

Modern Law and Environmental Problems: a Human Rights Perspective

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Abstract

The study doctrinally examined environmental problems as they relate to human rights and found out that conceptualizing right to healthy environment as integral part of right to life may give a solution to the enforceability of the right. The rising concern for environmental issues makes human right to environment (right to healthy environment) very paramount. Much is needed to be done by human right activists and environmental activists to ensure the sustainability and enforceability of the right.

Keywords: Right to Life, Healthy Environment, Environmental Problems

I. INTRODUCTION

Environmental problems are some of the most severe problems human beings are suffering from. Many people do not have access to clean air and drinking water, and experience health problems due to increasing pollution and other hazardous activities on the environment.

Environmental law in general is one of developing concept under international law which yet do not attain the level of maturity as many aspect of it remained unsettled. The principles of environmental law are mostly found in soft law.¹eg Stockholm Declaration on the Human Environment 1972 and Rio Declaration on Environment and Development (Rio declaration 1992)

Environment is very essential to human sustenance and it's only through its protection and keeping it health and hearty a human being can survive safely. Evidently, no meaningful development can be achieved without consideration for environmental protection, as it is the environment which provides the means for human survival and development. Besides, the present generation like its predecessors, is like a trustee for future generation: therefore when any activity is undertaken which has an impact on the environment, the question is whether such would leave the environment better or worse than was inherited

must be asked. An objective response to this question will determine the legacy which will be left for future generation.² it was on this account Barber Conable, a former president of the World Bank commented at Tokyo conference on the Global Environment and Human Response Towards Sustainable Development: thus the rent you pay for the land is your obligation to protect and preserve its fertilityas with land, so also too with rest of natural environment on which human survival and progress depend. Today's obligation needs have to be weighed against tomorrow's obligation or our children will be poorer than we are.³

The foundation of modern international law was laid at the United Nation Conference on the Human Environment in Stockholm, 1972, although the conference failed to proclaim an explicit human right to environment, it shows the concern of the international community for environmental matters and more importantly set the agenda and framework for future discussions and initiatives. For example principle 1 of Stockholm declaration 1972 contains the fundamental right to freedom, equality, and adequate condition of life, in an environment of quality that permit a life of dignity and wellbeing. Principle 7 provides that states are required to take steps to prevent pollution of the environment by substances which affect human health. Principle 1 and 7 above are liberally interpreted to have set a ground to infer human right to environment.⁴

Rio declaration 1992 did not do much in developing right to environment as it concern more with right to development than right to environment. Although environment was, at the title of the conference: "United Nation Conference on Environment and Development".⁵ The term "human

¹Subin N, "A Human Right to a Clean Environment, a Paper Presented at Centre for International Studies School of Oriental and African Studies, London on 20th Feb, 2004

² Patrick, D. D., "the Right to Clean Environment the Case for People of Oil Producing Communities in the Nigerian Delta" Journal of African law Vol. 41 No 1 (1997)p. 62

³Conable B. B., 'Development and Environment: A Global Balance' American University Journal of International Law and Policy (1990)5 p. 235

⁴Subin, N., op cit

⁵ It was this conference that gave birth to Rio declaration on environment and development 1992

right” is only used three times in Rio Declaration, 1992, and according to Diane Shelton, there is no explicit link between human and environmental rights in the declarations.⁶Boyle stated that principle 10 of Rio declaration can be considered as participatory rights, and said it suggest that environmental issues are at best handled with participation of all concern citizens and further requires the state to provide effective access to judicial and administrative proceedings.⁷

The development which lead to right to healthy environment was in 1989, when, a submission of United Nation Commission on human rights under the leadership of Mrs. Fatima Zohra Ksentini was assigned to study the possibility for a human right to environment, in 1994 the ksentini report concluded that environmental rights are part of the existing human rights. The draft principles on human rights and the environment, which are included in annexure of the report, emphasizes in principle 1 that human rights and environment are indivisible⁸

Boyle summarizes that from now on there is a shift from environmental law to the human right to healthy and decent environment. In his words, the Ksentini report “greened” existing human rights, meaning that existing human rights may already contain environmental rights. Thus, it is necessary to take a closer look at human rights treaties in order to examine whether human can claim right to clean environment from its norms.⁹

The need for a healthful environment is vital to the protection of life and to the preservation and enhancement of its quality and condition. Desirable standards of health and welfare will be impossible to sustain in an atmosphere depleted of life giving and life sustaining element.

The increasing emphasis on environmental protection and ecological preservation make it eminently desirable to analyze the conceptual values in which environmental law is based. The mounting interest evidenced in scientific, legal, political, and circles in the various dimensions of environmental law constitutes sufficient justification for this research.

II. HISTORICAL DEVELOPMENT OF ENVIRONMENTAL RIGHTS

Nature has always exercised mysterious fascination for man. Primitive man regarded elemental

forces of nature with awe and respect, and identified them as deities to be feared and propitiated.¹⁰ With time man began to acquire more intelligent understandings of the relationship between him and natural order.

From time immemorial people have developed the habit of protecting their environment conscientiously. Many had developed highly advanced ways of cooperating with nature to provide for their need without destroying environment.¹¹ A good example can be found where the villagers have farmed the fragile land intensively for centuries, maintaining and even improving its capacity to sustain them. their techniques of stone terracing, organic fertilizing, intercropping and crop rotation have been perfected over hundreds of years and have proven extremely effective in maintaining the community’s agricultural base.¹²

The conscience of a man to his environment and his quest to protect it and restore its natural order led to emergence of what is called “environmentalism.” Environmentalism is defined as social movement that intends to influence the political process by lobbying, activism and education in order to protect natural resources and ecosystem. The word was first coined in 1922¹³

In general, environmentalism is movement to advocate the sustainable management of resources and the protection (and restoration when necessary) of the natural environment through changes in public policy and individual behavior in its recognition of humanity as a participant in ecosystem, the movement is centered around ecology, health and human rights.

