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*Research Article*

# The Right to a Healthy Environment: An Emerging Norm of Customary International Law with Special Reference to Sanātana Hindu Ethics

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## Abstract

The right to a healthy environment has emerged as one of the most significant normative developments in contemporary international law, situated at the intersection of human rights, environmental protection, and sustainable development. This article critically examines whether this right has attained, or is in the process of attaining, the status of customary international law. Through an analysis of international environmental instruments, judicial pronouncements of international and regional courts, and evolving state practice, the study argues that environmental protection is increasingly perceived as a legal obligation rather than a discretionary policy choice. A distinctive contribution of this article lies in its integration of Sanātana Hindu ethics as a civilizational framework of environmental stewardship, highlighting principles of restraint, harmony, duty, and intergenerational responsibility that parallel modern environmental legal norms. The paper further evaluates India's constitutional jurisprudence, public interest litigation, and international engagement as evidence of both state practice and opinio juris supporting the normative evolution of environmental rights. Regional developments in South Asia are also examined to contextualise emerging trends. While acknowledging existing challenges such as fragmented enforcement and developmental constraints, the article concludes that the right to a healthy environment occupies an advanced stage of emergence within customary international law, reinforced by converging legal practices and ethical traditions. The study ultimately underscores the value of harmonising international law with enduring civilizational ethics to strengthen global environmental governance.

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## 1. INTRODUCTION

Environmental degradation has emerged as one of the most pressing challenges confronting the contemporary international legal order, transcending national boundaries and directly affecting the enjoyment of fundamental human rights. Climate change, biodiversity loss, pollution, and unsustainable exploitation of natural resources have increasingly threatened human life, health, dignity, and well-being, thereby compelling a re-evaluation of the relationship between environmental protection and human rights. What was once viewed primarily as a matter of state sovereignty and economic development is now widely acknowledged as a global concern demanding collective legal and ethical responses. This shift has encouraged international law to move beyond a purely regulatory framework toward a rights-based approach that recognises the environment as an essential condition for the realisation of human existence itself.

Within this evolving legal landscape, the idea of a right to a healthy environment has gained significant prominence in international discourse. Although not originally articulated as a standalone right in classical international human rights instruments, the concept has progressively developed through environmental declarations, treaty frameworks, judicial interpretations, and resolutions of international bodies. The increasing recognition of environmental protection as inseparable from established human rights has contributed to the gradual emergence of the right to a healthy environment as a normative claim with growing legal relevance. This development raises an important question as to whether the right has moved beyond an aspirational status and is crystallising into a norm of customary international law, supported by consistent state practice and an emerging sense of legal obligation.

Against this background, the present article seeks to examine whether the right to a healthy environment can be understood as an emerging norm of customary international law. The central inquiry of this study focuses on identifying the extent to which international instruments, judicial pronouncements, and state practice reflect the necessary elements of custom, namely general practice and *opinio juris*. The article adopts a doctrinal and analytical methodology, drawing upon international legal frameworks, comparative jurisprudence, and regional practices to assess the normative evolution of environmental rights. Particular attention is given to the role of domestic courts and regional experiences in shaping and reinforcing international environmental norms.

In addition to legal analysis, this article explores the significance of ethical and civilizational perspectives in understanding the normative foundations of environmental protection. By incorporating Sanātana Hindu Ethics as a cultural framework emphasising coexistence, restraint, and reverence for nature, the study seeks to demonstrate how long-standing ethical traditions can influence environmental consciousness and legal development without undermining secular or pluralistic principles. The inclusion of such perspectives is not intended to advance religious doctrine, but rather to highlight how civilizational practices rooted in non-violence and ecological harmony can contribute valuable insights to contemporary international law. In doing so, the article underscores the importance of integrating legal norms with ethical values in the pursuit of a sustainable and just environmental order.

## 2. Conceptualising the Right to a Healthy Environment:

The right to a healthy environment has emerged as a multifaceted legal concept encompassing ecological integrity, environmental quality, and conditions necessary for human survival and flourishing. Although international law has not yet adopted a universally binding definition, the normative content of this right generally includes access to clean air and water, a safe and stable climate, biodiversity protection, and freedom from environmental harm that undermines human well-being. The scope of the right extends beyond mere environmental regulation and reflects a substantive entitlement to conditions that sustain life and dignity. Its evolving recognition in international and domestic legal systems demonstrates a growing understanding that environmental protection is not an optional policy choice but a foundational legal requirement for the realisation of human rights.

