

CHAPTER-V

BALANCE BETWEEN DEVELOPMENT ENVIRONMENT PROTECTION: A HUMAN RIGHTS APPROACH

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CHAPTER FIVE

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5.1 Introduction

Environment has been a major concern of the twenty-first century. As discussed earlier the right to healthy environment is been held to be a fundamental right under Article 21 of the Constitution. Today it has very much become a part of the Fundamental Rights. Many countries of the world have not hesitated to recognize the right to healthy or adequate environment in the policies or activities. Now it is well established that right to live means much more than mere animal existence. Right to life means right to live with human dignity, right to live a dignified life. And hence today in the broadened version of Article 21 of the Constitution of India, we find all those rights required for leading a healthy, respectful and fruitful life.

Climate change, destruction of the ozone layer, desertification, fresh water shortages, etc. - the list of current environmental problems, which are assuming ever more menacing dimensions, could be extended indefinitely. The present state of our environment is alarming – as countless publications by institutions like the European Environmental Agency remind us. The relationship between human rights and the environment is considered by the United Nations' agencies whose principle objective is not the protection of human rights usually in terms of a specific human right or aspect of human existence.

The United Nation's conferences in Stockholm, Rio and Johannesburg showed that the international community sees environmental protection as a matter of global concern and is stepping up its efforts at international level. For a long time now, people have been wondering whether - on top of the many important bilateral and multilateral treaties – something could be

done to tackle this problem from the human rights angle. Inclusion of a right to the environment in the European Convention on Human Rights might thus be one of the next aims of the Council of Europe's international environmental policy.

5.2 Meaning of Human Rights

Human beings are rational beings. They by virtue of their being human possess certain basic inalienable rights, which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being birthrights are therefore inherent in all the individuals irrespective of their caste, creed, religion, sex or nationality. It is very difficult to define the expression 'human rights', mainly because of the differences in cultural background, legal systems, ideology and economic, social and political conditions of different States.

The World Conference on Human Rights held in 1993 in Vienna stated in the Declaration that all human rights derive from dignity and worth inherent in the human person, and that the person is the central subject of human rights and fundamental freedoms.

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights constitute a trinity often called the *Magna Carta* of humanity. The list of Human Rights, which every human being has, a right to enjoy includes:

- The right to life
- Abolition of Slavery and suppression of slave trade

- Abolition of forced or compulsory labour
- Freedom from torture
- Freedom from arbitrary arrest
- Equality in the administration of justice
- Right of everyone to leave any country, including his own, and to return to his country
- Right to a nationality
- Freedom of thought, conscience and religion
- Freedom of opinion and expressions
- Freedom of Association
- Right of everyone to take part in the government of his country
- Realisation of economic, social and cultural rights
- Right to work
- Right to Education
- Right to Health
- Freedom from hunger
- Right to participate in cultural life
- Right to a clean Environment
- Right to adequate shelter and services

5.2.1 The notion of "Generations of Human Rights"

The classification of human rights into generations may be said to reflect the dynamic character of human rights concerns. First generation rights represented the major public concerns of American and French Revolutions. The germ of the "second

generation” human rights is traceable back to the nineteenth century, even though its public recognition came only in 1966, with the International Covenant on Economic, Social and Cultural Rights. “Third generation” human rights have taken form mainly in the second half of the twentieth century.

5.3. Right to Clean Environment: A Human Right

It is universally recognized that the well being of mankind require a healthy environment, free from pollution, to lead a life worthy of human beings. This elemental reality has brought environmental issues into the equation of human rights. It was precisely in this context that the United Nations Conference on Environment held at Stockholm in 1972, declared the right to environment to be a right no less important than the right to life itself. The concept of human rights has assumed new dimension since the Second World War. Such ensuing legal instruments as the Universal Declaration of Human Rights 1948 and the United Nations Covenants on Civil and Political Rights, Economic, Social and Cultural Rights, both of 1996 have introduced novel concept of human rights. The general principles of the two covenants have led to a reclassification of human rights. Apart from the traditional first-generation rights and more recent second-generation rights a third generation has been emerged which is considered to encompass the right to environment.