The concern for environmental protection starts for long time in different parts of the world for example in Europe king Edward of England banned the burning of sea coal in 1272 when its smoke had become a problem.¹⁴

The industrial revolutions in Europe pave a way for earlier legislation for protection of environment for the increase and incessant smoke pollution in the atmosphere. The industrial revolution increased the level of coal consumption and unprecedented pollution in the air, and large volume of industrial chemicals

⁶ Shelton, D., ” Environmental Rights.” in Peoples’ Rights. Aston p. (ed) Oxford University Press(2001)p. 196

⁷ Boyle, A. E.,” the Role of International Human Rights Law.” In The Protection of Environment, Boyle, A.E., and Anderson, M. R., (ed.) Oxford University Press, (1996)p.12

⁸Subin, N. , op cit, p. 5-6

⁹ Boyle, A. E., op. cit. p. 9

¹⁰ Pathak, R.S., “the Human Rights System as a Conceptual Framework for Environment” www.unu.edu retrieved on 28th sep, 2014

¹¹ Amina, A. M., “Environmentalism and Environmental Protection: An Analysis of Development of Environmental Law in Nigeria.” a paper presented at university Abuja, 2010

¹² Meyer and Moosong “ the Environmental Colours of Microfinance” 1992 www.gdrc.org/icm/environment/plan retrieved on 6/12/2010

¹³ Environmentalism www.wikipedia/environmentalism.com retrieved on 28th sep, 2014

¹⁴ ibid

discharges to the growing load of untreated human waste.¹⁵

In Britain in 1863, Alkali Act was passed to regulate the deleterious air pollution (gaseous hydrochloric acid). Between 1872 and 1903 the zoologist Alfred Newton led an advocacy for legislation to protect animals from hunting and led the formation of the royal society for the protection of birds and influenced the passage of sea birds Act in 1869.¹⁶ Earlier movement for environmental protection was aimed at mitigation of air pollution. The earliest NGO advocating for environmental protection Was Coal Smoke Abatement Society formed in 1898, founded by William Blake Richmond,¹⁷ also Public Health Act 1875 requires all furnaces and fireplaces to consume their own smoke and provided sanctions against factories that emitted large amount of smoke.¹⁸ Equally there are number of legislations in England aimed at mitigating air pollution which were passed subsequently, like Smoke Abatement act, 1926,¹⁹ Clean Air Act, 1956.²⁰

In United States the concern for protection of environment was began in late 19th century when John Muir in his philosophical writing of the book "Walden" expressed the need for people to understand their relationship with nature.²¹ Similarly, Henry David Thoreau in his study of ecology and geology lobbied the congress to form Yosemite National Park and went on to set up the Sierra Club in 1892.²²

The move to protect environment continue to get recognition in United States particularly during the President Woodrow Wilson when he established National Park Services in 1916.²³

During the 1930s the Nazis had elements that were supportive of animal rights, zoos, and wildlife.²⁴ In 1962 the American biologist wrote a book "Silent Spring" in which he questioned the logic of releasing large amounts of chemicals into environment without fully understanding their effect on ecology and human health. The pressure from public led the United State to

create Environmental Protection Agency in 1970s which was charged with responsibility to control and reduce the release of some chemicals to agricultural products.²⁵

By 1970s the concern for environmental protection received a new face and getting much popularity. This result the emergence of pressure group like Greenpeace, Friend of Earth, etc. this led to growing of some political parties championing the ideology of environmental protection eg. In England PEOPLE party was founded in 1973 which eventually turned into Green Party.²⁶

Not only in Europe and America environmental protection concern get a ground but even some other parts of the world; in India Chipko movement was formed under the influence of Mohandas Gandhi and they setup a peaceful resistance to deforestation by literally hugging trees with slogan "ecology is permanent economy."²⁷

Earth day was established to show concern for environmental protection, it was first observed in San Francisco and other cities on March 21st 1970. It was created to give awareness to environmental issues. On March 21st 1971 United Nation Secretary General U Thant spoke on spaceship earth on Earth day, thereby referring to the ecosystem services the earth supplies to us and hence our obligation to protect it.²⁸ Similarly, world environmental day was established. It was established by the United Nations General Assembly in 1972, on the day that United Nations Conference on the Human Environment began. The first World Environment Day was celebrated in 1973. Since then it is hosted every year by a different city with a different theme. World Environment Day falls in spring in the Northern Hemisphere and fall (rainy season) in the Southern Hemisphere, and midsummer in the tropical regions.²⁹ The 2014 slogan for environmental day is "small islands and climate change."³⁰

In the early of 20th century number of international agreements existed, even though most of them paid attention to territorial integrity, sovereignty, navigations rights, fishing rights and did not address environmental issues, however, Article IV of the 1909 United States-United Kingdom Boundary Waters Treaty stated that

¹⁵ Fleming, J., and Bethany, R. K., "History of Clean Air Act" www.wikipedia.com retrieved on 28th sep, 2014

¹⁶ Baeyens, G., and Martinez, M. L., Coastal Dunes: Ecology and Conservation (springer, 2007) p. 282

¹⁷ Environmentalism www.wikipedia.com retrieved on 28th sep, 2014

¹⁸ ibid

¹⁹ ibid

²⁰ ibid

²¹ ibid

²² ibid

²³ ibid

²⁴ ibid

²⁵ ibid

²⁶ ibid

²⁷ ibid

²⁸ www.earthday.net retrieved on 20/04/2011

²⁹ www.wikipedia.com retrieved on 8th oct, 2014

³⁰ Ibid,

water shall not be polluted on either side to the injury of health or property of the other.³¹

The earliest Treaties for the environmental protection are to protect commercial valuables species such as Convention for the Protection of Birds Useful to Agriculture 1902 and Treaty for the Preservation and Protection of Fur Seals 1911.³²

By the 1930s and 40s Conservation and Preservation had emerged as conceptual approaches to natural resource management, which led to agreements to protect fauna and flora. These agreements included the 1933 London Convention on Preservation of Fauna and Flora in their Natural States (focused primarily on Africa) and the 1940 Washington Convention on Nature Protection and Wildlife Preservation (focused on the Western Hemisphere.) conventions relating to whaling practices, other oceans fisheries and birds were also negotiated during this time.³³ In 1954 International Convention for Prevention of Pollution of the Sea by Oil is negotiated.³⁴