The conceptual foundation of the right to a healthy environment is closely linked with established human rights, particularly the rights to life, health, dignity, and well-being. Environmental degradation has been increasingly acknowledged as a direct threat to these rights, as polluted ecosystems, climate-induced disasters, and resource depletion disproportionately affect vulnerable populations. Judicial bodies have progressively and expansively interpreted the right to life to include environmental dimensions, recognising that life cannot be enjoyed in conditions of ecological harm. This interpretative approach is evident in both international and domestic jurisprudence, where courts have affirmed that environmental quality is intrinsic to human dignity and physical integrity. Such interpretations reflect a shift from a narrow, negative conception of rights toward a holistic understanding that recognises environmental conditions as essential to meaningful human existence.

Debates surrounding the right to a healthy environment are often shaped by the tension between anthropocentric and ecocentric approaches in environmental law. The anthropocentric perspective views environmental protection primarily as a means to safeguard human interests, emphasising the instrumental value of nature in supporting human life and development. In contrast, the ecocentric approach attributes intrinsic value to the natural environment, recognising ecosystems and non-human entities as deserving of protection irrespective of their immediate utility to humans. Contemporary environmental jurisprudence increasingly reflects an integrative approach that balances these perspectives, acknowledging both human dependency on nature and the inherent worth of ecological systems. This conceptual evolution has been reinforced by judicial trends recognising rivers, forests, and

ecosystems as legal entities, thereby expanding the moral and legal imagination of environmental law.

The right to a healthy environment also possesses a distinctly collective and intergenerational character, distinguishing it from traditional civil and political rights. Environmental harm is rarely confined to individual victims and often affects entire communities, regions, and future generations. As a result, the right is frequently articulated as a collective entitlement, grounded in shared ecological interests and communal responsibility. Its intergenerational dimension emphasises the obligation of present generations to preserve environmental resources for those yet to come, aligning with principles of sustainable development and intergenerational equity. This understanding has gained traction in climate change litigation, where courts have acknowledged the rights of future generations to a livable environment, thereby reinforcing the normative strength of the right to a healthy environment as a foundational element of contemporary human rights discourse.

## 3. Customary International Law: Framework and Methodology:

Customary international law occupies a central position within the international legal system and derives its authority from consistent state conduct accompanied by a belief in legal obligation. Recognised as a primary source of international law, custom functions alongside treaties and general principles to regulate areas where formal codification may be incomplete or evolving. Unlike treaty law, which binds only consenting states, customary international law has a broader normative reach, capable of imposing obligations on all states once a norm is established. This characteristic makes custom particularly significant in the field of international environmental law, where emerging challenges often outpace formal treaty-making and require normative development through practice and consensus.

The formation of customary international law traditionally rests on two interrelated elements: state practice and opinio juris. State practice refers to the general and consistent conduct of states, which may be reflected in legislative measures, executive actions, judicial decisions, diplomatic statements, and participation in international processes. Absolute uniformity is not required; rather, practice must be sufficiently widespread, representative, and consistent, especially among states most affected by the issue. In the environmental context, state practice includes the adoption of constitutional environmental rights, enactment of environmental legislation, participation in multilateral environmental agreements, and judicial enforcement of environmental protections. Such practices demonstrate how states operationalise environmental responsibility within their legal systems.

*Opinio juris*, the subjective element of custom, denotes the belief by states that a particular practice is carried out as a matter of legal obligation rather than political expediency or moral preference. This element distinguishes customary norms from habits or policy choices and is often inferred from official statements, voting patterns in international organisations, and judicial reasoning. In recent years, environmental protection has increasingly been framed in legal terms, with states acknowledging environmental obligations as necessary for the fulfilment of human rights and international commitments. The recognition of environmental protection as a legal duty, rather than a discretionary goal, has strengthened the claim that environmental rights, including the right to a healthy environment, are moving toward customary status.

Treaties, soft law instruments, and judicial decisions play a crucial role in the identification and development of customary international law, even though they are not themselves determinative of custom. Multilateral treaties may reflect or consolidate existing customary norms, while widespread ratification and implementation can serve as evidence of both state practice and *opinio juris*. Soft law instruments, such as declarations and resolutions, though formally non-binding, often articulate normative principles that influence state behaviour and contribute to the gradual formation of custom. International and domestic judicial decisions further reinforce this process by interpreting environmental obligations as legally binding and by articulating principles that resonate beyond the specific disputes before them.

In assessing customary international law, increasing attention has also been given to regional and cultural practices as contributing evidence, particularly in areas involving shared values and collective concerns. While regional practice alone cannot establish universal custom, it can provide persuasive evidence of normative trends, especially when it reflects consistency, repetition, and a sense of obligation. Environmental protection is deeply influenced by cultural, ethical, and historical contexts, which shape how states perceive and implement their responsibilities. Regional experiences, including judicial innovations and culturally rooted environmental consciousness, therefore serve as important indicators of evolving *opinio juris* and help illuminate the pathways through which global environmental norms emerge. This methodological approach allows customary international law to remain dynamic and responsive, accommodating diverse legal traditions while fostering the development of shared international standards.

