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Human Rights--Environmental Protection

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Abstract: Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the twentieth century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two seemingly distinct spheres interact, it is to be expected that there are different views on how to approach 'human rights and the environment'. This paper discusses International Instruments on Human Rights and Environment, Judicial Response in India and other Nations, The Contribution of the Supreme Court of India towards Environmental Protection and the Need for Sustainable Development.

Key Words: Ethods, Environment, Cultural, Integral; Preservation; Religious

Introduction: If we look at society from a historical perspective, we realize that protection and preservation of the environment has been integral to the cultural and religious ethos of most human communities. Nature has been venerated by ancient Hindus, Greeks, Native Americans and other religions around the world. They worshipped all forms of nature believing that it emanated the spirit of God. Hinduism declared in its dictum that "(t)he Earth is our mother and we are all her children."[1] The ancient Greeks worshipped Gaea or the Earth Goddess. Islamic law regards man as having inherited "all the resources of life and nature" and having certain religious duties to God in using them.[2] In the Judeo-Christian tradition, God gave the earth to his people and their offspring as an everlasting possession, to be cared for and passed on to each generation.[3]

Relationship between Human Rights and Environment: Over the years, the international community has increased its awareness on the relationship between environmental degradation and human rights abuses. It is clear that, poverty situations and human rights abuses are worsened by environmental degradation. This is for several obvious reasons;

- *Firstly,* the exhaustion of natural resources leads to unemployment and emigration to cities.

- *Secondly*, this affects the enjoyment and exercise of basic human rights. Environmental conditions contribute to a large extent, to the spread of infectious diseases. From the 4,400 million of people who live in developing countries, almost 60% lack basic health care

services, almost a third of these people have no access to safe water supply.

- *Thirdly*, degradation poses new problems such as environmental refugees. Environmental refugees suffer from significant economic, socio-cultural, and political consequences. And fourthly, environmental degradation worsens existing problems suffered by developing and developed countries. Air pollution, for example, accounts for 2.7 million to 3.0 million of deaths annually and of these, 90% are from developing countries. Environmental and human rights law have essential points in common that enable the creation of a field of cooperation between the two:

- *Firstly*, both disciplines have *deep social roots*; even though human rights law is more rooted within the collective consciousness, the accelerated process of environmental degradation is generating a new "environmental consciousness."

- *Secondly*, both disciplines have become internationalized. The international community has assumed the commitment to observe the realization of human rights and respect for the environment. From the Second World War[4] onwards, the relationship State-individual is of pertinence to the international community. On the other hand, the phenomena brought on by environmental degradation trascends political boundaries and is of critical importance to the preservation of world peace and security. The protection of the environment is internationalized, while the State-Planet Earth relationship has become a concern of the international community.

- *Thirdly*, both areas of law tend to universalize their object of protection. Human Rights are presented as universal and the protection of the environment appears as everyone's responsibility.

Facets of Human Right on environment: Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two seemingly distinct spheres interact, it is to be expected that there are different views on how to approach 'human rights and the environment'.

- The *first* approach is one where environmental protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized as 'giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood.' Here, the end is fulfilling human rights, and the route is through environmental law.

- The *second* approach places the two spheres in inverted positions – it states that 'the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection.' The second approach therefore highlights the presently existing human rights as a route to environmental protection. The focus is on the existing human right. In this context, there exists a raging debate on

whether one should recognize an actual and independent right to a satisfactory environment as a legally enforceable right. This would obviously shift the emphasis onto the environment and away from the human rights. These are the subtle distinctions between the two ways in which this approach can be taken.

- A *third* approach to the question of 'human rights and the environment' is to deny the existence of any formal connection between the two at all. According to this approach, there is no requirement for an 'environmental human right.' The argument goes that, since the Stockholm Conference in 1972, international environmental law has developed to such extents that even the domestic environments of states has been internationalized. In light of the breadth of environmental law and policy, and the manner in which it intrudes into every aspect of environmental protection in an international sense and notwithstanding the concept of state sovereignty, it is argued that it is unnecessary to have a separate human right to a decent environment. This view militates against the confusion of the two distinct spheres of human rights law and environmental law. However, there are many who oppose this view. They argue that there is in fact a benefit to bringing environmental law under the ambit of human rights. Environmental law has in many parts of the world, be it at the international or domestic level, suffered from the problem of standing. Because of this barrier, it is often difficult for individuals or groups to challenge infringements of environmental law, treaties or directives, as the case may be.

