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Right to Environment v. Right to Development: A Jurisprudential Analysis

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ABSTRACT

The environment is a concept that is relative to whatever object it surrounds. The Environment Protection Act 1986 defines it as "environment includes water, air and land and the inter-relationship which exists among and between air, water and land and human beings, other living creatures, microorganisms and property." The World Health Organization has observed that over 70% of all human ailments are influenced by environmental deterioration. Environmental problems are affected by economic development, availability of natural resources, population, and lifestyle. The lack of policy enthusiasm towards the environment around the world, as also in India, has been based on the hypothesis that environmental degradation first increases with per capita Gross Domestic Product (GDP) and then declines. However, empirical investigations showed that the development path might not necessarily improve the environment. The decade 2000 was declared the First UN Decade to Combat Desertification.

Keywords: *Biological Resources; Bio-trade; Commercialization; Conservation; and Sustainable Utilization.*

I. INTRODUCTION

The environment means 'surroundings'. The environment is a concept that is relative to whatever object it surrounds. If used in that sense, the environment could virtually include anything and everything. Hence, a specific definition for the word 'environment' is needed. The Environment Protection Act 1986 defines environment as "environment includes water, air and land and the inter-relationship which exists among and between air, water and land and human beings, other living creatures, microorganisms and property."²

The World Health Organization has observed that over 70 per cent of all human ailments are influenced by environmental deterioration.³ The industries are all sources of hazardous emissions and effluents. The use of chemical insecticides and pesticides in agriculture also leaves dangerous residues. Public health infrastructure, like sewage, garbage etc., harms the

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² Section 2(a), The Environment (Protection) Act, 1986

³ Q. Ashoka Chakkaravarthy, Human Survival and Environmental Pollution, Available at http://www.yorku.ca/bunchmj/ICEH/proceedings/Chakkaravarthy_Q_ICEH_papers_66to74.pdf

environment.⁴

A country's environmental problems are affected by its economic development, availability of natural resources, population, and lifestyle. These parameters collectively work towards change in the natural environment, contributing to conservation or degradation.

The lack of policy enthusiasm towards the environment around the world, as also in India, has been so far based on the hypothesis that environmental degradation first increases with per capita Gross Domestic Product (GDP) and then declines, as illustrated by the inverted U shaped Environmental Kuznets Curve [EKC]. However, this theory came under much criticism during the early 2000s. Researchers based on empirical investigations showed that the development path might not necessarily improve the environment. During the same time, scientists worldwide also became more vocal about creeping disasters like Desertification; therefore, the decade 2000 was declared the First UN Decade to Combat Desertification.

II. THE RIGHT TO DEVELOPMENT AND ITS IMPORTANCE

The Right to development - often understood as a human right belonging to the so-called third generation of human rights- is politically, conceptually and legally problematic. It can be observed that human rights and human development historically evolved parallel to each other and initially remained on non-intersecting tracks. Therefore, the time for the human rights approach to development had not yet arrived.

The convergence of human rights and development at the level of concepts can be noticed somewhere in the 1970s when a group of nations led by developing countries asserted their Right to development in the prevailing international economic order, which they believed to be unjust and responsible for their underdevelopment of which one was Africa.

The intention of the main protagonists (developing nations) of NIEO was to set up a mechanism to claim cooperation and assistance from developed nations in their economic development. The Right to development is one of the most highly debated and contentious issues in international relations. Since the 1970s, when the issue first featured on the agenda of the international community, the debate over the Right to development has continued unabated but with little progress towards consensus on the concept and the method of its implementation. However, despite all these controversies and placed in the interface between human rights and development, the concept of the Right to development seeks to promote development as a Human Right.

⁴ S Shantakumar's Introduction to Environmental Law, (Wadhwa & Company Nagpur) p 1

Nevertheless, political differences have prevented the identification of the exact contours of the definition and implementation of the Right to development. In recent years, work has been initiated at international organisations such as the United Nations High Commission for Human Rights to identify the content of the Right to development. To achieve this objective, open-ended working groups and Human Rights Commission have deliberated on reports submitted by the Independent Expert on the Right to Development United Nations appointed in 1999.

The Right to development describes the development process and emphasises the people's participation in the development process. NGOs play a crucial role in implementing the component rights of the Right to development in India and abroad. In this connection, the role of NGOs can be examined.

It is essential to locate the current debates on 'economic growth' and 'sustainable development'. According to Peet, development differs from economic growth in that it pays attention to the conditions of production, for example, the environments affected by economic activity, and to the social consequences, for example, income distribution and human welfare. He expands that development entails human emancipation by using science and technology to liberate from the vicissitudes of nature and two self-emancipation through control over social relations. In both senses, development entails economic, social and cultural progress, finer ethical ideals and higher moral values.

