 (Wadsworth Publishing 1993).

economic benefit to human beings, for example access to water or timber. Whereas, non-use values are attributed to ecosystem services that do not directly or indirectly benefit human beings but are seen as affecting their well-being, such as habitat preservation and bequest value.⁶⁰ It is pertinent to note that these values, be they aesthetic, historical, customary, recreational or scientific – continue to be oriented to human interests and are not based on the rhetoric of rights of nature. For example, in the case of *Lalit Miglani v. State of Uttarakhand*,⁶¹ the High Court espoused the “intrinsic right of rivers and lakes not to be polluted.” However, interestingly, the Court also observed that this right would be enforceable as “legally equivalent to harming, hurting and causing injury to person.” Thus, unless the value of a particular resource is placed in juxtaposition with a human interest, the notion of ‘intrinsic value’ holds no water. Another example is the case of *Orissa Mining Corporation v. Ministry of Environment & Forest*,⁶² where in the Court examined the implication of mining activities on the Niyamgiri Hills. Although the Court rejected the instrumental valuation of the Hills for the bauxite deposits, it upheld the ecological interests of conserving the hills, because the Dongria Tribes enjoyed customary rights of worship that were associated with the hills.⁶³

Lastly, it is argued that the eco-centric approach is not entirely compatible with the achievement of the right to development as the latter weakens the normative strength of the former. From an overview of the evolution of the right to development, it is evident that development discourse has always maintained an anthropocentric view. Despite the form it takes – sustainable, inter-generational, equitable, the concept of ‘development’ will be couched on human imperatives. As the UNDRD clearly elucidates

⁶⁰ Anne W Rea & Wayne R Munns Jr., *The Value of Nature: Economic, Intrinsic or Both?* *Integrated Environment Assess Management* 13(5): 953–955 (2017).

⁶¹ *Lalit Miglani v. State of Uttarakhand*, WP No. 140/2015 (Decided on 30.03.2017 – Uttarakhand H.C.) ¶ 51.

⁶² *Orissa Mining Corporation v. Ministry of Environment & Forest*, (2013) 6 SCC 476.

⁶³ *Id.* at ¶ 58.

this, 'the human being is the central subject' of development,⁶⁴ ergo, the human being will always be the protagonist. This means that law and policy formulated to realise this right will be designed with man as the crux or the centrepiece. As the right to development asserts that human beings may utilize resources to realise their claim to a certain quality of life, this assertion leaves little room to argue for 'intrinsic value of nature'. Furthermore, since the right to development is purely an anthropocentric construct, it clashes with the right-based approach of eco-centrism. Rights of environment is another core feature of an eco-centric approach. The attribution of rights constitutes the legal tone of this approach, implying that nature is a juridical entity. The recognition of the rights of nature places primacy on environmental needs and takes a radical turn towards environmental sustainability. However, these rights pose structural issues in the conception of the right to development. An apt example is evident through the disenfranchisement of indigenous or tribal people for the creation of management of wildlife habitats. Arpita Kodiveri, through her work elucidated the effects of securing land for creation of tiger reserves in displacing tribal inhabitants.⁶⁵ Explaining how the exclusionary conservation model of environmentalism jeopardised the right to life and livelihood of the forest dwelling communities, the author explains how certain communities stand the chance of having their rights diluted through a rigid eco-centric approach. Therefore, as the environment is the principal focus of rights of the environment, human interests, whether they are embodied in a right or not, do not feature in the calculations of eco-centrism. In other words, as the environment is the centre of concern, human rights, including the right to development, will necessarily have to take a back seat.

⁶⁴ United Nations Declaration on the Right to Development 1986, art. 2.

⁶⁵ Arpita Kodiveri, *If Nature has Rights, Who Legitimately Defends Them?* Open Global Rights, March 21, 2019.