Different scholars have proposed differing criteria for identifying human rights from other kinds of rights. Winslade¹¹⁰ for instance has argued that human rights must relate to the vital needs of

¹¹⁰ Edel A., “Some Reflections on the concept of Human Rights” in Human Rights Amintaphil (1971), as cited by R.S. Patnaik, “ The Human Rights system as a conceptual framework for Environmental Law . in “in Edith B. Weiss (ed) , Environmental Change and International Law: New Challenges and Dimensions, (Tokyo : United Nations University Press. 1992) p.210

humans. Needs for this kind are those "whose satisfaction would be in the interest of and would be wanted and desired by nearly all intelligent and rational persons under ordinary circumstances...." He considers that needs transform into rights through the medium of certain fundamental moral principles. He states "the rights are based not only on the existence of unfulfilled vital needs, but also upon an appeal to fundamental principles such as equality and human worth."¹¹¹

Edel ¹¹²on the contrary uses other criteria to distinguish human rights from other rights. He classifies the right according to their properties, status and function. Edel further considers human rights inalienable in the sense that they are indispensable to human personality. Thus rights such as those to life and liberty are human rights as they are minimum requirements for the integrity of the human personality .As regards the status and function of human rights , Edel considers that they must be rights of an inherent nature , and their normative values should flow through and control the relations between a political society and its members. ¹¹³

The idea of third generation Human Rights presupposes that rights are undergoing a certain developmental process as a result of continued social progress, thus necessitating recognition of new categories of rights. The earliest proponents of third generation human rights were prominent scholars like *Keba M'baye* and *Karel Vasak*¹¹⁴who later chaired the UN Commission on Human Rights and UNESCO's Division of Human Rights, respectively.

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ *ibid.* 214

¹¹⁴ Donnelly J., "Third Generation Rights" in C.Brolmann et al (eds), *Peoples and Minorities in International Law*(Dordrecht:Martinus Nijhoff Publishers, 1993) p.120

The right to development was the basis of notion of third generation human rights. In the inaugural lecture delivered by *Vasak* to the Tenth Study Session of the International Institute of Human Rights in 1979, he laid down the scheme of third generation human rights.¹¹⁵ More recently *Vasak* proposed the right to healthy and ecologically balanced environment, the right to equal enjoyment of the common heritage of mankind and the right to humanitarian assistance.¹¹⁶

A healthy environment is vital to human existence because a good and healthy environment only can provide a quality life to human beings. Physical existence and health and the quality and dignity of the existence do call for the safeguarding of the right to healthy environment. Thus the right to a healthy environment is a valid human right. This right already has been recognized in several national, regional and international legal instruments.

5.4 International Instruments on Human Rights and Environment

Following are the International Instruments on Human Rights which contain provisions pertaining to Environment Protection.

5.4.1 The Convention on the Rights of the Child 1989 refers to aspects of environmental protection in respect to the child's right to health. **Article 24 provides that States Parties shall take appropriate measures to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking water, taking into consideration**

¹¹⁵ Donnelly supra note pp120

¹¹⁶ ibid

the dangers and risks of environmental pollution.” (Article. 24 (2) (c). Information and education is to be provided to all segments of society on hygiene and environmental sanitation. (Article. 24(2)(e).

5.4.2 International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989¹¹⁷

It contains numerous references to the lands, resources, and environment of indigenous peoples.

Article 2 provides that actions respecting indigenous peoples shall be developed with the participation of the peoples concerned.

In **Article 4**, Special measures are to be adopted for safeguarding the environment of such peoples consistent with their freely-expressed wishes

Article 6 imposes an obligation on State parties to consult indigenous peoples while

Article 7 provides for their participation in formulating national and regional development plans that may affect them

Article 7(3) makes Environmental Impact Assessment mandatory of planned development activities with the cooperation of the people concerned.

According to **Article 7 (4)** Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit. Rights to remedies are provided in **Article 12**.

¹¹⁷ Geneva, June 27, 1989

Part II of the **Convention** addresses **land issues, including the rights of the peoples concerned** to the natural resources pertaining to their lands. The rights embodied in **Article 15** include **"the right to participate in the use, management and conservation of these resources."** **Article 30** requires the governments to make known to the peoples concerned their rights and duties.