## 4. International Legal Framework Governing Environmental Protection:

The modern international legal framework governing environmental protection traces its normative origins to the Stockholm Declaration on the Human Environment, 1972, which marked a decisive shift in global consciousness by explicitly linking environmental protection with human well-being. Although the Declaration did not articulate a standalone right to a healthy environment in explicit terms, it laid the conceptual foundation by affirming that human beings have a fundamental right to live in an environment of a quality that permits a life of dignity and well-being. This recognition transformed environmental protection from a purely technical or developmental concern into a matter of ethical and legal significance, encouraging states to integrate environmental

considerations into domestic and international decision-making. The Stockholm Declaration thus represents an early articulation of environmental rights discourse and continues to influence the normative evolution of international environmental law.

Building upon this foundation, the Rio Declaration on Environment and Development, 1992, further refined the relationship between environmental protection and development through the articulation of key principles such as sustainable development, intergenerational equity, precaution, and public participation. The Rio framework emphasised that environmental protection constitutes an integral part of the development process rather than an external constraint upon it. By introducing principles that balance ecological integrity with economic and social needs, the Declaration reinforced the normative idea that environmental protection is essential to long-term human welfare. These principles have since been widely incorporated into national legislation, judicial reasoning, and international agreements, thereby strengthening their role in shaping state practice and contributing indirectly to the formation of customary environmental norms.

The Convention on Biological Diversity represents a significant step toward ecosystem-based environmental governance by recognising the intrinsic value of biological diversity and the need for its conservation and sustainable use. Unlike earlier instruments that focused primarily on pollution control, the Convention adopts a holistic approach by addressing ecosystems, species, and genetic resources. Its widespread ratification and implementation reflect a shared understanding among states that biodiversity protection is indispensable to ecological stability and human survival. The Convention's emphasis on conservation, sustainable use, and equitable benefit-sharing reinforces the normative claim that environmental protection extends beyond immediate human interests and encompasses broader ecological responsibilities.

The climate change regime, particularly under the Paris Agreement, has further advanced the integration of environmental protection and human rights within international law. While the Agreement is primarily oriented toward mitigating greenhouse gas emissions and enhancing adaptive capacity, it explicitly acknowledges the importance of respecting human rights, including the right to health and the rights of vulnerable populations, in climate action. This human rights language signals an important normative development by recognising that climate change poses existential threats to human life and dignity. Climate-related litigation before domestic and international courts has increasingly drawn upon this linkage, treating environmental harm as a violation of fundamental rights and thereby reinforcing the legal relevance of environmental protection within the human rights framework.

Procedural dimensions of environmental rights have been most comprehensively articulated in the Aarhus Convention, which guarantees access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. Although regionally limited in formal application, the Convention has exerted significant normative influence beyond its geographical scope by affirming that effective environmental protection requires transparency, accountability, and participatory governance. These procedural guarantees strengthen substantive environmental rights by empowering individuals and communities to engage meaningfully in environmental governance, and they have increasingly been reflected in domestic laws and judicial decisions across diverse legal systems.

Recent developments at the level of the United Nations have further consolidated the normative status of environmental protection as a human rights concern. The recognition of the right to a clean, healthy, and sustainable environment by the UN Human Rights Council in 2021, followed by its endorsement by the UN General Assembly in 2022, represents a significant expression of collective state acknowledgement. Although these resolutions are not legally binding, they carry considerable persuasive value as indicators of emerging *opinio juris* and reflect a growing consensus that environmental protection is an essential component of human rights. Taken together, international declarations, treaties, judicial interpretations, and institutional resolutions form a coherent normative framework that has progressively strengthened the claim that the right to a healthy environment is evolving toward recognition as a norm of customary international law.

## 5. Judicial Recognition of Environmental Rights at the International Level:

International adjudicatory bodies have played a crucial role in advancing the recognition of environmental protection as a legal concern of international importance, even in the absence of an explicit and universally binding treaty-based right to a healthy environment. The International Court of Justice has gradually acknowledged the intrinsic link between environmental protection and the obligations of states under international law. While the Court has traditionally exercised caution in articulating new rights, its jurisprudence has affirmed that environmental considerations form an essential part of contemporary international legal obligations. In cases involving transboundary harm and shared natural resources, the Court has emphasised the duty of states to prevent significant environmental damage and to exercise due diligence in activities affecting the environment, thereby reinforcing the normative status of environmental protection within the international legal order.