In the late 1960s there was a significant increase in the number of multilateral international environmental agreements; conventions were negotiated relating to intervention in case of oil pollution casualties to civil, liability for oil pollution damage and to controlling oil pollution in North sea. The African Convention on the Conservation of Nature and Natural Resources was concluded in 1968.³⁵ Now, revised and amended in 2003³⁶ Art XV(I) of the revised convention requires the protection of environment even during the arms conflict³⁷

In 1959 Antarctic Treaty came into being which forbid all nuclear activity on the sixth continent and also envisaged the adoption of measures to protect animals and plants.³⁸

The foundation for modern international environmental law was laid at United Nation Conference on the Human Environment in Stockholm 1972, it was during this conference declaration on environment was unanimously adopted although the conference failed to proclaim an explicit human right to environment, the document show concern of international community for environmental matters and

more importantly set the agenda and framework for future discussions and initiatives.³⁹ "Stockholm was without a doubt the landmark event in the growth of international environmentalism", writes John McCormick in the book Reclaiming Paradise. "It was the first occasion on which the political, social and economic problems of the global environment were discussed at an intergovernmental forum with a view to actually taking corrective action."⁴⁰

Principle 1 of the Declaration read thus: "fundamental right to freedom, equality, and adequate conditions of life, in an environment of quality that permits a dignity of life and wellbeing." Principle 2-7 of the Declaration proclaim that the natural resources of the globe are not only oil and minerals but also air, water, earth plants and animals as well as representatives samples of natural ecosystem and it should be preserved in interest of present and future generations.⁴¹ Man has a particular responsibility to safeguard heritage of wildlife and its habitat.

One of the most important principles is principle 16 which is in favor of policies which respect fundamental human rights and are judged adequate by the government concerned.⁴² At the end of the conference a United Nation Environment Programme (UNEP) was established with office in Nairobi, Kenya; responsible for coordinating environmental programme under the auspices of United Nation.⁴³

Stockholm Declaration 1972, served as a bedrock and foundation of many multilateral and bilateral international agreements on the environmental protection which includes both humans and other ecosystem. The scope of international agreements has expanded significantly from transboundary pollution agreements to global pollution agreements. The result of establishing UNEP which has 58 members elected by General Assembly is negotiating the 1985 Vienna Convention for the Protection of Ozone Layer and 1987 Montreal Protocol, and 1992 convention on Biodiversity.⁴⁴

Some of the international agreements on environmental protection following the United Nation Conference, 1972 are United Nations Convention on

³¹Bown, w., " the Global Environmental Change and International Law: The Introductory Framework" www.udu.edu retrieved on 28th sept, 2014

³² ibid

³³ ibid

³⁴ ibid

³⁵Ladan, M. T., material and cases on public international law (Ahmad Bello university press, 2007)p.151

³⁶www.au.int.com retrieved on 8thoct, 2014

³⁷ ibid

³⁸Ladan, op. cit 150

³⁹Subin, s., op. cit

⁴⁰Environmental Day www.wikipedia.com retrieved on 8thoct, 2014

⁴¹Ladan, op. cit

⁴² ibid

⁴³ Brown, W., op. cit

⁴⁴Shaw, M. N., international law, 5th edition (Combridge University Press,Uk,2003)p 755

the Law of the Sea 1982 (UNCLOS),⁴⁵ world Charter for Nature 1982.⁴⁶

In 1980 the UN General Assembly voted for the creation of the World Commission on Environment and Development an independent body linked to, but outside the United Nation system. Its mandate is to examine critical environment and development issues. This commission is commonly known as Brundtland commission.⁴⁷

Another landmark development in the international environmental law is in 1992 when United Nation convened another Conference on Environment and Development in Rio Dejanairo, Brazil popularly known as Rio Declaration. The conference was centered on Environment and Development but much attention was given to issues of development and less given to environmental rights. In short it has different philosophy with Stockholm Declaration, 1972.⁴⁸

Now, environmental rights have been referred to in number of international agreements because of the understandings that the life is sustainable and fit if the environment is highly preserved. The World Trade Organization agreements contain number of provisions on environmental issues and set down dispute settlement mechanism to remedy environmental damage by one of the contracting party to the other.⁴⁹

III. CURRENT ENVIRONMENTAL PROBLEMS

It is worthy of consideration to highlight some of the environmental problems, their causes and adverse effect to the environment.

Environmental problems can be found in all areas of the world, and they affect land, water and air. Some result from what human taken from the environment; in the form of land for agriculture and accommodation for rapidly increasing population. Other problems stem from what human put into environment.

A. Environmental Degradation

Environmental degradation is a deleterious change in the chemical structure, physical properties, or appearances of a material from natural or artificial exposure to the environment and losing its strength.⁵⁰

One of the most publicized aspects of degradation is deforestation by felling trees at an alarming rate to provide more land for agriculture or use the trees as source of energy in rural areas. This is threatening the

survival of many animal species. It can also lead to soil erosion.⁵¹

Recently, in September, 2014, a very catastrophic act of deforestation was occurred in California United State when unknown person set a fire in the forest leading to the lost of animal species, burning of trees and the fire subsequently, spread to the town destroying number of properties worth millions of dollars. The government set to investigate the matter.⁵²

B. Air Pollution

This is a global problem that affects the atmosphere, oceans, lakes, rivers and land. Many human activities result in the release of toxic chemicals into the air or into water which can go on to damage the environment or cause ill health in people. Two of worst air pollutants are sulfur dioxide and nitrogen dioxide. The former is produced by sulfur compound in fossil fuels particularly coal, while the later, comes mostly from car exhaust.⁵³ Both are toxic and high level in urban environment can cause or aggravate respiratory problems in human.⁵⁴

These gases are also responsible for acid rain. Both undergo reactions in the atmosphere that produce strong acids which dissolve in rain water. The resulting rain can increase the acidity of soils and lakes, killing sensitive species and may directly damage trees and other plants.⁵⁵

Another cause for concern is depletion of ozone layer high in atmosphere cause as the result of chemicals known as chlorofluorocarbons (CFCs) used in aerosol sprays. The depletion is potentially increasing in exposure of human, animals, and plants to dangerous level of ultraviolet lights.