5.4.3 The African Charter on Human and Peoples' Rights¹¹⁸, 1981

The African Charter on Human and Peoples' Rights contains several provisions related to environmental rights. Article 21 provides that "All peoples shall freely dispose of their wealth and natural resources" and adds that this right shall be exercised in the exclusive interest of the people." " **Article 7** provides that "every individual shall have the right to have his cause heard." The African Charter on Human and People's Rights 1981 proclaims in Art. 24(1) a right to 'a general satisfactory environment favourable to their development.' **Article 24**, which could be seen to complement or perhaps conflict with **Article 21**, states that "All peoples shall have the right to a general satisfactory environment favorable to their development." **Article 7** provides that "every individual shall have the right to have his cause heard."

5.4.4 Additional Protocol to the American Convention on Human Rights 1994

The Additional Protocol to the Inter-American Convention on Human Rights (1994) popularly known as the San Salvador Protocol.

¹¹⁸ Banjul, June 26, 1981

Article 11 of the **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights** is entitled: **"Right to a healthy environment."** It proclaims:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation and improvement of the environment.

5.4.5 The European Convention on the Exercise of Children's Rights

It aims at ensuring access to information and participation of children in decisions relevant to them, as well as appropriate remedies as provided in **Articles. 1 and 3**

5.4.6. Draft Declaration of Principles on Human Rights and the Environment

This Declaration reaffirmed the universality, indivisibility and interdependence of all human rights. It also recognised that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment. It was recalled the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development.

In 1994, guided by various existing International Instruments on Human Rights like United Nations Charter, 1945, the Universal Declaration of Human Rights 1948, the International Covenant on

Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights¹⁹⁶⁰, the Vienna Declaration and Program of Action of the World Conference of Human Rights, and other relevant international human rights instruments. The Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law. It is also guided by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development.

Right to healthy and wholesome environment is a human right Also the harm to the environment causes violation of human rights The object of this Draft Declaration to focus specifically on the consequences of environmental harm caused by poverty, structural adjustment and debt programme and by international trade and intellectual property regimes It is to be remembered that the harm caused to the environment is irreversible. Hence it stated in the Preamble itself that,

It is convinced that the potential irreversibility of environmental harm gives rise to special responsibility to prevent such harm. The Draft Declaration further states that it is concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations.

The Draft Declaration declares the following Principles.

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.
6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental pollution.
8. All persons have the right to safe and healthy food and water adequate to their well-being.
9. All persons have the right to a safe and healthy working environment.
10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.
11. All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.
12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.
13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This Includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and

development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.
20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.
22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, *inter alia*,

- Collection and dissemination of information concerning the environment
- Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;

- Public participation in environmental decision-making;
 - Effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
 - Monitoring, management and equitable sharing of natural resources;
 - Measures to reduce wasteful processes of production and patterns of consumption;
 - Measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
 - Measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.
23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.
24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.
26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to

protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.

This is a very important document on human rights as it specifically expresses concern over the violation of human right of environment and commits to prevent the harm caused by loss of environment. It recognizes right to healthy and wholesome environment as a human right. It is guided by the well laid Conventions relating to Environment Protection like the Stockholm Declaration and Rio Declaration. It re emphasizes on Sustainable Development.

5.5. Environment Related Human Rights Violation – Instances

Development is a sign of progress. And there are many signs of progress of mankind. Science and technology is rapidly developing. But it also has its own side effects. And the side effects are borne by the mankind in the form of violation of its human rights. And in this case of human rights violation, it is seen that the confrontation is man against man.

5.5.1 Narmada Bachao Andolan

Dams signify progress. But then the question arises of rehabilitation of the people who have been ousted from their lands. This is the main problem in the Narmada Bachao Andolan. The compensation paid is inadequate. And it is yet to reach to all. Narmada River is the largest westward flowing river in India and empties into the Indian Ocean. The state began planning the dam in 1946, but only started construction in the mid 1980s. Because

the dam would not only affect the state of Gujarat, but also would cause flooding in Madhya Pradesh and Maharashtra, two neighboring states, construction was delayed. By 1983 the states' disputes had been reconciled and extensive planning began. The plans called for the displacement of several thousand families from the river valley. It is now estimated that well over 100,000 families will be displaced by the flooding of the valley¹¹⁹. The Narmada Bachao Andolan, led by Medha Patkar, rose in protest over the displacement and the state's plans, or lack there of, for the rehabilitation and resettlement of the "oustees."