A more explicit recognition of environmental rights has emerged from the jurisprudence of the Inter-American Court of Human Rights, which has been at the forefront of integrating environmental protection into human rights law. The Court has recognised that environmental degradation can give rise to violations of protected human rights and, in a landmark advisory opinion, affirmed the existence of an autonomous right to a healthy environment independent of its impact on individual human interests. This approach reflects an ecocentric orientation that acknowledges the intrinsic value of nature and ecosystems, while simultaneously recognising their essential role in supporting human life and dignity. The Inter-American

Court's jurisprudence has significantly influenced the conceptualisation of environmental rights by framing them as justiciable legal entitlements rather than mere policy aspirations.

The European Court of Human Rights has also contributed substantially to the development of environmental jurisprudence through its dynamic interpretation of existing human rights provisions. Although the European Convention on Human Rights does not expressly guarantee a right to a healthy environment, the Court has consistently held that severe environmental harm may interfere with the effective enjoyment of rights such as the right to life, the right to respect for private and family life, and the right to an effective remedy. By addressing environmental issues through the lens of established civil and political rights, the Court has expanded the protective scope of the Convention and underscored the responsibility of states to regulate environmental risks. This jurisprudential approach has strengthened the recognition of environmental protection as a legal obligation grounded in human rights law.

Collectively, the decisions of international courts and human rights bodies have contributed significantly to the formation of *opinio juris* in relation to environmental rights. Judicial reasoning that characterises environmental protection as a legal duty rather than a discretionary policy choice reinforces the perception among states that environmental obligations are binding in nature. These judicial pronouncements, though often context-specific, have broader normative implications by articulating principles that transcend individual cases and influence state behaviour, domestic courts, and international discourse. As such, international adjudication serves not only as a mechanism for dispute resolution but also as a powerful normative force in the gradual crystallisation of the right to a healthy environment as an emerging norm of customary international law.

## 6. Sanātana Hindu Ethics: A Civilizational Framework of Environmental Stewardship:

Sanātana Hindu ethics present a distinctive civilizational approach to environmental stewardship that predates modern environmental law yet resonates strongly with its core objectives. Rooted in ancient Indic philosophical traditions, this framework conceptualises the relationship between humans and nature not as one of domination but of coexistence, balance, and moral responsibility. The Indic worldview rejects an exclusively anthropocentric understanding of nature and instead recognises ecological systems as integral to cosmic and social order. This perspective situates environmental protection within a broader ethical consciousness rather than treating it as a matter of regulatory compliance, thereby offering an enduring moral foundation for environmental responsibility that transcends temporal legal frameworks.

Central to this ethical tradition is the symbolic sacralization of nature, wherein rivers, mountains, forests, land, wildlife, and even celestial bodies are revered as manifestations of a shared life-sustaining order. Rivers such as the Gaṅgā, Yamunā, Saraswati, and Narmadā are venerated not merely through ritual devotion but as embodiments of water's indispensable role in sustaining life and ecological continuity. Mountains, including the Himālaya, Vindhyāchal, Arāvalli, Govardhan, and Maināk, are symbolically associated with stability, climatic regulation, and protection, reflecting an early recognition of their ecological significance. Trees and plants such as the Peepal, Banyan, Tulsi, Banana, and sacred groves are traditionally preserved as sources of biodiversity, oxygen, and ecological resilience, while the reverence accorded to Bhūmi (land) underscores intergenerational responsibility toward soil, agriculture, and habitation. This cultural sacralization operates as a social mechanism that discourages reckless exploitation, achieving through ethical restraint what modern legal systems often struggle to enforce through coercive regulation alone.

The philosophical concept of Ṛta, denoting cosmic order and natural harmony, provides the metaphysical foundation for ecological balance within Sanātana Hindu thought. Ṛta signifies the principle that the universe operates according to an intrinsic order, disruption of which results in social, moral, and environmental consequences. Human actions that disturb natural equilibrium are thus viewed not only as material harms but as ethical transgressions against universal order. This conception parallels contemporary notions of sustainable development and ecological equilibrium, reinforcing the idea that environmental degradation carries normative implications beyond immediate economic or utilitarian considerations.

Equally significant is the doctrine of Dharma, which frames environmental responsibility as a duty rather than a discretionary right. Dharma imposes moral obligations upon individuals, communities, and rulers to act in ways that preserve balance between human needs and ecological integrity. Classical Indic texts articulate duties toward forests, animals, water bodies, and land, recognising that governance and social order are inseparable from environmental stewardship. This duty-based approach aligns closely with modern legal principles that emphasise state obligations and intergenerational equity in environmental governance, offering a culturally embedded model of responsibility rather than entitlement-driven environmentalism.