III. RIGHT TO ENVIRONMENT V. RIGHT TO DEVELOPMENT

We cannot be denied our Right to industrial development and material success, but this must not come at the expense of our environment. Are the nation's development challenges colliding with its environmental concerns? The question of how India will strike a balance on three fronts - economy, energy, and the environment - is gaining traction, given the Narendra Modi government's eagerness to promote industrialisation and ensure high economic growth, as well as the following changes to India's existing environment and land acquisition laws.

The United States and India have announced the formation of the "U.S.-India Climate and Clean Energy Agenda 2030 Partnership." The Partnership, led by President Biden and Prime Minister Modi, will be one of the primary platforms for US-India engagement, focusing on achieving urgent progress in this crucial decade for climate action. The United States and India have set lofty goals for climate action and sustainable energy by 2030.

We maintain that India is the world's third-largest greenhouse gas polluter – though beset by a high population growth rate – has one of the lowest per capita greenhouse gas emissions, roughly 1/20th of the US and Australia. Millions of people in small islands, least-developed

countries, landlocked countries, and vulnerable communities in Brazil, India and China, and all around the world suffer from the effects of a problem to which they did not contribute. The argument for industrial development in Brazil and India is compelling.

One-third of the world's population lives in the most heavily industrialised nations (commonly termed developed countries – DCs), accounting for 85 per cent of the global personal income and a like fraction of the annual use of global resources. The people living in the less industrialised nations (often called less developed countries – LDCs) must apportion the remaining 15 per cent of global income and resource use among two-thirds of the world's population. The result is excessive prosperity for most people in the DCs and crushing poverty for the majority in the LDCs.

Some of the cases of clash of these two rights have been observed in the following cases in our nation:

1. M.C. Mehta vs Union of India AIR 1988 SCR (2) 538

- The writ petition filed by the activist advocate M.C. Mehta in the Supreme Court highlighted the pollution of the Ganga river by the hazardous industries on its banks. Justice ES Venkataramiah gave a historic judgement, ordering the closure of several polluting tanneries near Kanpur.
- In this judgment, it was observed that just like an industry that cannot pay minimum wages to its workers cannot exist, a tannery that cannot set up a primary treatment plant cannot continue.

2. Indian Council for Enviro-Legal Action vs Union of India AIR 1999 SC 1502

- In the landmark judgment, Justice Jeevan Reddy held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the "Polluter Pays Principle".
- The Court set a time limit for the coastal states to formulate coastal management plans and banned industrial or construction activity within 500 metres of the High Tide Line.

3. M.C. Mehta vs Union of India (Taj Trapezium Case) AIR 1987

- The pride of India and one of the world's wonders, i.e., the Taj Mahal, was threatened due to high toxic emissions from Mathura Refineries, Iron Foundries, Glass and other chemical industries. The acid rain seriously threatened the Taj Mahal and 255 other historical monuments within the Taj Trapezium.
- The Apex Court delivered its historic judgment in 1996, giving various directions,

including banning coal and cake and directing the industries to Compressed Natural Gas (CNG).

4. M.C. Mehta vs. Kamal Nath and Ors (1996)

- The Bench of Justices Kuldip Singh and Sagir Ahmed held that the Government violated the Doctrine of Public Trust. The Himachal Pradesh State Government had leased out a protected forest area on the bank of river Beas to motels for commercial purposes.
- In 1996, the Supreme Court passed a judgment that would hold the State more responsible for maintaining natural resources.
- The Right to Pollution Free Environment was declared a part of the Right to Life under Article 21 of the Constitution of India in the case of "Subhash Kumar vs State of Bihar and Ors. (1991)". The Right to Life is a Fundamental Right which includes the Right to enjoyment of pollution-free water and air for the full enjoyment of Life.

IV. SUSTAINABLE DEVELOPMENT

The concern for the environment in modern times is traced back to the Law of Seas, which came into force to protect the over-exploitation of marine resources on high seas to allow equitable consumption to all nations.⁵ Further, the two world wars, which saw environmental destruction leading to declining quality of health and living standards worldwide, led to the World Health Organization's formation in 1948. This strengthened the obligation of nations to protect and enhance the "*physical environment*" only when it becomes dangerous or potentially dangerous to human beings. This "human-oriented protection" ideology has been carried forward in multiple international and regional agreements, including sustainable development.