5.5.2 Chernobyl Disaster

Its almost twenty years ago the Chernobyl disaster took place. But the horrifying memories are still fresh. It was one of the greatest industrial accidents. No one can predict what will finally be the exact number of human victims. Thirty one lives were lost immediately. Hundreds of thousands of Ukrainians, Russians, and Belorussians had to abandon entire cities and settlements within the thirty-kilometer zone of extreme contamination. Estimates vary, but it is likely that some 3 million people, more than 2 million in Belarus' alone, are still living in contaminated areas. The city of Chernobyl' is still inhabited by almost 10,000 people. Billions of rubles have been spent, and billions more will be needed to relocate communities and decontaminate the rich farmland.

Chernobyl' has become a metaphor not only for the horror of uncontrolled nuclear power The Chernobyl' catastrophe derailed what had been an ambitious nuclear power program and formed a fledgling environmental movement into a potent political force in

¹¹⁹ Fisher 1995,15

Russia as well as a rallying point for achieving Ukrainian and Belorussian independence in 1991.

After the Chernobyl accident radioactive material was widely dispersed and was measurable and resulted in effects over a vast area. The effects have been felt all over practically the whole of the northern hemisphere.

Number of people affected by the Chernobyl accident (to December 2000)

Belarus Russia Ukraine Total

Resettled people 135,000 52,400 163,000 350,400*

People living on contaminated territories 1,571,000 1,788,600 1,140,813 4,500,413

Liquidators 1986/87 70,371 160,000 61,873 292,244

Liquidators 1988/89 37,439 40,000 488,963 566,402

Invalids ** 9,343 50,000 88,931 148,274

Total 1,823,153 2,091,000 3,189,477 7,103,630¹²⁰

*** Includes voluntary resettlers ** Definitions vary between the three countries**

5.5.3 Tobago Case

With the decline in oil revenues during the 1980s, Trinidad and Tobago found itself in serious economic problems. The government decided to undergo structural reforms and start developing other sectors of the economy, particularly the tourism industry. Tourism, however, may be detrimental to the environment and careful planning must be done in order to preserve the islands natural endowments, which is precisely what attracts tourists.

¹²⁰ A Report on Human Consequences of Chernobyl Nuclear Accident. Commissioned by UNDP and UNICEF. 2002,p35.

The development of tourism, however, cannot proceed without careful environmental planning because the tourism industry may be very detrimental to the environment. A greater influx of tourists in a country without the infrastructure to receive them may cause environmental degradation that in turn will cause problems for the native population or deplete the natural attractions necessary for the tourism industry. In the Trinidad and Tobago case, there is a chronic shortage of water in Tobago which becomes critical during the month of February, when Carnival is on and tourists flood the island. The hotels end up absorbing most of the water supply, leaving the local population without water.

Another environmental problem that has arisen in the recent past is the depletion of sand for construction purposes. This has not only damaged the beaches, but also ruined the natural environment where turtles come to lay their eggs. Since Trinidad and Tobago's tourism industry development project relies heavily on eco-tourism, this country needs to create a very strong infrastructure in order to comply with the development plan's idea and secure the island's environmental assets. Trinidad and Tobago's environmental problems are multiple and the development of tourism is likely to worsen the situation if it is not done without regard to the environment. There are different types of coral reefs off-shore the island, and they are being harvested or destroyed in different manners because of unplanned tourist activity. For example, coral reefs are being harvested for sale to tourists and sometimes Tobagonians rent special rubber sandals to tourists so that they can enter the sea and step on coral reefs without harming their feet.

This poses before us the problem of environment protection vis-à-vis development. The tourism industry generates revenue and is necessary for development at the same time the environment which is at stake has to be considered. Since the tourists come and make unmindful use, the environmental problem becomes graver.