The ethical principle of Ahinsā further extends this framework by mandating non-violence and universal respect toward all forms of life, including wildlife and non-human species. This respect is not confined to sentient beings alone but encompasses entire ecosystems, acknowledging the interconnectedness of all living and non-living entities. The protection of animals, birds, aquatic life, and forests within this ethical tradition reflects an early articulation of what contemporary international law now recognises as biodiversity protection and ecological integrity. By attributing moral value to wildlife and ecosystems, Sanātana Hindu ethics anticipate modern ecocentric approaches that view environmental harm as intrinsically wrongful, regardless of immediate human impact.

The ideal of *Vasudhaiva Kutumbakam*, meaning "the world is one family," further universalises this environmental ethic by extending moral concern beyond territorial, cultural, or species boundaries. This principle fosters a sense of global

environmental solidarity, emphasising shared responsibility for the planet and its resources. In the context of international environmental law, this worldview complements emerging norms of common concern of humankind and collective responsibility, reinforcing the ethical legitimacy of cooperative global environmental action. Importantly, these values operate as cultural consciousness rather than religious prescription, offering normative guidance without imposing theological obligation, and thereby remaining compatible with secular legal systems and pluralistic societies.

Taken together, Sanātana Hindu ethics provide a civilizational model of environmental stewardship that emphasises symbolic reverence, moral restraint, duty-based responsibility, and universal respect for all life forms. Rather than advocating religious adherence, this framework offers a culturally grounded ethical lens through which contemporary international law can draw inspiration, particularly in its effort to internalise environmental protection as a shared normative commitment. In this sense, Indic environmental ethics contribute meaningfully to the evolving discourse on the right to a healthy environment as an emerging norm of customary international law, enriching it with a time-tested moral vocabulary of coexistence and ecological humility.

## 7. Interface Between Sanātana Hindu Ethics and Modern Environmental Law:

The interface between Sanātana Hindu ethics and modern environmental law reveals a striking convergence between ancient duty-based moral frameworks and contemporary legal principles governing environmental protection. At the heart of Indic environmental thought lies the ethic of restraint and non-exploitative coexistence, which conceptualises humans as participants within nature rather than masters over it. This worldview is vividly expressed in the Vedic articulation of Earth as a living, nurturing entity, encapsulated in the Rigvedic declaration that the Earth is the mother and human beings are her children, thereby establishing an ethical relationship grounded in care, gratitude, and responsibility rather than ownership. Such a relational understanding parallels modern environmental law's rejection of absolute sovereignty over natural resources and its increasing emphasis on stewardship and sustainable use.

This ethic of stewardship finds a direct conceptual parallel in the public trust doctrine as developed in modern environmental jurisprudence, particularly within Indian constitutional law. The doctrine holds that the state acts as a trustee of natural resources for the benefit of present and future generations, a principle that resonates strongly with the Indic trusteeship philosophy embedded in Dharma. Ancient texts consistently impose obligations upon rulers and communities to protect forests, rivers, wildlife, and land as part of righteous governance, anticipating contemporary judicial interpretations that treat environmental protection as a constitutional duty rather than a policy choice. Indian courts, drawing upon both constitutional principles and civilizational values, have repeatedly affirmed that natural resources are held in trust for the people, reinforcing the continuity between traditional ethical restraint and modern legal doctrine.

Intergenerational equity, a cornerstone of contemporary international environmental law, similarly finds deep roots in Indic ethical traditions. The Atharvaveda's Earth Hymn articulates a principle of regenerative use, imploring that any harm inflicted upon the Earth be promptly healed, thereby reflecting an early consciousness of sustainability and renewal. This ethic discourages irreversible exploitation and aligns with modern legal commitments to preserve environmental resources for future generations. The continuity between these traditions underscores that sustainability is not a novel legal invention but an ethical imperative long embedded within civilizational consciousness.

Sanātana Hindu ethics also anticipate the integrative vision of sustainable development through their holistic understanding of ecological balance. The Yajurvedic invocation of peace across the sky, earth, waters, vegetation, and all elements reflects an acknowledgement of ecosystem interdependence that mirrors contemporary ecological science. Likewise, the Bhagavad Gītā's articulation of the cyclical relationship between rainfall, food, and living beings offers a philosophical representation of ecological cycles that modern environmental law seeks to protect through climate regulation, biodiversity conservation, and sustainable agriculture. These parallels demonstrate that ancient Indic thought embodies principles analogous to sustainable development, long before their formal articulation in international legal instruments.

A particularly significant contribution of Indic ethics lies in their rejection of possessive dominion over nature. The Īśopaniṣadic injunction that all existence is pervaded by a higher order and that consumption must be guided by restraint rather than greed offers a powerful ethical counterpoint to exploitative economic models. This principle resonates with contemporary critiques of unsustainable development and reinforces modern legal efforts to balance economic growth with ecological limits. The Mahābhārata's explicit condemnation of environmental destruction as adharma further elevates ecological harm from a mere regulatory violation to a moral wrong, strengthening the normative foundations upon which environmental law operates.

