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RELATIONSHIP BETWEEN HUMAN RIGHTS AND ENVIRONMENT

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Abstract: *From ancient to modern periods, environment plays a definite role in the realization of natural or human rights. However, the significance of its preservation was realised only four decades back through the Stockholm conference in 1972. From then onwards, the augmentation of it recognised through a number of international and national legal nuances for the realization and promotion of rights of the human beings across the world. This paper considering the increasing bond developed between the jurisprudential vistas of human rights and environment; briefly examine the relationship between the two. Further, it addresses the responsibility of the nation-states through international legal regulations framed by them through this linkage especially that of the Indian context and suggests remedial mechanisms for its affective achievement by the humanity as a product of nature.*

Key words: Environmental Protection, Human Rights, Millennium Goals.

Introduction:

No doubt, in the era of massive rapid techno-economical development, environment holds the key to the success of man. Nature being the personification of man, it not only teaches how to live, but also enunciates the uses of its exploitation for further progress. The quest for development and exploitation of environment finally resulted in a number of vicissitudes, which ultimately led man to realize that the benefits achieved by him are lesser than the baffling harm that has brought in the survival of humankind itself. To escape from the horrendous dangers of future existence, both internationally and nationally a number of legal regulations are evolved for the conservation and management of natural resources. These regulations for the survival of humanity, and to develop an institutional framework to tackle problems of poverty and sustainability of resources, the international community linked the prism of destruction and development through the principles of international law of human rights.

Human Rights being natural rights, they develop an innate responsibility on humanity in their realisation and promotion. These inter relationships between rights and duties led the humankind to recognise the right to environment as a human right through the principles of international law¹. This paper makes a brief attempt to study the developmental perspective of international law of environment and the linkage that it has with human rights. It also discusses the rights and responsibilities of states under international law and examines it through the Indian perspective to preserve the environment for the future generations through human rights.

Development of Linkage between Environment and Human Rights

Without environmental protection, development cannot sustain. Environment supports our life system. It

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¹ The development of international environmental law traced back from 1902 Convention for the Protection of Birds Useful to Agriculture and the Treaty for the Preservation and Protection of Fur seals in 1911. For discussion on the development of international Environmental Law, see United Nations University, Global Change and International Law: A Legal Framework; at <http://archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee04.htm#introduction> visited on 16.8.2011

includes everything that we rely for the sustainability of life especially, air, water, metals, soil, rock, and other living organism. It is important to remember that the state of our environment influenced by our behavior and that we have the opportunity either to nurture or mistreat it. To tackle the inimical activities of man towards nature, regulations of international environmental law have been developed over the years.

The Trail Smelter Arbitration between US and Canada laid the foundations for the development of international law of environment². The judicial principles of the Trail Smelter Award led the academicians to develop a number of principles to sustain environment especially, to fix the responsibility of nation-states and the individuals for the degradation of environment. This in turn led for the development of normative principles of international law through the Charter of United Nations and the subsequent number of documents adopted by the UN. However, it was the Stockholm Conference of 1972 laid the main basis for the augmentation of international environmental as an important branch of International Law³. From Stockholm to World Conference of World Environment slated in 2012, there are more than 500 international and regional agreements are by nation-states⁴.

Apart from these treaties and agreements, a number of principles of international law, especially state responsibility and the jurisdictional issues developed the compensatory jurisprudence for the sustainability of environment. However, none of them could provide sufficient strength to halt the degradable activities of both states and man towards environment due to linkage of economic and political reasons to tackle poverty and other perennial issues of the World⁵. In order to achieve unanimity and to bring a peaceful sustainable environment, in the contemporary era a number of studies started highlight the subject from the purview of human rights.