C. Climate Change

Climate change is one of the biggest environmental problems facing mankind and is due to a pollutant that is not normally directly harmful to humans. Carbon dioxide is produced in huge quantities by burning of fossil fuels, for example by cars, industrial process and air planes. It traps heat in the earth atmosphere and is the most important greenhouse gas. Increased levels resulting from human activities are thought to be raising air and ocean temperatures across planet, a phenomenon known as global warming or climate change. This in turn, seems to be causing melting of glaciers and ice sheet on large scale, which may lead to rises in sea level and the consequent loss of

⁴⁵ ibid

⁴⁶ Ibid

⁴⁷ Ladan, M. T., op. cit 156

⁴⁸ Ibid 159

⁴⁹ Harvey, R. J., "The Human Right to a Healthy Environment" XVII IADL congress, www.iadlcongress.com retrieved on 28th sept, 2012

⁵⁰ www.scientificdefinition.com retrieved on 28th sept, 2014

⁵¹ Environmental Problems, www.wisegeek.com retrieved on 28th sept, 2014

⁵² www.bbcnews.com retrieved on 25th sept, 2014

⁵³ EnvironmentalProblemsOp.cit

⁵⁴ ibid

⁵⁵ ibid

large areas valuable, low laying agricultural land and the displacement of number of peoples.⁵⁶

Climate change may also, have a drastic effect on agriculture due to changes in temperatures and rainfall. Many crop plants may be unable to adapt to drier or weather conditions. Droughts may affect some areas while others may suffer from flooding, due to increased rainfall. It may be that warming of the oceans will lead to more frequent and more severe hurricanes.⁵⁷

D. Water Pollution

This can occur through the release of industrial waste for example from mining and metal refining activities, into streams and rivers from where it may make its way into ocean. A variety of toxic metal can affect aquatic and marine life and may accumulate in the food chain, posing a threat to human. Another source of water pollution is fertilizer which can be washed from farm land into rivers and lakes, and essential for plants growth, can also, promote uncontrolled multiplication of algae in lakes causing an algal bloom; this reduces water quality and oxygen level and may kill fish. Similarly, use of pesticides on farm land affects the aquatic life of many species.⁵⁸

E. Invasive Species

Human often introduced animal and plant species to areas outside their natural range. Sometimes, this is done intentionally and unintentionally, but often leads to serious environmental problems. Domestic pets may kill local wildlife while non-native garden plant may escape and become established in a new area, taking over from native species perhaps because they have no natural predators in their new environment increased international travel means that disease causing organization.⁵⁹

IV. Environmental Rights (Right to Healthy Environment)

The growing concern and multiple international, regional and national legislations, agreements, and treaties influence the emergence of right to environment⁶⁰ as new realm of human rights. The right to environment has been given different conations by different writers and human rights activists; right to “healthy”, “clean”, “decent”,

“adequate,” “satisfactory”, and “ecologically balanced” environment”.⁶¹

According to Kiss⁶² “The comparison of this new human rights with formerly recognized ones help to determine its content, indeed, it has been objected that the term right to environment are too vague to allow the utilization of judicial means of redress, the very word environment can hardly be defined, even if it is generally qualified(adequate, satisfactory, healthy, ecologically balanced etc.)”⁶³

It is difficult in legal parlance to give exact meaning and content of right to healthy environment, like any other concept in law. The interpretation of the exact meaning and content of this right can only be left to subsequent test of time and perhaps judicial interpretation as argued by Dinah Shelton:

Establishing the content of a right through reference to independent and variable standards is used in human rights, especially with regard to economic entitlements, rights to an adequate standard of living and to social security are implemented in varying measures by individual states based on general treaty provisions, according to changing economic indicators, need and resources. No precise standard exist nor can such a standard be established in human rights treaties. Instead, the conventions state rights to adequate living conditions for health and well being and to social security without defining the term further. The framework treaty allows national and local regulations to elaborate on these rights, since norms are easier to defined and amend on the local level and are more responsive to the needs of community. A similar approach should be utilized to give meaning to a right to environment.⁶⁴

Furthermore, understanding the ambit and content of this right will help in determining the degree of pollution and environmental degradation that the states are obliged to prevent, and degree that should be allowed in a given situation in order not to stultify the socio economic development.⁶⁵

As stated earlier, no adequate definition to right to healthy environment, but, however, the definition given under African charter on Human and Peoples’ Rights will be much relevant which provide all people should have the right to generally satisfactory environment

⁶¹ Kiss, A., “International Human Rights Law and Environmental Problems”, www.udu.edu retrieved on 28th sept, 2014

⁶² ibid

⁶³ ibid

⁶⁴ Shelton, D., “Human Rights, Environmental Rights and Right to Environment” 28 standard Journal of International Law, 1991, p. 134-135

⁶⁵ Ameachi, E. P., “Enhancing Environmental Protection and Socio Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment under the African Charter on Human and Peoples’ Rights”, 5/1 Law, Environment and Development Journal (2009)p. 65

⁵⁶ ibid

⁵⁷ ibid

⁵⁸ ibid

⁵⁹ ibid

⁶⁰ Shaw, op. cit

favorable to their development. Nonetheless, the scope of the definition of right to environment will remain uncertain; the precise area cannot be defined as it will vary with social, economic and cultural values, and due to technological advancement in a particular place.⁶⁶