Importantly, Sanātana Hindu ethics extend moral consideration beyond human life to include wildlife and all living beings, reinforcing a biocentric orientation that modern environmental law is only beginning to embrace. Texts such as the Manusmṛti impose ethical sanctions for the destruction of trees and forests, recognising their ecological and social value, while Upaniṣadic affirmations of the unity of all existence dissolve rigid distinctions between humans and nature. This universalist ethic aligns closely with emerging global legal trends that recognise the intrinsic value of biodiversity and ecosystems, independent of immediate human utility.

In the context of global environmental governance, Indic ethics offer a culturally grounded yet universally resonant framework that complements international legal norms without imposing religious doctrine. Principles such as *Vasudhaiva Kutumbakam*

and the unity of existence articulated in the Bṛhadāraṇyaka Upaniṣad reinforce the idea of shared planetary responsibility, echoing international concepts such as common concern of humankind and collective environmental responsibility. By functioning as ethical consciousness rather than prescriptive theology, these traditions provide normative depth to contemporary environmental law and contribute meaningfully to the evolving recognition of the right to a healthy environment as a universal and customary legal norm.

**8. India's State Practice and Judicial Contribution:**

India's contribution to the development of environmental rights is most prominently reflected in its constitutional interpretation of the right to life under Article 21 of the Constitution, which the Supreme Court has expansively construed to include the right to a clean, healthy, and pollution-free environment. Through purposive and dynamic interpretation, the Court has transformed environmental protection from a directive policy objective into an enforceable fundamental right, thereby positioning India among jurisdictions that recognise environmental quality as integral to human dignity and well-being. This jurisprudential evolution has elevated environmental protection to constitutional status, reinforcing the normative perception that a healthy environment is not merely aspirational but legally indispensable.

A defining feature of India's environmental legal landscape has been the evolution of environmental public interest litigation, which has enabled courts to address systemic ecological harms affecting marginalised communities and future generations. By relaxing traditional rules of locus standi and procedural rigidity, Indian courts have allowed civil society actors to act as representatives of environmental interests, thereby recognising the collective and diffuse nature of environmental rights. Public interest litigation has served as a transformative tool in addressing air and water pollution, forest degradation, and industrial hazards, while simultaneously reinforcing the state's obligation to act as a guardian of ecological integrity. This procedural innovation has significantly strengthened the enforcement of environmental norms and reflects a form of state practice supportive of environmental rights.

The Supreme Court's environmental jurisprudence has further contributed to the articulation of core principles such as sustainable development, the precautionary principle, and the polluter pays principle, which have been incorporated into Indian law as binding doctrines. In adjudicating conflicts between development and environmental protection, the Court has consistently emphasised the need for balance, affirming that economic growth cannot be pursued at the cost of ecological destruction. By embedding these principles within domestic law and repeatedly invoking them in judicial reasoning, Indian courts have reinforced their status as normative standards with both domestic and international relevance. This sustained judicial engagement contributes to the consolidation of opinio juris supporting environmental protection as a legal obligation.

Beyond judicial practice, India's active participation in international environmental treaties further evidences its commitment to environmental protection at the global level. India is a party to major multilateral environmental agreements addressing climate change, biodiversity conservation, desertification, and ozone depletion, and has engaged constructively in international negotiations while articulating the concerns of developing states. Its endorsement of principles such as common but differentiated responsibilities reflects a nuanced approach that balances environmental protection with developmental equity, reinforcing the legitimacy of environmental norms within international law. This treaty participation, when coupled with consistent domestic implementation, constitutes significant state practice contributing to the emergence of customary environmental obligations.

Indian environmental adjudication is also distinguished by the ethical and cultural undercurrents that inform judicial reasoning, often drawing implicitly upon civilizational values of restraint, trusteeship, and harmony with nature. Courts have invoked concepts such as trusteeship of natural resources, intergenerational responsibility, and reverence for ecological balance in framing legal obligations, thereby integrating ethical considerations into formal legal analysis. While these references are framed in secular and constitutional terms, they reflect a deeper cultural consciousness that views environmental protection as a moral duty owed to society and future generations. This synthesis of constitutional law, international norms, and civilizational ethics strengthens India's contribution to the evolving recognition of the right to a healthy environment as an emerging norm of customary international law.

**9. South Asian State Practice and Regional Trends:**

Regional practice within South Asia provides important contextual support for the gradual emergence of the right to a healthy environment as a normative legal principle, particularly where constitutional recognition, judicial enforcement, and cultural ethics converge. Nepal offers one of the clearest examples of explicit constitutional acknowledgement of environmental rights, as its Constitution guarantees every person the right to live in a clean and healthy environment and imposes corresponding duties upon the state to protect natural resources. This constitutional entrenchment has enabled Nepali courts to treat environmental protection as a justiciable right rather than a policy aspiration, reinforcing the perception that environmental quality is inseparable from human dignity and social justice. The Nepali experience demonstrates how clear constitutional language, combined with judicial willingness to enforce environmental norms, contributes to both state practice and *opinio juris* in favour of environmental rights.