5.5.4 Surat Plague of 1994

In September 1994, nearly 30 years after the last urban outbreak of plague in India, plague struck Surat. The Surat outbreak, which killed 56 people nationwide, did not have the devastating impact originally feared, but it did generate considerable anxiety worldwide while also exacting a heavy economic toll in India. To make matters worse, floodwaters inundated the city during the 1994 monsoon, particularly in low-lying slum areas near the river. Surat residents complain that nothing was done to remove the great piles of rubbish that remained after the floodwaters reminder of how rapid urbanization and deterioration of the urban environment can bring people into contact with forgotten disease vectors.

It becomes essential to find out the reason of reemergence of plague. Evidence points to two principal factors: the filthy conditions in much of Surat and the occurrence of two recent natural disasters in the area. Both of these factors contributed to bringing a plague-infected rat population into contact with the human population of Surat. Even though pneumonic plague does not require rats and fleas for its transmission among humans, the Surat rat population is regarded as the original source of the infection.

A year before the plague incident, an earthquake measuring 6.4 on the Richter scale hit the adjacent state of Maharashtra, killing at least 10,000 people and causing extensive damage. Researchers

believe that the disturbances and resettlement associated with the earthquake helped bring the wild rodent population inhabiting the forested area near Surat into contact with the domestic rat population, introducing the disease into the local rat population in the process. Surat's sanitation problems then helped the rat population receded, offering an ideal habitat for rats.

5.4.5 Bird Flu in India, 2006

And recently India was visited with bird flu. The dreaded pathogenic H5N1 bird flu has hit the country — about 50,000 birds are suspected to have been infected in the tribal Nandurbar district of Maharashtra.¹²¹

India reported its first case of the deadly H5N1 strain of bird flu Saturday after chickens were found to have died from the virus. A man in Indonesia also died from the disease, that country's 19th death,

Bird flu has killed at least 91 people, mostly in Asia, since 2003, according to World Health Organization figures updated through Monday.18 Feb 2006.

All the above instances point towards the human rights violations in the cases pertaining to environment. The human rights violation instances cited bring before us some problems. First instance gives rise to the issue of rehabilitation to the oustees. There is no disagreement on the issue of development. But at the same time the human rights of the people needs to be considered. The right to shelter, the rights to livelihood, right to live with dignity are some of

¹²¹ The Hindu , February 2006

the basic human rights which are being violated in the first instance.

The second instance of Chernobyl Disaster poses before us the harmful effects of nuclear power. Innocent people are suffering years after the incident. The human right to healthy environment is being violated

Environment and tourism go hand in hand. The widely connoted meaning of environment connotes nature. Beautiful environment attracts tourists. And these tourists spoil the nature. Thereby violating the right of healthy environment of the others living in that place. In the Tobago case the coral reefs are at stake.

Surat Plague 1994 and Bird flu 2006 are the instances as to what happens if the environment is not clean. These instances clearly violate the human right to a clean and healthy environment.

5.6 Relation between Human Rights, Environment Protection and Development

Rapid population growth and the intensified social and economic activities have led to deterioration in the environment and a depletion of natural resources. Such a destruction of the earth's life support system has had the effect of endangering humankind's safety. Such insecurity has been caused by depletion of rain forests, desertification, long-range trans-frontier population; soil and water pollution, global warming, depletion of the ozone layer etc. This has been the matter of great concern for the last two-three decades. And so to create awareness in this regard and to take steps towards protection of environment various treaties have been entered into

at the regional, sub-regional, national and international level. By making the subject of environment a highly regulated one, treaty law, has bestowed upon it clear juristic characteristics. Besides, the regulatory principles set up in international law have been taken up by more detailed national laws of implementation, which have consolidated the juristic character of environmental needs.

5.6.1 Importance of the relationship between these two spheres

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.

5.6.2 Common Points Between Environmental and human rights law : Need for Cooperation

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 War¹²² onwards, the relationship State-individual is of pertinence to the international community. On the other hand, the phenomena brought on by environmental degradation transcends 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.

¹²² Kane Michael J. Promoting Political Rights to protect the Environment, The Yale Journal of International Law, Volume 18, Number 1, pgs.389-390

5.6.3 Approaches to Environmental law and Human Rights

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.¹²³ For one thing, there can occasionally be a conflict,

¹²³ Boyle A. And Anderson M. (Eds.), *Human Rights Approaches To Environmental Protection* (Oxford, 1996).