The human right to clean environment is highly controversial⁶. The exploitation of resources by colonial masters in most of the developing states and the explicit recognition of self-determination to exploration and exploitation of natural resources coupled with economic rights by international law brought in a radical

² The central issue in the Trail Smelter case was pollution originating at the Cominco Smelter (at the time it was called the Consolidated Mining and Smelting Company) at Trail, British Columbia (Canada) causing damage to farms in Steven's County, Washington (United States). The total distance between the affected farms and the Smelter was less than 30 kilometers. Unfortunately, within this 30 kilometer stretch lies the US/Canadian border. The presence of this border complicated the case significantly and provided the initial impetus to the unique procedural progression of the Trail Smelter dispute. 33, *American Journal of International Law*, 1939; Martin Van de Kerkhof, *The Trail Smelter case Re-examined: Merkourios-International and European Environmental Law*, vol. 27/73, 2011, pp 68-83; available at <http://www.merkourios.org/index.php/mj/article/viewFile/34/40>, visited on 28.8.2011.

³ The first principle of the 1972 Stockholm Declaration declares that: "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.*"

⁴ Louis Kathleen Camenzuli, *The Development of International Environmental Law at the Multilateral Agreements of International Agreements' Conferences of the Parties and its validity*, cmsdata.iuen.org/downloads/cel10_camenzuli.pdf visited on 02.09.2011.

⁵ The Durban Conference held in 2011 in South Africa with an expectation to receive the global commitment to the Kyoto Protocol and to finalise some of the Cancun Agreements with respect to "co-operation on clean technology", as well as "forest protection, adaptation to climate impacts, and finance — the promised transfer of funds from rich countries to poor in order to help them protect forests, adapt to climate impacts, and "green" their economies". However, the statements made by India, china, Greece-Cyprus makes it amply clear, the line of division exist between the Developed and Developing states on the emission green house gases and other regulations is still a long way to achieve the environmental sustainability in the near future. For details see <http://www.un.org/apps/news/story.asp?NewsID=40535&Cr=climate+change&Cr1=> retrieved on 18.4.2012; http://en.wikipedia.org/wiki/2011_United_Nations_Climate_Change_Conference retrieved on 16.4.2012.

⁶ Magdalena Sepulveda et al., *Human Rights and Environment: Human Rights Reference Hand Book*, University of Peace, Costa Rica, 2004, at 420.

change for the damage caused to environment. However, one exception was recognised in times of war through Article 55, Protocol I of the Geneva Convention, 1949, explicitly stipulated a responsibility on the states to protect environment⁷.

Though the First and Second Generation of Human Rights (these are the civil, political, economic, Social and Cultural Rights) documents haven't explicitly recognise environment as a human right, it is part and parcel of these documents through number other rights such as right to life, liberty health, socio, economic and cultural rights. It was the Stockholm Declaration through Principle 1 brought in the direct relationship between environment and human rights. The linkage further expanded by the Brundtland Commission Report, 1987⁸ that advocated the significance of economic development without depleting the natural resources or harming the environment. This principle became later popular and referred to as sustainable development⁹.

The sustainable development report has brought to the fore the direct relationship that exist between human rights and environment directly. According to it, all human beings should be able to achieve their basic needs. The report also suggested that social equity, economic growth, and environmental maintenance are simultaneously possible and that each nation is capable of achieving its full economic potential, whilst at the same time, enhancing its resource base and the preservation of the eco system is the ultimate duty of humankind. The Earth Summit 1992 further endorsed the relationship of environment and human rights advocated by the Sustainable development concept. The twenty-seven articles clearly advocated new approach to development through the realisation of human rights. The document of the World Summit popularly referred to as Agenda 21 constitutes as blue print for sustainability of environment through human rights in the 21st century. Agenda 21 addresses the development of societies and economies by focusing on the conservation and preservation of environment and natural resources on one hand; provide guidelines to deal with the problems of poverty, hunger, resource consumption and the upliftment of deterioration of ecosystems. In the language of human rights, the entire concept advocated by Agenda 21 constitutes as Right to Development. Basing on this central issue of development, it imposed an obligation on the Governments to take steps for the promotion of active and social environmental policies, and protection of all human rights and fundamental freedoms based on democratic and institutional participation¹⁰.

