

SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PROTECTION – HUMAN RIGHTS PERSPECTIVE

By

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Introduction

In the process of development, man became oblivious of damage he was causing to nature. The over exploitation of natural resources like, water, land, air, forests and other natural resources has been resulting in fast depletion of natural resources and at the same time depriving millions of people their legitimate human rights to clean environment and other related civil, political and economic rights recognized by Human Rights and the International instruments. In their desperate attempt to survive, environment is over used for today's survival, unmindful of tomorrow's requirements. There is an imperative duty on the part of the mankind to protect and preserve the nature's resources, not only in the interest of the survival of the present generation but also of the future generations. In other words, the core issue is not merely the development but development, in harmony with the environment and due regard for human rights and fundamental freedoms. The ultimate goal of development and its associated growth should be to satisfy the basic human and social needs and also not losing sight of the limits of the environmental resources for the present as well as for the posterity. Any deviation from this approach would ultimately lead to degrading of eco-system on the one hand and depriving of the basic human rights of people of the international community on the other.

Sustainable Development – Meaning and Dimensions:

Many present development trends leave increasing numbers of people poor and

vulnerable, while at the same time degrading environment. And thus development came to be seen not in its restricted context of economic growth in developing countries but as one that sustained human progress. Ecology and economy are becoming ever more interwoven, locally, regionally, nationally and globally into a seamless net of causes and effects. It is in this context that, the principle of sustainable development has emerged, which calls for sustenance in developmental programmes, so that, the resources of the nature are also being preserved for the needs and benefits of the future generations to come.

Sustainable development is a process in which the exploitation of resources, the direction of investments, the orientation of technological development and the institutional changes are made consistent with future as well as present needs. The unsustainable patterns of development sheds light on the shortfalls of our past, which have caused much damage to the environment in the form of depletion of the ozone layer, risks of climate change, loss of biodiversity and pollution of air and the water *etc.* It follows from this that, sustainable development must be based on minimum use of energy and raw materials and consequently, minimum waste and pollution.

The main focus of sustainable development is on the following linkages¹:

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1. R.V. Mahiya, "Sustainable Development and Environment: Emerging Trends and Issues", Indian Journal of International Law, Vol. 36, No.4, Oct-Dec. 1996.

1. It links our economic decisions with our ecological well-being and *vice-versa*.
2. It links the quality of life for all humans with the quality of the environment which we all share and
3. It links the way we live with the way our children and our children's children will be able to live.

Sustainable Development and Stockholm Conference 1972:

The Stockholm Conference, which is a historic conference in the annals of the environmental protection, has well recognized the links between environment and development. But little was done to integrate this concept for international action until 1987, when the Brundtland Report, *Our Common Future*², was presented to the UN General Assembly. The Brundtland Report stimulated debate on development policies and practices in developing and industrialized countries alike and called for an integration of our understanding of the environment and development into practical measures of action.

The guiding rules of sustainable development are³

1. People must share with each other and care for the earth.
2. Humanity must take no more from nature than man can replenish, and
3. People must adopt life styles and development paths that respect and work within nature's limits.

According to the Brundtland Report the concept of sustainable development contains within two key concepts.⁴

1. The concept of needs, in particular the essential needs of the world's poor to which overriding priority should be given, and
2. The idea of limitations imposed by the state of technology and social organization the environment's ability to meet present and future needs.

Earth Summit and Sustainable Development:

The historic Earth Summit, held at Rio De Janeiro, during 1992, which was the largest ever UN Conference, has put the world on a path of sustainable development, which aim at meeting the needs of the present, without compromising the ability of future generations to meet their own needs.

The following significant documents, which are the outcome of the Earth Summit, specially focusing attention on and emphasize the need for attaining the goal of sustainable development in the interest of preserving the environment and also safeguarding the Human Rights of individuals.

1. The Rio Declaration contains 27 principles, which guide the behaviour of nations towards more environmentally sustainable pattern of development.
2. Agenda 21: A set of principles to support the sustainable management of forests world wide.
3. The convention on Climate Change and The Convention on Bio-diversity, which are aimed at preventing global climate change and the eradication of biologically diverse species.

The ecological realities indicate that if the present generation continues to consume and deplete resources at unsustainable rates, future generations will suffer the consequences in the form of depleting resources and denial of legitimate human rights of people.

2. Report of the World Commission on Environment and Development: *Our Common Future* (1987)

3. UN Chronicle, June 1992. P.46.

4. See note 2 above.

According to *Dominic McGoldrick*⁵, sustainable development is a temple which is based on three pillars, namely,

1. International Human Rights Law
2. International Environmental Law
3. International Economic Law

Thus, sustainable development has many facets. It calls for a balanced approach towards the development, with due care and caution, with an eye on human rights of people, who are at the root of all developments.