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.¹²⁴ 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.

One of the primary concerns of the United Nations is the protection of the human rights. The right to life is one of the fundamental human rights recognized under the International Covenant on Civil and Political Rights (1966). Though there are no specific environmental rights provisions under the above-said Declaration, Article 3 providing for right to life can be liberally interpreted to accommodate such rights. Right to life to every individual is guaranteed by Article 6 (1). In both the Universal Declaration and the Covenant, the right to life seems to be restricted to the physical protection of an individual against death. But it must be recognized that the concept of a healthy environment within the context of the Stockholm Declaration on the human environment, is inseparable from the right to life itself. The right to a healthy environment is now to be found in a number of regional human rights instruments around the world.

Principle 1 of the Stockholm Declaration established a foundation for linking human rights and environmental protection, declaring

¹²⁴ Margaret DeMerieux, "Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms" 21 (3) OXFORD JOURNAL OF LEGAL STUDIES 521 (2001).

that man has a 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. It also announced the responsibility of each person to protect and improve the environment for present and future generations. Almost 20 years later the United Nations General Assembly recalled the language of Stockholm Declaration stating that all individuals are entitled to live in an environment adequate for their health and well being. The resolution called for enhanced efforts towards ensuring a better and healthier environment.

The **International Covenant on Economic, Social and Cultural Rights (1966)** has certain relevant provisions on the right to a healthy environment. **Article 11(1)** provides for the right to an adequate standard of living, to a healthy environment, in principle have been provided for in express terms, in the two human rights Covenants, since the Universal Declaration impliedly recognizes such a right.

In the mid 1990s, recognizing the urgent need and importance of deepening the link between human rights and the environment, and of exploring ways to achieve a better collaboration, harmony, and complement the agendas of different United Nations institutions working on both subjects, the UN created the position of Special Rapporteur on Human Rights and Environment. The Rapporteur prepared an important report, the Ksentini Report,¹²⁵ which offered a theoretical, thematic, and practical framework to address the linkages between human rights and the environment.

In the absence of petition procedures pursuant to environmental treaties, cases concerning the impact of environmental harm on

¹²⁵ Ksentini Fatma Zohra Human Rights and Environment, Special Rapporteur's Final Report, UN. Doc. E/CN.4/Sub.2/1994/9, July 6, 1994.

individuals and groups have often been brought to international human rights bodies. For example, the Committee on the Elimination of Discrimination Against Women linked environment to the right to health in its Concluding Observations on the State report of Romania, expressing its "concern about the situation of the environment, including industrial accidents, and their impact on women's health."¹²⁶

The first humanitarian law to introduce environmental protection was the **1977 Protocol I Additional to the 1949 Geneva Conventions** relating to the **Protection of Victims of International Armed Conflict**. In this instrument were included certain important provisions on the protection of the environment. **Article 55(3) of Additional Protocol I** to this Convention provides: **It is prohibited to employ methods or means of warfare, which are intended or may be expected to cause widespread, long term & severe damage to the natural environment. Article 55 of the same Protocol makes special reference to the health & survival of the people in the conflict areas, and beyond. It states: 1. care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage.** The protection includes a prohibition of the use of methods.

In contrast to the earlier documents, the 1992 Conference of **Rio De Janeiro** on Environment and Development formulated the link between human rights and environmental protection largely in procedural terms. **Principle 10** of the Rio Declaration on Environment and Development proclaims as follows:

¹²⁶ U.N. CEDAW, Concluding Observations on Romania, U.N. Doc. CEDAW/C/2000/II/Add.7 at para. 38 (2000).

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings including redress and remedy shall be provided. Thus right to information and participation formed the focus.

Rights to information, participation and remedies in respect to environmental conditions thus formed the focus of the Rio Declaration. In addition to Principle 10, the Declaration also included provisions on the participation of different components of the population: women (**Principle 20**), youth (**Principle 21**), and indigenous peoples and local communities (**Principle 22**). Public participation also is emphasized in **Agenda 21**. The Preamble to **Chapter 23** states:

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. This includes the need of individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those that potentially affect the communities in which

they live and work. Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures.