It is obvious that to eradicate the social and economic causes of the people, especially poverty that has a potential nexus in the degradation of environment could promote the right to development as advocated by the UN. Further, the abuse of human rights for obvious reasons¹¹ worsened the situation of the world in the degradation of environment and led to a number of ecological imbalances. Taking into consideration of the degradable legal standards and practices adopted by the comity of nations in the promotion of protection and realisation of environmental standards vis-à-vis human rights, the UN called a World Conference to review the concept of sustainable development concept of Agenda 21. An examination of the practices and legal policies of the states, clearly highlight the linkage between development and environment had a mismatch. Accordingly, to achieve better results, to provide ecological balance, the concepts of globalization

⁷ Art. 55: Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection include a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice to the health or survival of the population.

⁸ *Our Common Future*, Report of the World Commission on Environment and Development, World Commission on Environment and Development, 1987. Published as Annex to General Assembly Resolution A/42/427, Development and International Co-operation: Environment August 2, 1987.

⁹ According to Brundtland sustainable development is " development that meets the needs of the Present without compromising the ability of future generations to meet their own needs." G.H. Brundtland: *Our Common future* (ed) Oxford University Press, 1987 at 5.

¹⁰ UN: Earth Summit: Agenda 21, Department of Public Information, UN, 1997.

¹¹ Y.K. Sabharwal: Human Rights And Environment; lecture delivered at the National Law School of India University, visited on 1.09.2011 <http://www.nlsenlaw.org/environmental-protection/articles-human-rights-and-the-environment/>

and good governance are linked with the aspect of sustainable development. This paved the way further, to develop third generation of rights, otherwise referred to as group rights. Among the various rights, polluter pays principle to halt the denuding of environment at the cost of tackling poverty, economic and social problems¹² emerged as the basic right of states. Apart from the above, the significant outcome of the conference on the one hand, recognised the right to development of nation-states as a basic human right, and on the other hand, imposed a responsibility on the nation-states to monitor the concept good governance through the participation of public private partnerships without any major damage to right to sustainability¹³. Apart from these issues, a number of other principles are developed over the years by states parties to achieve the concept of sustainable development through the realisation of environmental protection at various levels including that of responsibility of the states under international law to take steps for the sustenance of¹⁴ environment and human rights.

Linkage in Human rights Documents :

The aftermath results of Second World War, led the international community to assume the commitment to achieve the ideals of peace and security, through the realisation of human rights. Though environmental development is explicitly found after two decades of the adoption of Universal Declaration of Human Rights, innately it is interwoven in every instrument of human rights. This is because, environment and human rights transcends boundaries and is of critical importance for the human realtions across the frontiers to achieve the basic aspect of 'one world' concept of international law¹⁵.

Until recent times, none of the documents on human rights explicitly recognised environment as a part of human rights. However, it constitutes as Economic, Social, Cultural, Civil and Political right through the language of various human rights instruments as part and parcel of right to life, liberty, economic, social and cultural rights as a part of the inherent right of dignity of individual from the adoption of UDHR in 1948. In recent times, the African Charter on Human and Peoples' Rights, 1981 proclaims environmental rights. It protects both the right of peoples to the 'best attainable standard of health'¹⁶, and their right to 'a general satisfactory environment favourable to their development'¹⁷. The African Commission on Human and People Rights in the *Ogoniland* case, interpreting Article 24, held that the Charter imposes an obligation on the States to take reasonable measures, to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources¹⁸. The San Salvador Additional Protocol of the Intern American Convention on Human Rights (1994), recognised the significance of environment as a substantial human right. It guarantees 'the right to live in a healthy environment and to have access to basic public services', and imposes a duty on the states to 'promote the protection, preservation and improvement of the environment'¹⁹. Art 37 of the European Union's Charter of Fundamental Rights provides that 'a high level of environmental protection and the improvement of the quality of the environment must be integrated with the policies of the Union and to ensure their implementation in accordance with the Principles of sustainable development'²⁰.

The UN recognised the significance of the realisation of environment as a basic tool for the development of humankind through the Convention on the Rights of Children. Art. 24 (2) (c) imposes obligations on the states parties and all the constituent units of society, to take steps to promote through education, '.....