Sri Lanka's contribution to regional environmental jurisprudence lies primarily in its judicial development of the public trust doctrine and rights-based environmental governance. Despite the absence of an explicit constitutional right to a healthy environment, Sri Lankan courts have interpreted existing constitutional guarantees in a manner that places environmental protection at the core of state

responsibility. By characterising natural resources as assets held in trust for the benefit of the people, the judiciary has imposed enforceable obligations upon the state to prevent ecological degradation and to ensure sustainable use. This jurisprudence mirrors developments in Indian environmental law and reflects a shared regional understanding that environmental stewardship is an essential component of constitutional governance, thereby reinforcing the normative status of environmental protection across South Asia.

Bhutan presents a distinctive model of environmental governance rooted in both constitutional mandate and civilizational philosophy. The Bhutanese Constitution imposes a direct obligation upon the state and citizens to protect the environment and mandates the maintenance of forest cover as a constitutional requirement. This legal framework is complemented by the philosophy of Gross National Happiness, which integrates environmental conservation as a foundational pillar of national development. Bhutan's consistent policy emphasis on ecological preservation, sustainable development, and intergenerational responsibility reflects a holistic approach that aligns closely with contemporary international environmental principles while remaining grounded in indigenous ethical values. Such sustained and coherent practice strengthens the evidentiary basis for recognising environmental protection as a binding normative commitment rather than a discretionary policy choice.

Taken together, the experiences of Nepal, Sri Lanka, and Bhutan reveal a discernible regional trend toward recognising environmental protection as a legal and ethical obligation of the state. The convergence of constitutional provisions, judicial doctrines such as public trust and intergenerational equity, and culturally embedded values of restraint and stewardship contributes to a shared normative understanding within the region. While these practices vary in form and institutional expression, their cumulative effect supports the argument that the right to a healthy environment is gaining acceptance as an emerging norm of customary international law, reinforced by consistent regional state practice and a growing sense of legal obligation grounded in both constitutionalism and civilizational ethics.

## 10. Assessing the Customary Status of the Right to a Healthy Environment:

Assessing whether the right to a healthy environment has attained the status of customary international law requires careful evaluation of the consistency and generality of state practice across diverse legal systems and regions. Over recent decades, a significant number of states have incorporated environmental protection into constitutional texts, statutory frameworks, and judicial interpretations, often recognising environmental quality as integral to the enjoyment of fundamental rights such as life, health, and dignity. Domestic courts in multiple jurisdictions have enforced environmental obligations through rights-based reasoning, while states have increasingly regulated environmental harm through legislation and administrative action. Although variations remain in the scope and enforceability of such protections, the cumulative pattern of constitutional entrenchment, judicial enforcement, and regulatory practice suggests a growing convergence toward treating environmental protection as a legal obligation rather than a discretionary policy choice.

Parallel to evolving state practice, evidence of *opinio juris* has strengthened through consistent references to environmental rights in international resolutions, judicial reasoning, and treaty practice. The recognition by the United Nations Human Rights Council and the United Nations General Assembly of the right to a clean, healthy, and sustainable environment has contributed significantly to shaping normative expectations, even if such resolutions are not themselves legally binding. International and regional courts have further reinforced this perception by characterising environmental protection as a legal duty derived from human rights obligations and principles of international law. Judicial pronouncements emphasising due diligence, prevention of environmental harm, and protection of ecosystems reflect an emerging belief among states that environmental protection is required by law, thereby supporting the development of opinio juris.

An important yet often understated dimension of customary norm formation lies in the role of ethical and cultural values in shaping legal consciousness. Civilizational traditions that emphasise restraint, stewardship, and harmony with nature have influenced domestic legal systems and judicial reasoning, particularly in regions where cultural ethics and constitutional values intersect. Such ethical frameworks do not operate as independent sources of international law but contribute to the internalisation of environmental obligations within state practice. When ethical norms align with legal principles and are reflected in consistent governmental and judicial conduct, they reinforce the normative legitimacy of emerging rules and facilitate their acceptance as binding standards of behaviour.