There has been a great deal of debate on the theoretical soundness of the idea of a human right or rights to a satisfactory environment.[5] For one thing, there can occasionally be a conflict, or tension, between the established human rights and the protection of the environment *per se*. There are circumstances where the full enjoyment of the rights to life, to healthy living and to one's culture can lead to the depletion of natural resources and environmental degradation. Nevertheless, clearly there is a *prima facie* rhetorical and moral advantage in making the environment a human rights issue.[6] There has been a simultaneous increase in 'legal claims for both human rights and environmental goods,' which is a clear reflection of the link between 'human' and the 'environment' and the dependence of human life on the environment.

Judicial Response in other Nations: If we look at the developments that are taking place through the intervention of national Courts in various parts of the world, we come to note several things: first, the courts are moving the right to a healthy environment up the hierarchy of human rights by recognising it as a fundamental right; second, the courts are defining the content and nature of the right to a healthy environment through landmark decisions.

- In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.

- In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court observed that "side by side with fundamental rights such as liberty, equality and necessary conditions for people's life, there is the right to the environment. The right to a healthy environment cannot be separated from the right to life and health of human beings. In fact, factors that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity."

- In the same year, the Supreme Court of Costa Rica affirmed the right to a healthy environment in a case concerning the use of a cliff as a waste dump. In the case of *Carlos Roberto García Chacón,* the Supreme Court stated that life "is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination."

- Guatemala too has seen the environmental ombudsman note in a 1999 case[7] that "lack of interest and irresponsibility on the part of authorities in charge of National Environmental Policy amounts to a violation of human rights, considering that it impairs the enjoyment of a healthy environment, the dignity of the person, the preservation of the cultural and natural heritage and socio-economic development."

The question of human rights and the environment has also come up for consideration in our neighboring countries. The Constitution of Bangladesh does not explicitly provide for the right to healthy environment either in the directive principles or as a fundamental right. Article 31 states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or property', unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. In 1994, public interest litigation[8] was initiated before the Supreme Court dealing with air and noise pollution. The Supreme Court agreed with the argument presented by the petitioner that the constitutional 'right to life' does extend to include right to a safe and healthy environment. A few years later, the Appellate Division and the High Court Division of the Supreme Court dealt with this question in a positive manner, in the case of *Dr. M. Farooque v. Bangladesh,*[9] reiterating Bangladesh's commitment in the 'context of engaging concern for the conservation of environment, irrespective of the locality where it is threatened.'

The contribution of the Supreme Court of India towards Environmental Protection: The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen "to protect and improve the natural environment

including forests, lakes, rivers, and wildlife and to have compassion for all living creatures."

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body such as the Supreme Court to find a breach of this article, without the need for a definition of an environmental right as such. All that the Court needs to do is what it must in any event do; namely, define the Constitutional right before it. Accordingly, a Court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated. This is well illustrated by the cases that have come before the Supreme Court, in particular in relation to the broad meaning given to the Right to Life under Article 21 of the Constitution. The right to life has been used in a diversified manner in India. It includes, *inter alia,* the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. However, it is a negative right, and not a positive, self-executory right, such as is available, for example, under the Constitution of the Phillipines. Section 16, Article II of the 1987 Phillipine Constitution states: 'The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature'. This right along with Right to Health (section 15) ascertains a balanced and healthful ecology.[10] In contrast, Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme Court expanded this negative right in two ways. *Firstly*, any law affecting personal liberty should be reasonable, fair and just. *Secondly*, the Court recognized several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

Rural Litigation and Entitlement Kendra v. *State of U.P.*[11] was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin* v. *Union Territory of Delhi*[12] where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life. The importance of this case lies in the willingness on the part of the Court to be assertive in adopting an expanded understanding of human rights. It is only through such an understanding that claims involving the environment can be accommodated within the broad rubric of human rights. The link between environmental quality and the right to life was further addressed by a constitution bench of the Supreme Court

in the *Charan Lal Sahu*.[13] Similarly, in *Subash Kumar*,[14] the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.' Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution.[15] It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community.[16] The courts have taken a serious view of unscientific and uncontrolled quarrying and mining,[17] issued orders for the maintenance of ecology around coastal areas,[18] shifting of hazardous and heavy industries[19] and in restraining tanneries from discharging effluents.[20]

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

Matters involving the degradation of the environment have often come to the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum due to the lenient view adopted by the Court towards concepts such as *locus standi* and the 'proof of injury' approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an 'aggrieved person' test, which means a right or recognised interest that is direct and personal to the complainant.