¹² UN Doc. A/CONF. 199/PC.1, 2002

¹³ *Ibid* Annex III, 40-42

¹⁴ Edith Brown Lewis: Invoking State Responsibility in the Twenty-First Century, *The American Journal of International Law*, (AJIL) Vol. 76, 2002, 798-816

¹⁵ Michael J. Kane: Promoting Political Rights to Protect the Environment, *The Yale Journal of International Law*, vol. 18, No. 1, 1993, 389-90

¹⁶ Article 16

¹⁷ Article 24

¹⁸ K.S.A. Ebeku, The right to a satisfactory environment and the African Commission, *African Human Rights Law Journal*, vol.3, 2003, 163

¹⁹ Article 11

²⁰ DJEC 2000/c 364/01.

environmental sanitation and prevention of accidents²¹. The Final Report of the Special Rapporteur on Prevention of Discrimination and Protection of Minorities²² listed 15 rights dealing with the significance of environment as a quality parameter for the harmonization of the rights of minorities and to prevent the discriminations.

In 1994, the UN special Rapporteur, Mrs. Fatma Zohra Ksentini, recognised the significance of right to information is the basic right that states parties need to recognise and implement in the realisation of environment and human rights²³. Apart from the few provisions discussed above, a number of other international and regional organisations and judicial decisions clearly advocated the linkage and the significance that environment has in the realisation of human rights²⁴.

Goal 7 of the Millennium Development Goals of the UN recognised the significance of environmental sustainability and directed the states parties to frame policy formulations to reduce considerably the degradation of human environment and the prevention of pollution²⁵.

Indian Scenario:

The constitution of India even before the declaration of the International agreements on human rights recognised under Article 48-A as a directive principle imposed obligation on the state 'to protect and improve the environment and to safeguard the forests and wild life of the country'. This objective might led former Prime Minister, Mrs. Indira Gandhi, to voice for international concern for the protection and preservation of environment, which ultimately resulted in the Stockholm conference, 1972. Among the various legislative enactments, the Environmental Protection Act, 1986 constitutes as a milestone in the development of a legal relationship between human rights and environment in India.

However, Art 48-A is not an enforceable right; the Indian courts gave a vigorous interpretation to it in the promotion of human rights (fundamental rights). In *Virendra Gaur's Case*, the Supreme Court held that: "*Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to live with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contacts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc., should be regarded as amount to violation of Article 21. There, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment*"²⁶.

The liberal interpretation of the significance of environment in the realisation of human rights by the Indian judiciary largely not only augmented the socio, economic, justice philosophy of the preamble, but also expanded the contours of fundamental rights. This has led for the recognition of right to shelter²⁷, Right to Food²⁸, Rights of Refugees²⁹, Ban on Smoking in Public Area³⁰, Rights of Slum Dwellers³¹, Right to Safe Drinking Water³², prevention of air and noise pollution and a substantial issues in protecting the ecological

²¹ Convention on the Rights of the Child, 1989, UNGA Resolution 44/25 20 November 1989

²² U.N. Doc. E/CN.4/Sub.2/1994/9 (1994). Some of them are right to freedom from pollution, Right to environmental degradation, activities which threaten life, health or livelihood, Right to protection and preservation of air, soil, water, flora and fauna; Right to healthy food and water; Right a safe and healthy working environment.

²³ UN Doc. E/CN.4/Sub.2/1994/9, July 6, 1994.

²⁴ See Alan Boyle, Human Rights and the Environment: A Reassessment, *Fordham Environmental Law Review*, Vol. 18, 2008 471-511;

²⁵ <http://www.unmillenniumproject.org/goals/index.htm>

²⁶ *Virendra Gaur v. State of Haryana*, 1995 (2) SCC 577.

²⁷ *P.G. Gupta v. State of Gujarat*, 1995 Supp. (2) SCC 182.