Chapter 23 proclaims that individuals, groups and organizations should have access to information relevant to the environment and development, held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection matters. Agenda 21 also calls on governments and legislators to establish judicial and administrative procedures for legal redress and remedy for actions affecting the environment that may be unlawful or infringe on rights under the law, and to provide access to individuals, groups and organizations with a recognized legal interest. Section III of Chapter 23 identifies major groups whose participation is needed: women, youth, indigenous and local populations, non-governmental organizations, local authorities, workers, business and industry, scientists, and farmers. Agenda 21 also calls for public participation in environmental impact assessment procedures and in decisions, particularly those that potentially affect the communities in which individuals and identified groups live and work. It also encourages governments to create policies that facilitate a direct exchange of information between the government and the public in environmental issues, suggesting the EIA process as a potential mechanism for participation.

In the decade since preparations began for the **Rio Conference**, global and regional treaties adopted in the fields of human rights

and environmental protection have included provisions specific to the rights contained in Principle 10. The language used by different instruments is far from being homogeneous. Sometimes public participation is used in a broad sense to designate the recommended openness of authorities towards individuals and groups of individuals and includes the right to information rather than separately guaranteeing it. Some treaties also contain substantive rights to a particular environmental quality while others, such as the **Lugano Convention**, focus on remedies for environmental harm. Generally, global and regional environmental treaties since 1991 contain at least some reference to public information, access or remedies, although this practice is not usually followed in the case with watercourse agreements. Such agreements tend to focus on interstate management and utilization of freshwaters without reference to public information and participation. e.g. the *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin*, the *Protocol on shared Watercourse Systems in the Southern African Development Community Region*, the *Convention on the International Commission for the Protection of the Oder*, and the U.N. *Convention on the Law of the Non-Navigational Uses of International Watercourses* the last does contain a requirement of non-discrimination in respect to any remedies that are provided. The exceptions in this regard are the regional *Convention on the Protection and Use of Trans-boundary Watercourses and International Lakes*, as discussed below and the *Convention on Cooperation for the Protection and Sustainable Use of the Danube River*.

The European Convention on Human Rights has also been invoked in environmental matters. In Europe, most of the victims invoke either the right to information or the right to privacy guaranteed

under the Convention. Under the said Convention and Protocol, it has been recognized that pollution or other environmental harm can result in a breach of one's right to privacy and family life. While this harm may be excused if it results from an authorized activity of economic benefit to the community in general, as long as there is no disproportionate burden on any particular individual; *i.e.* the measures must have a legitimate aim, be lawfully enacted, and be proportional. Of course, the State enjoys some margin in determining the legitimacy of the aim being pursued, but the Court has been playing an active role in ensuring fairness and balancing the scales. One important point to be noted in the context of the European Convention is the fact that it has successfully invoked most of all in the context of environmental pollution. Resource management, nature conservation and the protection of biological diversity have not been easily brought under the rubric of the European Convention. This is because of the absence of a specific right to a safe and ecologically-balanced environment.

The Draft Declaration is the first international instrument that comprehensively addresses the linkage between human rights and the environment. It demonstrates that accepted environmental and human rights principles embody the right of everyone to a secure, healthy and ecologically sound environment, and it articulates the environmental dimension of a wide range of human rights.

5.6.4 Sustainable Development

Brundtland Committee Report in 1987, United Nations, has defined the concept of sustainable development as **"a process of developing (land, cities, business, communities, etc) that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs."**

Sustainable development demands ways of, working and doing all that enables all people of the world to lead a healthy, fulfilling and economically secure life without destroying the environment and without endangering the future welfare of people and planet. The meaning of Sustainable Development has always been debated and yet no common agreed definition or meaning is found. Because even after the definition of Sustainable Development has been given in Bruntland Report, we have 140 more definitions after it.

According to United Nations Environmental Programme (UNEP) the present position of sustainable development is, **"the intensified and unsustainable demand for land, water, marine and coastal resources resulting from the expansion of agriculture and uncontrolled urbanization leading to increased degradation of natural ecosystems and erode the life supporting systems that uphold human civilization. Caring for natural resources and promoting their sustainable use is an essential response of the world community to ensure its own survival and well being."**

Sustainable Development can be said to be an admixture of sustainability and development. Sustainability means continuation while development means change that is taking place. Thus we can

conclude that sustainable development means passing through an era of development.