A. Right to Life as Bedrock to Right to Healthy Environment

Right to life is nowadays, universally acknowledged as a basic or fundamental human right. It is a basic right because the enjoyment of it is a prerequisite condition of the enjoyment of all other human rights. This was indicated and emphasized by Inter American Court of Human Rights in its advisory opinion on Restrictions to Death Penalty (1983) that the human right to life encompasses a "substantive principle" whereby every human being has an inalienable right to have his life respected and a "procedural principle" whereby no human being shall be arbitrarily deprived of his life.⁶⁷ Similarly, the UN Human Right committee qualified human right to life as supreme right of the human beings.⁶⁸ Under international human rights instruments, the assertion of inherent right to life of every human being is accompanied by an assertion of the legal protection of that basic human right and of the negative obligation not to deprive arbitrarily of one's life.⁶⁹ But this negative obligation is accompanied by the positive obligation to take all appropriate measures to protect and preserve human life.⁷⁰ The fundamental right to life comprises the right of every human being not to be deprived of his life and the right to have the appropriate means of subsistence and decent standard of life, thus properly understood, the right to life affords an eloquent illustration of indivisibility and interrelatedness of human rights.⁷¹ Some views expressed by members of Human Rights Committee over art 6 of the UN Covenant on Civil and Political Rights is that to take positive measures to ensure the right to life including steps to reduce the infant mortality rate, prevent industrial accidents and protect

the environment, taking the essential requirement of the right of living as a corollary of the right to life.⁷²

From the above understanding it appears that the right to life is a stem of all other rights and it encompasses right to living. The full enjoyment of right to life could not be realized if adequate condition was not given to for decent living and healthy environment for decent life. This right is regarded as corollary to right to life as such indivisible.⁷³

The right to life and its modern and proper sense is not only for the protection against arbitrary deprivation of life but, furthermore the states are under duty to pursue policies which are designed to ensure access to the means of survival for all individuals and all peoples.⁷⁴ As such states are under obligation to avoid serious environmental hazards or risks to life and set into motion monitoring and early warning system to detect such serious environmental hazards or risks and urgent action system to deal with such threats.

It can be simply argued that right to healthy environment safeguards human life into two aspects (1) the physical existence and health of human beings, and the dignity of that existence, the quality of life that renders it worth living. (2) It enlarges right to health and right to adequate or sufficient standards of living and has furthermore wide temporal dimension.⁷⁵

Some international organizations understand right to healthy environment stemming up from the right to life. According to Inter American Commission on Human Right the requirement of survival is a component of the right to life, and the right to life comprise not only protection of life in the form of preventive measures against all form of ill treatment and, threat to life and health, but also the realization of the economic and social aspiration by pursuing policies that assign priority to the basic need of health, nutrition, education and physical protection of environment.⁷⁶ According to the Commission the priority of right of survival and basic needs is a natural consequence of right to personal security and the requirement of cultural survival of indigenous populations as component of the right to life.⁷⁷

The UN Assembly has taken the right to life as encompassing protection against use of weapons of mass destruction, such as nuclear weapons.⁷⁸ Furthermore, the UN Human Right Committee while emphasizing the need to avert the

⁶⁶ Pathak, R. S., op. cit

⁶⁷ IACHR, Advisory Opinion OC 3/83 of 8th sept, 1983 series A no 3 p. 59

⁶⁸ Leib, L. H., Human Rights And Environment: Philosophical, Theoretical and Legal perspective, (MartinusNijhoff Publishers, 2011)p. 73

⁶⁹ Article 6(1) European Convention on Human Right, Art 2 American Convention on Human Rights, Art 4(1) African Charter on Human and Peoples' Rights.

⁷⁰ Association X vs United Kingdom (1978), also Art 2 European Convention on Human Rights.

⁷¹ Gormly, W. P., "The Right to a Safe and Decent Environment" 20 Indian Journal of International Law p. 23-24

⁷² Trindade, A. A., "The Contribution of International Human Rights Law to Environmental Protection with Special Reference to Global Environmental Change www.unu.edu retrieved on 28th sept, 2014

⁷³ ibid

⁷⁴ ibid

⁷⁵ Ibid

⁷⁶ Leib, L. H., op. cit. 75

⁷⁷ Trindade, A. A., op. cit

⁷⁸ Ramcharan, B.G., "The Right to Life" 30 Netherlands International Law Review, 1 (1983)p303

world from all catastrophic activities of destruction by using mass weapons assert that this kind of activities is the greatest threat to right to life which confronts mankind today, and the very existence and gravity of this threat generate a climate of suspicion and destruction of environment endangering the life of the habitants.⁷⁹

According to Churchill the right to life is theoretically applicable in terms of the environment, and people have the right to a fair trial in case the state acted harmful to the environment.⁸⁰

In the wordings of Pathak⁸¹ the need for a healthful environment is vital to the protection of life and to the preservation and enhancement of its quality and condition. Desirable standards of health and welfare will be impossible to sustain in an atmosphere depleted of life giving and life sustaining elements, interference with man's ecological relationship with nature could destabilize his human personality that is evolutionalized product of several millennia. The destruction of his cultural heritage could set him back in time grievously depriving him of that intellectual artistic and social milieu deemed essential to the sustenance of civilized man.⁸²

In sum, the basic right to life, encompassing the right to living, entails negative as well as positive obligation in favor of preservation of human life. Its enjoyment is a precondition of enjoyment of all other human rights. It belongs at a time to the realm of civil and political right and to that of economic, social and cultural rights. It establishes a link between the domains of international human rights law and environmental law. It inheres in all individuals and all the people with special attention to the requirement of survival. It has corollary to right to healthy environment and it lies as basis of domains of international human rights, and environmental law turned to the protection and survival of the human person and mankind.