Despite these developments, it would be premature to conclude that the right to a healthy environment has fully crystallised as a universally binding norm of customary international law. While the trajectory toward recognition is clear and accelerating, inconsistencies in state practice, uneven enforcement, and differing conceptualisations of the right indicate that the norm remains in an advanced stage of emergence rather than complete consolidation. The right presently occupies a transitional space, functioning as a powerful normative standard that informs treaty interpretation, judicial reasoning, and domestic lawmaking, while progressively shaping expectations of lawful state conduct. As state practice becomes more uniform and expressions of legal obligation more explicit, the right to a healthy environment is likely to mature into a fully crystallised customary norm, reflecting the convergence of law, ethics, and global environmental necessity.

## 11. Challenges and Counter-Arguments:

Notwithstanding the growing recognition of environmental protection within domestic and international legal frameworks, significant challenges continue to complicate the consolidation of the right to a healthy environment as customary international

law. A primary counter-argument arises from developmental priorities and economic constraints, particularly in states where poverty alleviation, industrial growth, and infrastructure expansion are perceived as immediate imperatives. Governments often contend that stringent environmental obligations may impede economic development and restrict policy autonomy, leading to a cautious or selective embrace of rights-based environmental standards. International jurisprudence has acknowledged this tension, emphasising the need to balance environmental protection with developmental needs while rejecting the notion that economic growth can justify unchecked ecological harm.

A related challenge stems from the fragmented nature of state practice and uneven enforcement of environmental norms. While numerous states have constitutionally or judicially recognised environmental rights, the scope, enforceability, and implementation of such rights vary considerably across jurisdictions. Inconsistencies in regulatory capacity, institutional effectiveness, and political will result in divergent standards of environmental protection, weakening claims of uniform and general practice required for customary norm formation. Moreover, selective compliance with environmental obligations and gaps between formal recognition and actual enforcement raise concerns about whether existing practices reflect genuine legal obligations or merely aspirational policy commitments.

The predominantly soft-law character of many environmental norms further complicates their customary status. Key international instruments addressing environmental protection often take the form of declarations, guidelines, and resolutions rather than binding treaties, allowing states to express support without assuming enforceable obligations. While soft-law instruments play a critical role in norm development and normative convergence, their non-binding nature has been cited as evidence that states do not yet regard environmental rights as legally obligatory. Nevertheless, international courts and scholars have observed that sustained reliance on soft law in judicial reasoning and state practice can gradually harden such norms, particularly when they inform treaty interpretation and domestic adjudication.

Concerns of cultural relativism and universality also feature prominently in critiques of environmental rights discourse. Sceptics argue that framing environmental protection as a human right may reflect particular philosophical or cultural assumptions that are not universally shared, thereby undermining the universality required for customary international law. However, this critique overlooks the fact that environmental ethics and stewardship principles are deeply embedded in diverse civilizational traditions across regions, albeit expressed through different cultural idioms. When environmental protection is articulated in neutral legal terms and grounded in shared human interests such as survival, dignity, and intergenerational justice, it transcends cultural particularism and acquires universal normative relevance. International law has increasingly accommodated this pluralism by recognising that diverse ethical foundations can converge toward common legal standards, thereby strengthening rather than weakening the legitimacy of emerging environmental norms.

## 12. CONCLUSION

This article has examined the evolving recognition of the right to a healthy environment through the lens of international law, regional and domestic state practice, and civilizational ethical traditions, demonstrating that environmental protection has progressively moved from the periphery of policy discourse to the core of rights-based legal reasoning. The analysis reveals a discernible convergence of constitutional provisions, judicial interpretations, international instruments, and state conduct that increasingly treat environmental quality as indispensable to the enjoyment of life, dignity, and well-being. While inconsistencies in enforcement and formulation persist, the cumulative weight of state practice and judicial articulation indicates that the right to a healthy environment occupies an advanced stage of normative emergence within customary international law. International legal developments, particularly through human rights bodies and international adjudication, have provided the formal doctrinal structure for this evolution, while Sanātana Hindu ethics contribute a complementary civilizational perspective grounded in restraint, stewardship, intergenerational responsibility, and harmonious coexistence with nature. Rather than functioning as a religious prescription, these ethical principles operate as cultural consciousness that reinforces environmental responsibility and lends moral depth to contemporary legal norms. India's constitutional jurisprudence, public interest litigation, and consistent engagement with international environmental regimes underscore its significant role in shaping and internalising environmental obligations, further reflected in initiatives such as its leadership as a founding member of the International Solar Alliance, which advances sustainable energy transitions and ecological protection through cooperative global action. Together, these legal, ethical, and institutional contributions position India as an important normative actor in the ongoing development of environmental customary norms. Looking ahead, the future trajectory of the right to a healthy environment in international law will depend upon greater coherence in state practice, strengthened implementation mechanisms, and continued integration of ethical values that encourage environmental restraint and solidarity. As environmental degradation increasingly threatens global survival, the convergence of law and ethics offers a compelling foundation for the eventual crystallisation of this right as a universally binding principle of international law.

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