It has to be remembered that the problem of pollution and environmental imbalance is not a new one. What are new are the enormity, complexity and variety inherent in the problem and our own attitude and sensitization towards it. The concept of sustainable development has gained recognition in the law of many countries like France and Poland and in fact the entire European Union. The time has come to make sustainable development as a fundamental part of law to protect our existence and survival. The law is dynamic and ever changing and this is need of the hour to introduce sustainable development as the basic constituent of our legal system to provide for a healthy and economically secured life. Economists and free traders believe that trade policy goals and environmental policy needs, can be made largely compatible by ensuring that environmental resources are properly priced.

Environment protection is, in fact, just one of many social policies affecting trade; two other examples are antitrust policy and labour standards. The nature of environmental problems exacerbates the valuation problems and thus tension between environmentalists and free traders arises.

5.6.5 The contribution of the Supreme Court of India

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.

The right to life is, of course, the foremost human right. But what is life, and human life at that. A dynamic as against static, view of the quality of life makes it clear that life includes livelihood and opportunities for unfolding personality. The Hon’ble Supreme Court in *Maneka Gandhi’s*¹²⁷ case conscientised the fascicules of Part III fundamentals thus:

¹²⁷ *Maneka Gandhi v UOI*, AIR1978SC597

Article 21 occurs in Part III of the Constitution, which confers certain fundamental rights. These fundamental rights had their deep roots in the struggle for independence and as pointed out by Granville Austin in the '**The Indian Constitution-Cornerstone of a Nation**¹²⁸', they were indelibly written in the subconscious memory of the race which fought for well-nigh thirty years for securing freedom from British rule and they found expression in the form of fundamental rights when the Constitution was enacted. These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop the personality to the fullest extent. They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions. It is apparent from the enunciation of these rights that the respect for the individual and his capacity for individual volition which finds expression to his creativity and to prevent governmental and other forces from alienating the individual from his creative impulses....."

The Indian situation, vis a vis the status of human rights and judicial remedies, cannot be viewed in isolation. While on the one hand, a burgeoning jurisprudence of human rights awakens the oppressed and the suppressed to their rights and remedies, an emerging totalitarianism, overt or covert, and spreading over many parts of the world, contradicts the energetic democracy of human rights. These contradictions are part of the dialectics and dilemmas of man in his marginalized lot. This human predicament must currently be high on the Agenda of Concerns.¹²⁹

¹²⁸ Austin Granville *The Indian Constitution-Cornerstone of a Nation* –Granville Austin Oxford University Press

¹²⁹Justice Iyer Krishna '*Human Rights and Inhuman Wrongs*', p7

The advancement of the relationship between human rights and the environment would enable the incorporation of human rights principles within an environmental scope, such as anti-discrimination standards, the need for social participation and the protection of vulnerable groups. At the same time, the human rights system would be strengthened by the incorporation of environmental concerns, enabling the expansion of the scope of human rights protection and generation of concrete solutions for cases of abuses. Of course, one of the most important consequences, is to provide victims of environmental degradation the possibility to access to justice. Given the occasional helplessness suffered by victims of environmental degradation, linking human rights and the environment brings such victims closer to the mechanisms of protection that are provided for by human rights law.

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. This should also facilitate those who are working in the environmental and conservation fields to develop a better working relationship with those in the human rights arena. This will eventually lead to the articulation of a more integrated approach to dealing with socio-economic and environmental problems, encouraging the development of a sustainable model for the preservation of biological resources and natural ecosystems, for the use and enjoyment of both present and future generations.

The challenge today is how to strike a balance between the competing claims of conservation and development is formidable indeed and has yet to be met effectively by the planners, administrators, scientists, engineers and law makers of the country. The fundamental question before us today is whether we can allow the destruction of the environment leading to destruction of human life on this planet. Obviously this is not an agreeable option before the humanity today. Nor can one expect to live in undeveloped situation. Despite our brutal exploitation of our forests, indiscriminate quarrying, pollution of rivers and other water resources, rapid increase of air and noise pollution the environment can be protected by introducing the right policies. Because protecting the ecology against pollution of all kinds is the crying need of the hour.