B. The Interrelation between Right to Health and Right to Healthy Environment

The mere combination of the wordings and coining it is enough evidence that the right to health is an integral part of right to healthy environment. Like right to life, (right to living), the right to health entails negative as well as positive obligations. In fact, the right to health is inextricably interwoven with right to life itself. The right to life implies negative obligation not to practice any act that can endanger one's health

and is accompanied by positive obligation to take all appropriate measures to protect and preserve human health.⁸³ Art 11 of the European Social Charter linking the right to life to the right to adequate standard of life discloses the fact that the right to health, in its proper and wider dimension partakes the nature. Right to health is an individual right in that it requires the protection of the physical and mental integrity of the individual and his dignity; and it is also a social right that imposes on the state and the society collective responsibility for the protection of the health of the citizenry and the prevention and treatment of diseases. The right to health thus, properly understood, affords, like the right to life a vivid illustration of the indivisibility and interrelatedness of all human rights.⁸⁴ Art 12 of UN Covenant on Economic, Social and Cultural Rights in laying the guidelines for the implementation of the right to health singled out, the improvement of all aspects of environmental and industrial hygiene. This paved a way for future recognition of the right to healthy environment.⁸⁵

P. M. Dupuy at the 1978 colloquy of the Hague Academy of international law on "the right to health as human right" where the issue of the human rights to environmental salubrity was raised on the occasion after warning that the degradation of the environment constituted nowadays a menace and added the need for the proclamation of human right to environmental salubrity as the supreme guarantee of the right to health.⁸⁶

The protection of whole biosphere entails the protection of human beings, in so far as the object of environmental law and hence, of the right to healthy environment. The interrelatedness between right to environmental protection and the safeguards of the right to health is clearly evidenced in the implementation of Art 11 of the European Social Charter 1961, the committee of independent experts operating under the Charter, have taken measures in implementing the right to protection of health to prevent and reduce the pollution of the atmosphere.⁸⁷

An attempt has been made, in the European continent, to extend the protection of right to life and health so as to include well-being, under the realm of the European Convention on Human Right itself; prior to convening of the 1973 European Ministerial Conference on the Environment, a Draft Protocol to the European Convention on Human Right to that effect was prepared by H. Steiger. The Draft Protocol, containing articles, provide for the protection of life and health to include well-being of the environment fit for living and further

⁷⁹Trindade, A.A., op. cit

⁸⁰ Churchill, R. R., Environmental Rights in Existing Human Rights Treaties: Human Approaches to Environmental Protection. Boyle, A. E., and Anderson, M. R., (eds)(Oxford University Press, Oxford,1996)p.5

⁸¹Phathak, op cit

⁸² ibid

⁸³Trindade, A. A., op. cit

⁸⁴ Ibid,

⁸⁵ ibid

⁸⁶ Ibid,

⁸⁷ Ibid,

provides for protection of individuals against act of other person.⁸⁸

C. Human Rights and Right to Healthy Environment

Before any right can be discussed as human right it has to pass some stage of development and maturity; right to healthy environment is not an exception. There is number of argument as to whether this right can be considered as human right, and if it was considered, to what category of right it belongs, first generation, second or proclaimed third generation otherwise known as collective rights or group rights. There are some conceptual criteria developed by jurist to test whether a right is human right or not. An attempt will be made to conceptualize right to healthy environment under this test.

1) Generality Test

Human rights are general in that they pertain to all human beings and while understanding of them may vary from region to region, culture to culture, the concept of human right remain universal. The right to healthy environment is a right that belongs to every individual or group of individuals. When a group claim that right, it is not the group that possess the human right but the individuals cooperating together in the membership of that group. This right cannot be withheld from individual by reference to his race, citizenship, religion, sex, place of birth or any such limiting class qualification. The right to healthy environment belongs to all across the globe. The right satisfies the human right test of generality.⁸⁹

2) Importance Test

Human rights are more basic of fundamental than other right. They are basic and fundamental because in the scale of values they enjoy transcendental position over other rights. They are in facts the source of other rights which are derived or flowed from them. This test, applied to right to healthy environment. It easily satisfied when we remember that a healthful environment is a fundamental requirement for the protection and enhancement of quality of life and, in certain circumstances, proceeds the issue of human survival on the planet. The categories of environmental issues demonstrate clearly that degradation of the natural environment poses a grave and sometime an immediate threat to planetary life eg, depletion of ozone layer.⁹⁰

⁸⁸ Ibid

⁸⁹Edel, A., "some reflections on the concept of human right" www.unu.edu retrieved on 28th sept, 2014

⁹⁰ ibid

3) Inalienability Test

The American Declaration of Independence includes life, liberty and pursuit of happiness as inalienable rights. They constitute the central core of human rights indispensable to the nature of human personality.⁹¹ There will always be a minimum of human rights that cannot be alienated if human personality is to retain its essential character. It can be unhesitatingly concluded that the right to healthy environment is not a right that can be waived or surrendered, having regard to its fundamental relationship with the basic life process of human being. It is not possible to conceive of life or an acceptable quality of life without a sound environment to sustain it.⁹²

4) Status and Function Test (Originality)

Concerning status, human rights are those grounded in reality and not in mere convention. Human right in it is inherent feature of the fundamental values of the society to which individual belongs. They donot exist by convention but because they inhere in individuals as the owner of human personality. The right to healthy environment is rooted in reality from man's inherent condition and its indispensability to his personality as human beings; it cannot be regarded as offspring of convention.⁹³

Edel,⁹⁴ further, added that, the normative value of right to healthy environment flow through and control the relations between a political society and its members. From such a right proceed an entire bundle of environmental rights, the right to clean water and pure air, the right to protection of the social environment against degradation and of marine resources against pollution, the right to preservation of man's cultural heritage and host of other rights centered in the right to healthy environment.

Conclusively, in consideration of the above tests advocated by Edel, we can simply assert that right to healthy environment met the test human right.

D. What Generation of Rights Does Right to Healthy Environment Belongs

The idea of dividing human rights into generations was first come up in 1978 by Czech jurist Karel Vasak.⁹⁵ However, it has to be noted that when human rights are identified as right of the first generation, second or third generation does not implied that first generation rights had superseded by the second generation. The expression is used to indicate a further

⁹¹ Ibid,

⁹² ibid

⁹³ Ibid,

⁹⁴ ibid

⁹⁵ The generations of human rights www.wikipedia.com retrieved on 28th sept, 2014

distinct development in the domain of human rights; that while the earlier generation of rights continues to exist, a new generation has also come into existence.⁹⁶ The first and second generation of human right are much older, the third generation evolved for a filling significantly important gap in the international law system of human rights. They are rights exercised jointly by individuals grouped into larger communities. The third generation rights are occupied with planetary or global concern such as peace, development, communication, common heritage and humanitarian assistance.⁹⁷ The third generation rights has been described as rights of solidarity, collective rights, synthetic rights, consolidated rights, communal rights, popular or popularity rights, joints rights of individuals etc.⁹⁸

The question to be asked is to what realm of rights does right to healthy environment belongs to, to determine this, cursory look has to be made to each generation of rights vis-à-vis the right to healthy environment to ascertain where its fitted.