- The Bench of Justices PN Bhagwati and Ranganath Mishra in "Rural Litigation and Entitlement Kendra, Dehradun vs State of Uttar Pradesh AIR 1987 SC 2187" introduced the concept of "Sustainable Development". An NGO named RLEK filed a case against limestone quarrying in the valley in 1987.
- It was stated that the permanent assets of humanity are not to be exhausted in one generation. Natural resources should be used with requisite attention and care so that ecology and the environment may not be affected profoundly.

⁵ Economic Development, 2nd edition. Basingstoke: Macmillan. Smith, Charles; Rees, Gareth (1998). ISBN 0-333-72228-0

V. THE EFFECTS OF ECONOMIC GROWTH ON THE ENVIRONMENT

Affluence (i.e. material aspects of per capita consumption of goods and resources) is an essential factor in the man-resource environment relationship. There is a fundamental conflict between the traditional concept of economic growth and the preservation and conservation of the environment. While economists tout record-breaking increases in global commerce in recent decades, more sobering statistics are being put forth by the world's leading Biologists: the loss of living species in recent decades, they report, represents the largest mass extinction since the dinosaurs were wiped out 65 million years ago.⁶

Globalisation is a powerful driving force behind today's unprecedented biological implosion. Trade in timber, minerals and other natural resources is climbing, and many of the world's hot spots of biological diversity are now threatened by a surge of international investment in resource extraction. Yet, the new rules of the global economy pay little heed to the importance of reversing the biological impoverishment of the planet.⁷

Human beings remain fundamentally dependent on the natural world. One shot coming off conventional economics is failing to account for critical services provided by a natural ecosystem such as forests, wetlands, coral reefs, rivers, and seas. In 1997, a team of 13 ecologists, economists and geographers published a path-breaking article that put a price tag on the value of these ecosystems' functions. The study covered a broad array of services, including genetic resources, flood control, pollination, water supply, and the value of nature's services, which added to almost \$33 trillion annually- almost as much as the annual gross world product.⁸

Unfortunately, despite their value to humankind, ecosystems are being degraded at an unparalleled rate due to human activity. For example, the planet's forest cover steadily shrinks as the population and the world economy expand. Mining and petroleum development also threaten the health of the world's forests, mountains, waters and other sensitive ecosystems. Besides disturbing valuable ecosystems, mining companies and multinational oil and gas firms continuously scour the planet for new development opportunities, as the most accessible fields in the industrial countries have already been tapped.

VI. CONCLUSION

The economic justification for the protection of the environment is probably, the most popular

⁶ S Shantakumar's Introduction to Environmental Law, (Wadhwa & Company Nagpur) p 23

⁷ Hilary French, Vanishing Borders, A World Watch Book, Earthworms Books Pvt. Ltd. 2000 pp 15

⁸ Ibid

protection rationale in environmental debates.⁹ For example, in 1902, an international treaty for the protection of birds was justified because certain birds provided economic benefits for agriculture. Elizabeth Dowdeswell, the Executive Director for the United Nations Environment Program, has once observed that "until recently, the language of mainstream economics has defined the economy in market terms, without giving much attention to non-market elements such as subsidies provided by ecosystem services, subsistence activities, household labour or cultural aspects of human social services. From an ecological and economic perspective, poverty and environmental degradation are symptoms of a poorly functioning economic system."¹⁰

Currently, environmental questions are becoming dominated by economics. Even though many of those involved in environmental protection are weary of economic rationales, many have nevertheless accepted the central message of this type of approach: namely that some form of economic analysis should control the level of environmental quality that society tries to achieve in practice. A primary justification for this change is because of the high economic values that can be attached to the environment through reformulated economic methods. These new methods can act as powerful stimuli for environmental protection. The World Bank, in its "World Development Report 1992", has pointed out that the "primary cause of environmental problems is not the price-making market, but rather the failure of markets and governments to price the environment appropriately.

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which humans depend. However, integrating environmental and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, a better protected and managed ecosystem and a safer and more prosperous future.

One of the most critical side effects of development is environmental degradation. People who see or anticipate the environment degrading realise that it will degrade the entire life support system. According to their perception, the only way they can prevent environmental degradation is to oppose development projects. Thus a conflict grows in intensity-the developers say that there cannot be development without environmental destruction. They are vehement that environmentalists are preventing development and progress.

⁹ Alexander Gillespie, *International environmental Law, Policy and ethics*, (Clarendon Press, Oxford), p. 28

¹⁰ Dowdeswell, E., Speech at world Summit for social Development, 1995, 7Mar. UNEP Speech, 1995/3.

On the other hand, environmentalists allege that the developers are destroying the environment, making further development impossible and the development process unsustainable. The two sides are locked in battle. The conflict cannot be resolved within the framework of the conventional paradigm.