Sustainable Development and Protection of Human Rights: The International Legal Regime:

Humans out of ignorance, shortsightedness, greed or desperation have polluted air and water, undermined the productivity of the land through accelerated soil erosion, creeping deserts, increased flooding and declined soil fertility. They thus destroy the basis of their own livelihood and they violate the limits of natural systems. The principal victims of these trends are the world's poor, who in their quest for food and fuel, are often forced by circumstances beyond their control to serve as the agents of their own undoing⁶. This obviously has a far-reaching impact on the Human rights.

In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, developing countries must direct their efforts

to development, bearing in mind their priorities and the need to safeguard and improve the environment. For this purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development⁷.

Since late 60's the International Law, having realized the inevitable link between the environment and development and its impact on the Human rights, expressed its concern for the need to protect the human of individuals, in the process of development *vis-à-vis* the environment. This has reflected in several Declarations and Treaties.

In 1968, the UN General Assembly first recognised the relationship between the quality of the human environment and the enjoyment of basic rights. The 1972 Stockholm Declaration proclaimed that man's natural and man-made environment are essential for his well – being and to the environment of basic human rights even the right to life itself and declared in Principle 1.

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.

The 1982 World Charter for Nature though does not expressly provide for the individual's right to a clean environment, it was one of the first instruments to recognize the right of individuals to participate in decision-making and have access to means of reserves when their environment has suffered damage or degradation. Similarly, the 1989 Declaration of the Hague on the

5. *Dominic McGoldrick*, "Sustainable Development and Human Rights: An Integrated Conception", *International and Comparative Law Quarterly*, Vol.45 (1996), pp 796-97.

6. P.R. Trivedi and *D.K. Singh* (ed), *Environmental Protection and Law*, (1994), p.30.

7. Preamble to the UN Conference on Human Environment, (Stockholm Declaration, 1972).

Environment recognized “the fundamental duty to preserve the eco-system” and the right to live in dignity in a viable global environment and the consequent duty of the community of nations *vis-à-vis* present and future generations to do all that can be done to preserve the quality of the environment.⁸ The UN General Assembly has declared that “all individuals are entitled to live in an environment adequate for their health and well-being”⁹ and the UN Commission on Human Rights has affirmed the relationship between the preservation of the environment and the promotion of human rights.

Sustainable Development v. Human Rights – The Emerging Issues:

International environmental law raises many familiar issues in the field of international human rights law. In the environmental context, questions related to the existence and application of minimum international standards and the proper role of individuals and other non-governmental organizations in the international legal process have raised analogies listed to those arising in international human rights law. Allegations of civil rights breaches continue to abound in the environmental field and have focussed on the suppression of environmental discussion and debate and of environmental campaigners. As rightly pointed out by *Philippe Sands QC*¹⁰, some of the significant issues raised in the context of Environmental Protection related Human Rights includes: restrictions on the right of association and assembly, the mistreatment of whistle blowers, press censorship, and restrictions on rights of access to environmental information. Human rights issues are equally being raised in relation to environmental refugees forced to flee areas because of drought or desertification, and

humanitarian issues involving the use of force and the environmental impacts of war. Human rights issues related to environmental protection became the subject of increasing attention following a number of well-known cases, including the 1988 murder of the Brazilian Union Organizer *Chico Mendes*, restrictions on the provision of information to citizens of the USSR following the accident at the Chernobyl nuclear power plant and the limited availability of remedies for breaches of environmental standards and obligations under national legal systems. Against this background, there have been important developments in the past decade, including in particular a growing body of jurisprudence and commentary recognizing the existence and importance of the linkages between human rights and environmental matters.¹¹

An analysis of International Instruments concerning the Environmental Protection *vis-à-vis* the Human Rights clearly indicate that there are several social, political and economic rights of the people which are influenced either directly or indirectly by the policies and procedures pertaining to environmental protection in general and the goal of sustainable development in particular. Some of such significant economic, social, civil and political rights are as follows:

1. Economic and Social Rights :

Economic and social rights, which are the essential components of Human rights, demand that in the process of attaining the goal of sustainable development, substantive environmental standards and conditions be being maintained at satisfactory levels, so that, it does not result in the violation of economic and social rights. In the context of environmental issues, some of the important economic and social rights which are relevant include, the right to a standard of living adequate for health and well-being¹², safer

8. Declaration of The Hague on the Environment, 11 March 1989, 28 ILM 1308 (1989).

9. UNGA, Res. 45/94 (1990).

10. *Philippe Sands QC*, Principles of International Environmental Law, (2003), p. 292.