<https://www.openglobalrights.org/if-nature-has-rights-who-legitimately-defends-them/>

7. A Paradigm for Convergence

As it has been established that the concept of eco-centrism cannot be a means to realising the end goal of the right to development, the next question arises as to whether the end can be reformulated to accommodate the means. In other words, is it possible to qualify the right to development with the imposition of environmental limits?

At the outset, imposing limits to the right to development is problematic. Especially in a developing country such as India which is home to almost 1.4 billion people, limiting the right to development would grossly conflict with the fundamental goal of economic self-determination. Given the economic growth and the status of development index in the country⁶⁶, it would seem quite preposterous to narrow the scope of development and the rights associated with it. This being stated, a rudimentary anthropocentric approach cannot be the norm and a subscription to such a perspective is also not supported. As the world, including India, reels under the threat of an environmental crisis, with climate change and global warming at the helm of it, an environmental consciousness cannot be completely done away with. While development of the human race is admittedly important and is a continuing endeavour, it is imperative for development to be based on ecological resistance. By resistance, we do not imply halt to progress – technological, economic or social, but a sense of forbearance in the rampant resort to ecological resources to achieve this progress.

At this juncture, the concept of sustainable development becomes a crucial guiding principle in lieu of the eco-centric approach. The concept of sustainable development is an enticingly simple concept that encompasses both human and non-human interests. It is a bridge or middle ground of sorts that resolves tensions between

⁶⁶ Human Development Report, United Nations Development Programme (2020) available at <http://hdr.undp.org/sites/default/files/hdr2020.pdf> – Indian featured in the Medium Development Category and ranked 131 among the 189 countries that were evaluated.

anthropocentric and eco-centric views. The unique selling proposition of the concept of sustainable development is that it recognizes the primacy and legitimacy of human interests and rights, but is conditioned by environmental limits. It weaves ecological interests into the human rights discourse, connecting the quality of human rights to the quality of environment. The notion of qualifying the right to development with a sustainable qualifier not only moves away from the archaic concept of 'developmentalism' but also addresses two competing interests through one solution.

Contrary to the highly theoretical eco-centric approach, the concept of sustainable development speaks volumes in terms of practical application. Especially in realising the right to development, it clearly spells out the trade-offs between the human interests and environmental rights. For instance, the right to development entails the right of people to "a constant improvement of their well-being"⁶⁷. It stresses the need to attain the highest attainable standard of living from which people can derive economic, social, cultural, aesthetical and recreational value. Accommodating this line of thought, the concept of sustainable development simply postulates that in a world that is under threat of degradation and destruction, the 'highest attainable standard' can only be achieved if environmental concerns are addressed. If the environment to nurture and facilitate the very existence of man is not conducive, then the issue of development will not arise. Thus, the right to 'development' must necessarily be a sustainable one.

The idea of sustainable development has been lauded for creating a balance between environmental and non-environmental imperatives. However, it has been criticised for being heavily inclined to human needs. Taking cue from the Brundtland Report⁶⁸ itself, some scholars argue that the very definition of 'sustainable

⁶⁷ High-level Task Force on the Implementation of the Right to Development, UN Doc. A/ HRC/15/WG.2/TF/2/Add.2. (8 March 2010).

⁶⁸ Brundtland, G. H. (1987). *Our Common Future*, Report of the World Commission on Environment and Development.

development' was centred around human interests,⁶⁹ to the exclusion of nature and planetary eco-systems.⁷⁰ This narrative was deemed to be problematic and 'vacuous' as it left out ecological sustainability from the picture, giving way to justify almost any activity that may have grave environmental ramifications.⁷¹ Bossleman, specifically hits against this conception of human development by stating that the failure to conceive sustainability as the core driving factor of sustainable development, renders the principle redundant in reconciling human interests with ecological integrity.⁷²