Need of Sustainable Development: Awareness of the major challenges emerging both as regards development and with reference to the environment has made possible a consensus on the concept of "sustainable and environmentally sound development" which the "Earth Summit", meeting in Rio in 1992, endeavoured to focus by defining an ambitious programme of action, Agenda 21, clarified by a Declaration of 27 principles solemnly adopted on that occasion. We can also

refer to the content of the Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, which clearly recognizes that "Economic development must be environmentally sound and sustainable."

The concept of sustainable development contains three basic components or principles. *First* among these is the precautionary principle, whereby the state must *anticipate, prevent* and *attack* the cause of environmental degradation.[21] The Rio Declaration affirms the principle by stating that where ever "there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[22] Most of the cases of the 1990's deal with the definition of the principle. In 1996, the Supreme Court[23] stated that environmental measures, adopted by the State Government and the statutory authorities, must *anticipate, prevent and attack* the causes of environmental degradation. In the *Taj Trapezium Case*, applying the precautionary approach the Supreme Court ordered a number of industries in the area surrounding the Taj Mahal to relocate or introduce pollution abatement measures in order to protect the Taj from deterioration and damage.

An interesting comment on the precautionary principle by the Supreme Court of Pakistan is worthy of mention here. The Court in *Shehla Zia v. WAPDA*[24] commented: "The precautionary policy is to first consider the welfare and the safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to be a policy of prudence or precaution."

The second component of the doctrine of sustainable development is the principle of '*polluter pays'.* The principle states that the polluter not only has an obligation to make good the loss but shall bear the cost of rehabilitating the environment to its original state.[25] In operation, this principle is usually visible alongside the precautionary principle. A Native American proverb states that "*we do not inherit the planet from our ancestors but borrow it from our children*", this is the next significant component of sustainable development – the principle of intergenerational equity. The Brundtland Commission defined sustainable development as development '*which meets the needs of the present without compromising the ability of the future generations to meet their own needs.*' The principle envisages that each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous

generations. This principle is called "conservation of options." *Secondly*, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "conservation of quality." *Thirdly*, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access."[26]

Another important aspect of the right to life is the application of public trust doctrine to protect and preserve public land. This doctrine serves two purposes: it mandates affirmative state action for effective management of resources and empowers the citizens to question ineffective management of natural resources. Public trust is being increasingly related to sustainable development, the precautionary principle and bio-diversity protection. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension. When the Supreme Court has applied the public trust doctrine, it has considered it not only as an international law concept, but also as one which is well established in our domestic legal system. Its successful application in India shows that this doctrine can be used to remove difficulties in resolving tribal land disputes and cases concerning development projects planned by the government. In *M.C. Mehta v. Kamal Nath and Others,*[27] the court added that '[it] would be equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of ways for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required.' In both *M.I. Builders Pvt. Ltd*[28] and *Th. Majra Singh,*[29] the court reconfirmed that the public trust doctrine 'has grown from article 21 of the constitution and has become part of the Indian legal thought process for quite a long time.'

Conclusion: Civil society has an important role to play in the work to put an end to the policies that allowed environmental degradation. Human rights and the environments are the pillars of sustainable development rested on the base of respect for human rights. States have a responsibility to regulate harm caused by private actors as well as public ones. Assessing environmental impacts and making the information public was argued to be essential in order to be able to provide remedies to environmental harm.It is apparent that environmental and human rights are inextricably linked. As we increasingly recognize the serious impact of a degraded environment on human health and well being, we are better placed to adjust our policies and cultural practices to reflect our enhanced understanding. As a result, we should be able to protect human rights and human dignity within its broader social, economic and cultural context by drawing from and contributing to those who are actively

engaged in the environmental and public health arenas. In order to achieve sustainable development, human beings must live in harmony with Mother Earth and not only view nature as an object to be used as stock or capital but as a subject with rights of its own.

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