11. Ibid

12. Article 25 UDHR 1948: Article 11(1) ICESCR

and healthy working conditions,¹³ the right to enjoy the benefits of scientific progress and its application *etc.*¹⁴

Lack of access to drinking water, which is free from toxic or other contaminants, pollution of the atmosphere by heavy metals and radioactive materials, the dumping of hazardous and toxic wastes in the vicinity of people's homes can all be viewed and treated as violation of fundamental economic and social rights.

2. *Civil and Political Rights:*

Civil and political rights are equally capable of creating practical and enforceable obligations in relation to environmental related matters. In fact, these rights and obligations are established by several environmental related treaties and other intentional instruments at the global and regional levels.¹⁵ Civil and political rights which are relevant to environmental protection include: the right to life¹⁶, the right to an effective remedy by competent national Tribunals for acts violating fundamental rights¹⁷, right to receive information.¹⁸ Similarly, the Rio Declaration also supported the right of access to environmental information, the right to participate in decisions which effect their environment¹⁹, right to development to meet environmental needs.²⁰

3. *War and Armed Conflicts and Environmental related Human Rights:*

Military activities may have significant impact upon the environment, which have a consequential effect on the human rights of

people. Testing, development, production and maintenance of chemical, biological and nuclear weapons and their application have generated large quantities of hazardous, toxic and radioactive substances. These have not only contributed to a large scale depletion of natural resources, degradation of environment, but also equally resulting in threat to the very basic human right to survival and live in peace. The recent conflicts in Vietnam, Afghanistan, and Persian Gulf stands as a testimony to this fact.

International law, international humanitarian law and the human rights law have well recognised the need to protect the people against the adverse impact of wars and armed conflicts and they have properly addressed to the military activities and environmental protection, apart from the humanitarian and human rights of the people.²¹

Concurrent with the ongoing growth of a right to environment the emergence of a right to development adopted in 1986 by a Resolution of the UN. General Assembly, denotes an inalienable right which at once mandates that individual States be able to control their own economics and thus develop their own way and also suggests that the performance of an economic system is related to qualitative centers based upon human rights standards. That is, development involves social and cultural, as well as economic changes. In less developed nations seeking to improve their economic status, the right to exploit their resource could well at the expense not only of the environment but indigenous societies, which depend on it.

These principles embody a prudential, progressive attitude towards the global

13. Article 7(b) ICESCR 1966

14. Article 15(1) (b) ICESCR 1966

15. See for instance, the 1989 Indigenous Peoples Convention

16. Article 6 (1) ICCPR 1966

17. Article 8 UDHR 1948

18. Principle 10, Rio Declaration 1992

19. Ibid, Chapter V.

20. Principle 3, Rio Declaration 1992.

21. Some of the important Treaties which deal with the subject of protection of environmental and human rights are: 1972 Stockholm Declaration, 1959 Antarctica Treaty, 1980 Inhumane Weapons Convention, 1977 ENMOD Convention, Geneva Conventions of 1949 *etc.*

environment and the human societies that constitute a part of it. Further, they appeal to resolve the problematic of environmental and cultural preservation and economic development.

Sustainable Development and Protection of Human Rights – Strategies for the 21st Century:

As aptly pointed out by *Phillip Sands, QC*²², “Of late, environmental considerations have been integrate into human rights discourse in relation to human rights, notwithstanding the fact that most human rights treaties do not expressly refer to environmental considerations, practice under those Conventions recognizes that a failure to adequately protect the environment may give rise to individual human rights, particularly in relation to rights associated with the enjoyment of a person’s home and property. In the very recent past, human rights procedures may also have begun to define the content of participatory rights in the environmental domain”.

The existing international legal framework needs to be significantly strengthened not only to reach the goal of sustainable development, but also, at the same time, to ensure the securing and protection of human rights of people at the global level, so that, the new international environmental order will ensure that, the people, particularly large majority of whom live in the developing world are able to get good health, education, better standard of living and other such basic amenities. It is needless to state that, of all the things in the world, people are the most precious. It is the people that propel social progress, create social wealth. Ultimately, the

application of science and technology should be used for the benefit of and in the interest of millions of people for whom still the basic human rights like, right to life, right to food, right to development *etc.* are a distant dream.

With a view to make the new policies and programmes – both, global and national, designed towards attaining the goal of sustainable development more meaningful and effective, following suggestions are made:

1. An international monitoring mechanism to monitor environmental programmes of the States should be developed to ensure that there is minimum interference in the human rights of individuals.
2. An international data bank should be developed and operated under the agies of UN pertaining to current and upto date information on environmental protection to serve as a guide to the programmes pertaining to sustainable development.
3. The existing criminal laws of the States dealing with environmental protection should be made more stringent and deterrent to punish the guilty, who are responsible for polluting the environment.
4. Right to environment should be made a mandatory right by the State legislations.
5. Right to information should be recognized as a fundamental right by the States.

²². See note 14 above.