In the Indian framework as well, the definition of sustainable development based on inter-generational equity had been the predominant view. As evinced in a plethora of case laws, the Courts have recurrently subscribed to the valuation of sustainable development based on whether it meets the aspirations of future (human) generations.⁷³ The accuracy of this approach however came to be questioned for having side-lined environmental issues at a much deeper level. For instance, in the case of Centre for Environmental Law, World Wide Fund - India v. Union of India and Ors.,⁷⁴ the anthropocentric bias of 'sustainable development' was highlighted, whereby the Court specifically iterated that it is a concept that is least concerned with the rights of other species to live on earth. Similarly, in the case of Jammal Chhoudaraiah and

⁶⁹ C. Speed, *Anthropocentricism and Sustainable Development: Oymoron or Symbiosis?* 93, WIT Transactions on Ecology and the Environment, 323, 328 (2006).

⁷⁰ Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*, (Farham, UK: Ashgate, 2008).

⁷¹ Richardson, D. 'The Politics of Sustainable Development' in S. Baker et al eds., *The Politics of Sustainable Development: Theory, Policy, and Practice within the European Union*, London: Routledge, 45 (1997).

⁷² Bosselman, *Supra* note 69 at 9.

⁷³ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647; *T. N Godavarman Thirumulpad v. Union of India*, (2008) 2 SCC 222; *M. C. Mehta v. Union of India*, (2009) 6 SCC 142.

⁷⁴ *Centre for Environmental Law, World Wide Fund, India v. Union of India & Ors.*, (2013) 8 SCC 234, ¶ 46.

Ors., v. Union of India and Ors.,⁷⁵ the Court noted that the concept as it stands presupposes the needs of humans as higher than those of other life forms and the intrinsic value of humans as greater than that of other non-human components of nature. But lately, in a few, rare cases, the Courts have shown some inclination in unfurling the non-human interests in understanding this principle. For example, in *Rajeev Suri v. Delhi Development Authority*,⁷⁶ the Supreme Court observed that the principle of sustainable development posits ‘controlled development’ which demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns, by proper mitigating measures. This observation is also fraught with ambiguity, owing to the expanse of what constitutes environmental rule of law.

Currently, the principle of sustainable development is evolving gradually, encompassing the notion of sustainability. But as the Supreme Court stated in the case of *Citizens for Green Doon and Ors. v. Union of India and Ors.*,⁷⁷: Without a common benchmark or standard being applied by the Court in its analysis of the impact of development projects, the principle of sustainable development may create differing and arbitrary metrics. This not only creates uncertainty within the law, but makes the application of the principle of sustainable development selective, taking away from its potential to drive sustained change.

Thus, there is a need to re-define the contours of the concept of sustainable development by including interspecies-equity. In other words, the ‘sustainability’ of development must be based on an inclusive and symbiotic relationship between man and nature.

⁷⁵ *Jammal Chhoudaraiah & Ors. v. Union of India & Ors.*, O.A. 175/2018 (02.12.2021 - NGT), ¶ 459.

⁷⁶ *Rajeev Suri v. Delhi Development Authority*, W.P (Civil) No 1041/2020 (05.01.2021 - SC) ¶ 375.

⁷⁷ *Citizens for Green Doon & Ors. v. Union of India & Ors.*, C.A 10930/2018 (14.12.2021 - SC), ¶33.

8. Conclusion

Having established that right to development can and ought to be conditioned by ecological limits, the next question that follows is to what extent can development be limited to be deemed sustainable? In this regard, it can be said that the right to development should be exercised in so far as the natural order of earth's processes allows it. This means that the right to development should be qualified by the threshold of the earth's carrying capacity. For example, in the context of consumption of precious resources, the rate of development should not exceed that of replenishment. Similarly, in polluting the environment, the rate of pollution and the measures to address it must be commensurate to the ability of the environment to sustain it. Furthermore, in devising policies, scientific reasoning should take into account the best alternative with least environmental impact. This also promotes weighing and balancing of interests, bearing in mind respect and consciousness for the environment. By doing so, the complex relationship between human rights and environmental interests will be addressed, with the most ecologically pragmatic outcome.