²⁸ *PJCL v. Union of India*, 2000 (5) SCALE

²⁹ *NHRC v. State of Arunachal Pradesh*, 1996 (1) SCC 742

³⁰ *Murli Deora v. Union of India*, AIR 2002 SC 40

³¹ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986, SC 280

³² *AP Pollution Control Board v. M.V. Naidu*, AIR 1999 SC 812

imbalances of environment in the realisation of human rights.³³ The Indian courts are far ahead in adopting the international mandate of promotion and protection of environment in the realisation of especially, economic, social and cultural rights of the citizens than their counter parts in other countries. In their quest for the promotion of these rights, they recognised the relationship between human rights and environment as a part of right to life and liberty which is on par with the that of the Right to development concept. However, the issues of poverty, lack of education, illiteracy and population, selfish motives of certain corporate houses cause concern for ecological imbalances many a times in the country. These issues need to be tackled by the state with utmost seriousness and sincerity than partisan attitude in order to achieve the objectives of the constitution especially, that of the economic, social and cultural justice.

Concluding Observations:

It is clear from the above brief discussion, the UN and the international community provided a great scope for the linkage of environment and human rights for their realisation. However, in the absence of explicit recognition of environment through the legal instruments of human rights in the international level, to what extent legal policies could help to achieve environmental sustainability through the realisation or litigation of human rights. As rightly, observed by the OHCHR 2009 report on human rights and climate change, to what extent climate change has obvious implications for the enjoyment of human rights? To what extent human rights litigation would promote environmental concerns through the precautionary measures based on risk assessments, until and unless such dangers effect on the enjoyment of human rights of individuals³⁴. Some of these issues need political concern of nation-states both internationally, regionally and nationally provide measures to address for the concerns of human environment. International law and the international institutions have done their best to give greater environmental concern in the realisation of human rights. To achieve a decent satisfactory environment, it is the duty of states to provide developmental activities giving much importance to the concept of sustainable development and to evolve policy formulations by involving the humankind of the world at every stage of realisation, protection and promotion of human rights and environment. Further, to achieve these, nation-states need to augment the UN and the international organs with necessary resources, and integrate the international policy formulations into the municipal sphere with all the seriousness³⁵.

Further, as stated above, the linkage between, poverty, development and preservation of human environment and the realisation of human rights are intricate issues surrounded with economic, social, cultural and political equations. The best way is to educate the masses of the world, highlighting the positive and negative factors associated with environment and the realisation of human rights. This alone would pave the way for the sustainability of environment and the realisation of right to development without hampering the further degradation to ecological imbalance.

As rightly pointed out by Mustafa Tolba, former Director General of the United Nations Environmental Programme, *"We do not inherit the earth from our ancestors; we borrow it from our future generations; it is our duty to hand it over as beautiful as possible; if not the way we received from our forefathers."*

It is the primary duty of humankind and the nation-states to evolve policy formulations to adopt strategies to achieve the concept of sustainable development as the key to achieve environmental standards than looking for further legal regulations or harnessing to bridge the gap between the developed and developing states. Sustainable development is being the key aspect to achieve all round development, such as need to be guaranteed and achieved as a human right of mankind. Let us hope that the all nations will come forward, especially the developed states to reduce their green gas emissions, and take steps to create a environment friendly globe to protect the present and future generations from the imminent threat to life on the earth through global warming. Let us hope that the progressive views initiated in the 1972 Stockholm conference,

³³ See for the Indian cases Sukanta K. Nanda Environmental Law, 2006 Central Law Publications Allahabad.

³⁴ <http://www2.ohchr.org/english/issues/climatechange/index.htm> visited on 5.9.2011

³⁵ Hanna Stoddart (ed): A Pocket Guide to Sustainable Governance, Commonwealth Secretariat, 2011, 81

and followed by the Rio World conferences, the forthcoming June 2012 World Summit would succeed in receiving a positive commitment by the states to enhance the quality of environment as basic human right of mankind. It is such assurance alone could enhance the responsibility of the states both nationally and internationally to take positive steps in preserving environment than fighting for their supremacy for destruction. This alone will ensure mankind to achieve freedom, equality, and adequate conditions of life and to realize other human rights that are guaranteed by the comity of nations.

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