It has been argued previously, that right to healthy environment has rooted from the right to life and quality of life, this can be seen from the preamble of to the UN charter specifically refers to fundamental human rights, the dignity and worth of the human person as well as to better standards of life. Similarly, art 6(1) ICCPR⁹⁹ emphasize that right to life is inherent and no one should be deprived of this arbitrarily. Liberal interpretation of this article means that any act that may deprive a human from his life should be avoided eg, destruction of his environment to be unfit for human survival.¹⁰⁰ In the preamble to Stockholm Declaration of 1972, the enjoyment healthy of environment has been linked with right to life.¹⁰¹

Similarly, article 12(2)b ICECR¹⁰² categorically makes reference to protection of environment as part of realization of right of every one to enjoyment of highest attainable standard of physical and mental health, that the state parties should take steps in improvement of all aspects of environmental and industrial hygiene.¹⁰³ the African convention on the conservation of nature and natural resources, 1968 amended in 2003 added some articles among which are

Art XV (1) emphasizing the protection of environment as part of human right.¹⁰⁴ The UN General Assembly comments regarding the Convention on the Elimination of Discrimination against Women 1979 and the Convention on the Right of Child 1989 have described environmental degradation as an infringement against human right.¹⁰⁵ The 2007 Declaration on the Rights of Indigenous and Tribal Peoples Convention respectively Art 29 and 15 make reference to human right to environment.¹⁰⁶ The UN Human Right Commission Resolution 2003/71 and 2004/19 advocate the promotion of human right to healthy environment¹⁰⁷

It is evidently, clear that right to healthy environment can be traced back to civil and political rights as being corollary to right to life, in this sense it is part of first generation of human rights under the guise of right to life. Also, second generation of human right, because under the wordings of Article 12(2)b of the ICECR,¹⁰⁸ call can be made to state to provide the conditions for a healthful environment.

There is, however, another, aspects of environmental rights which generally belong to a group of individuals. In certain cases, they may have regional and even global dimension. A nuclear fallout or acid rain may affect an entire region. The depletion of ozone layer and greenhouse effect could have consequences affecting the entire planet.¹⁰⁹ Clearly, the regional or global dimension implied in the consequences above would bring the right to a healthy environment into the list of third generation human rights.¹¹⁰

The right to healthy environment includes a large number of different facet and therefore traverse and overlaps the first, the second and third generation groups of human rights. Because of the nature of environmental rights, the several facets are members of a single environmental system. It is a system that is indivisible; it is not capable of dissection and separation into individual, independently operating parts of the whole. The intimate interaction and interdependence between its different parts requires us to view the environment from a holistic approach as a single, indivisible, and close integrated operating system.¹¹¹

⁹⁶ Ibid,

⁹⁷ ibid

⁹⁸ UNESCO symposium on the study of new human rights: the rights of solidarity , 30 (UNESCO1980)

⁹⁹ International covenant on civil and political rights www.hrweb.org/legal/htmlretrieved on 2nd oct, 1014

¹⁰⁰ Phatak, op. cit

¹⁰¹ United nation declarations on human environment, 1972 www.unep.org retrieved on 8th October, 2014

¹⁰² International covenant on economic, social and cultural rights www.ohchr.org/en/professionalinterest retrieved on 2nd oct, 2014

¹⁰³ Ibid

¹⁰⁴ United Nation Environment Pogramme' Report on Protecting the Environment during the Arm conflict: An Inventory and Analysis of International Law, published in Nov, 2009 www.bookzz.org retrieved on 8th oct 2014

¹⁰⁵ ibid

¹⁰⁶ ibid

¹⁰⁷ ibid

¹⁰⁸ Ibid,

¹⁰⁹ Phatak, R. S., op. cit

¹¹⁰ ibid

¹¹¹ Ibid,

E. The Scope of the Right to Healthy Environment and Possessors' of Right to Healthy Environment

One of the concern debates in the environmental right is the question of who is the possessor of the right to healthy environment. This engaged considerable debate on the basis of recognizing an obligation in man towards the non-human elements of the planet. The principle of orthodox jurisprudence that an obligation arises only upon a correlative right cannot be serve here inasmuch as non-human elements cannot be regarded as right bearing. Professor Christopher stone stressed that:

*"..... Which would be more in line with our growing understanding of the grandness of the interrelationship of the natural, even if non human whether animate or non animate object cannot be regarded as possessors of rights they must be treated as morally considerable. Moral consideration creates duties in man to non human animate and non animate objects. The mere circumstances that non human things possess an intrinsic goodness, that is, good and in themselves should be sufficient to attract duties towards them."*¹¹²

This approach shows liberal understanding of environment. In this field two opposing argument were considered by number of jurist on anthropocentric and ecocentric. Some viewed human right to human beings only at expense of the ecosystems while others took the other side of the argument. There is very real concern amongst many commentators over the inherent anthropocentricity of environmental human rights, in the view of many, the very existence of environmental human rights reinforces the idea that the environment and natural resources are exist only for human benefit and have no intrinsic worth.¹¹³ Furthermore, they result in creating a hierarchy according to which humanity is given a position of superiority and importance above from the other members of natural community. Human survival, living standards and continued use of resources are the objectives the state of environment is determined by the needs of humanity, not the needs of other species.¹¹⁴

This human centered character of environmental human rights leads to a philosophical tension between deep and shallow ecologist. As a result of this tension some commentators wholly reject human rights proposal.¹¹⁵

¹¹² Stone, C. D., "the Environment in Moral Thought" www.unu.edu retrieved on 28th sept 2014

¹¹³ Klaus, ., "**Human Rights** and Environment : Redefining Fundamental Principles, a Paper Presented at University of Auckland, Newzealand

¹¹⁴ ibid

¹¹⁵ Gibson, N., "the Right to Clean Environment", 54 saskatchewan law review(1990)p,5

Those who condemn the human rights approach raise the following concerns:

- 1- Anthropocentric approaches to environmental protection are seen as perpetuating the values and attitudes that are at the root of environmental degradation.
- 2- Anthropocentric approaches deprive the direct and comprehensive protection; for example human health, life, and standards of living are likely to be the aims of environmental protection. Thus, the environment is only protected as a consequence of, and to the extent needed to protect human well-being. An environmental right thus subjugates all other needs, interest and values of nature, to those of humanity. Environmental degradation as such is not sufficient for complaint; it must be linked to human wellbeing.
- 3- There no guarantee of its utilization for the benefit of the environment, nor is there any recognition of nature as the victim of degradation.
- 4- Environmental protection is dependent on human protest.¹¹⁶

On the other hand, a number of arguments are put forward which may, to some extent mitigate these concern: it suggested that adegree of anthropocentrism is necessary part of environmental protection not in any sense of humanity as the centre of the biosphere, but because humanity is the only species, that we know of which has the consciousness to recognize and respect the morality of rights and because human beings are themselves integral part of nature. In short, the interest and duties of humanity are inseparable from environmental protection.¹¹⁷ It is based on this Shelton argues as follow:

*"Humans are not separable members of the universe. Rather, humans are interlinked and interdependent participants with duties to protect and conserve all elements of nature, whether or not they have known benefits or current economic utility. This anthropocentric purpose should be distinguished from utilitarianism."*¹¹⁸

Shelton further argued that an environmental human right could be complementary to wider protection of the biosphere which recognizes intrinsic values of nature, independent of needs.¹¹⁹ Birne and

¹¹⁶ Klaus. B., op cit

¹¹⁷ Ibid,

¹¹⁸ Shelton, D., Human Rights, Environmental Rights and the Rights to Environment, 28 Stanford Journal of International law(1991) 110

¹¹⁹ Ibid,

Boyle stressed that, this approach would only work to the extent that it successfully de-emphasizes the uniqueness of man's right to the environment and conforms more closely to the characterization of this relationship as a fiduciary one not devoted solely to the attainment of immediate human needs.¹²⁰

The pro activists of ecocentric approach require the integration of human rights claims within a broader decision making framework capable of taking into account, among other factors, intrinsic value the needs of future generations and the competing interests of states.¹²¹ According to them, human right institutions are too limited in their perspective to be able to balance these factors, some alternatives institutional machinery would be needed, to take a more holistic view however difficult this may be to achieve in practice.¹²² Roston accepts the paradigm of human rights for protection of human needs for environmental integrity, but in addition suggests the human responsibilities for nature.¹²³

A better option is development of all human rights in a manner which demonstrates that humanity is an integral part of the biosphere, that the nature has intrinsic value and humanity has obligation towards nature. This debate lead to a wide variety of ethical and legal approaches including legally enforceable rights for nature (supra), biotic rights (being moral imperatives which are not legally enforceable), moral responsibilities and rightness(a norm which prescribes a need for a proper healthy relationship between humanity and nature).¹²⁴

Many environmental lawyers have questioned the fundamentally anthropocentric character of environment. They are calling for an ecocentric turn around, some have argued, therefore, that we should not view environmental issues through a human rights focus, entailing a form of species chauvinism. We should instead think either of nature's rights or of limitations with respect to the intrinsic values of the environment.¹²⁵

The project of ecological human rights attempts to reconcile the philosophical foundations of human rights with ecological principles. The aim is to link the intrinsic values of humans with the intrinsic values of other species and the environment. As such, human

rights (human dignity, liberty, property, development) need to respond to the fact that the individual not only operates in a social environment, just as much as the individual has to respect intrinsic value of fellow human beings, the individual also has to respect the intrinsic value of other fellow beings (animals, plant, ecosystems).¹²⁶

Klaus expressed his opinion and middle course to be taken on anthropocentric and ecocentric approach thus:

To rectify this situation of grave imbalance, I see two options. Either we manage the ethical paradigm shift in society and don't worry about human rights doctrines. We may simply assume that these doctrines would follow sooner or later. Or we promote the ethical paradigm shift at all social levels including the constitutional and legal level. Without discussing to what extent the law can make a difference to social behavior, both of the two views appear to be wrong. Neither the traditional liberal view is true which holds a profound difference between legal norms and social legality, nor is the Marxist view appropriate which denies any difference between legal norms and social reality. The law is both purely reflecting and actively influencing the way in which society operates. That is why it matters whether ecological reflections exist in legal norms or not.¹²⁷

CONCLUSION

Human beings cannot be separated from the environment they live in; it is quite truism that contaminating the environment may affect the inherent and sacrosanct human right to life which was encapsulated in the constitution of many civil and democratic countries across the globe. The problem faced by environmental right is its enforceability due to its classification as part of social rights in some counties' constitution, however, be it that as it may, conceptualizing right to healthy environment as integral part of right to life may give a solution to the enforceability of the right. The rising concern for environmental issues makes human right to environment (right to healthy environment) very paramount. Much needs to be done by human right activists and environmental activists to ensure the sustainability and enforceability of the right.

¹²⁰Birmie, P. W.,and Boyle, A. E., "international law and environment", oxford, (1992)p. 192 quoted in Klaus, B., op.cit

¹²¹ Ibid,

¹²² Ibid,

¹²³Roston, H., "rights and responsibilities on the home planet, 18 yale journal of international law (1993)p. 251 quoted in Klaus, B. op. cit

¹²⁴ Klaus, B., op cit

¹²⁵ Ibid,

¹²⁶ ibid

¹²⁷ Ibid,

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