



UNIVERSALLY RECOGNISED PRINCIPLES IN ENVIRONMENT PROTECTION

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Abstract--Laws can, of course, guide the process of protection of environment. Laws are the way human society regulates its relationships. Traditionally universally recognized principals govern the relationship among nations. Environment protection principals define each individual's rights and the duties that governments have to protect earth's environment. Environmental principals guide the duties that governments and individual have toward nature and for maintaining a healthy environment. International Humanitarian Law governs the protection of civilians and their health needs including environmental considerations during times of changing climate.

Keywords: Environment, protection, principals

INTRODUCTION

The problem of environmental pollution in an increasingly small world concerns all countries irrespective of their size, level of development or ideology. Irrespective of political division of the world into national units, the oceanic world is interconnected whole, and winds that blow over the countries are also one.¹ The problem of environmental pollution is not new in its origin. It is as old as the emergence of Homo Sapiens on the Planet and it was realised in the times of Plato 2500 years ago.² It is a basic right of all to live in a healthy environment, as guaranteed under United Nations Declaration on Human Rights at International level and by constitutional of India, at National level under Article 21. Environment pollution consists of five kinds of pollution namely; air, water, soil, noise and light weight. The depletion of ozone layer and global warming (Green House Effect) is one of the major problems before the present generation.³ Indian constitution is perhaps one of the rare constitutions of the world which contains specific provision relating to environment protection. It puts duty on the State⁴ as well as on citizens⁵ to protect and improve the environment. The Indian judiciary has made extensive use of these constitutional provisions and developed a new “environmental jurisprudence” in India (Jaswal and Jaswal, 2014).⁶ International concern for environment protection and sustainable development is comparatively of recent origin. The U. N. Conference on Human Environment and Development at Stockholm in 1972 is considered to be the Magna Carta of environment protection and sustainable development.

INTERNATIONAL ENVIRONMENTAL RIGHTS

A growing number of international, constitutional and statutory provisions set forth rights that are relevant to and invoked for environmental protection. In some instances, the provisions guarantee procedures that are designed to provide transparency and democratic governance by allowing interested persons to have information about and input into decisions that affect their environment or redress when that environment is harmed. Such rights are also viewed as instrumental in achieving sound environmental decision-making. Principle 10 of the Rio Declaration on Environment and Development⁷ reflects the notion “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level”.

There are various principles in the field of environment protection which found universal recognition and adopted at international and domestic level while formulating various policies, laws and regulations to combat the problem of environment degradation. A brief of these principle are as follow:

Right to Information: Access to environmental information is a prerequisite to effective public participation in decision-making and to monitoring governmental and private sector activities. The right to information is included in the *Universal Declaration of Human Rights*⁸, the *International*



*Covenant on Civil and Political Rights*⁹, the *Inter-American Declaration of the Rights and Duties of Man*¹⁰, the *American Convention on Human Rights*¹¹, and the *African Charter on the Rights and Duties of Peoples*¹². In applying article 10 of the European Convention, the European Court of Human Rights has held that a state may not extend defamation laws to restrict dissemination of environmental information of public interest (*Bladet Tromsö and Stensaas v. Norway*¹³; *Thoma v. Luxembourg*¹⁴).

Public participation: It is emphasized throughout international and national environmental law. Public participation is based on the right of those who may be affected to have a say in the determination of their environmental future. Depending on the jurisdiction, this may include foreign citizens and residents. 1992 *Rio Declaration on Environment and Development*, principle 10, recognizes the need for public participation. Agenda 21, the plan of action adopted at the Rio Conference, calls it 'one of the fundamental prerequisites for the achievement of sustainable development'. Section III identifies major groups whose participation is needed are women, youth, indigenous and local populations, non-governmental organizations, local authorities, workers, business and industry, scientists, and farmers. The *Climate Change Convention*¹⁵, the *Desertification Convention*, *American Declaration of the Rights and Duties of Man*¹⁶, *International Covenant on Civil and Political Rights etc promote this concept.*

Access to Justice: The right to an effective remedy, meaning access to justice and redress, can be found in both human rights law and in environmental law. The United Nations Covenant on Civil and Political Rights¹⁷ calls for states to provide a remedy whenever rights protected under national or international law have been violated. In the European Convention on Human Rights, Article 13¹⁸ guarantees a remedy whenever there is a violation of the rights and freedoms contained in the Convention, thus encompassing violations of the right to information

Environmental Quality: At present, no global human rights treaty proclaims a right to environmental quality, although the *Universal Declaration of Human Rights* and other human rights instruments contain a right to an adequate quality of life and a right to health. Compare *Flores v. Southern Peru Copper Corporation*¹⁹(where the court found the right to life and the right to health too indefinite to constitute customary international law and therefore inadequate as a foundation for an enforceable right to a clean environment) with *KedarBhaktaShrestha& Others v. HMG, Department of Transportation Management & Others*²⁰, where the Supreme Court of Nepal recognized a right to a healthy environment based in part on the provisions of the *Vienna Convention for the Protection of the Ozone Layer* and the Rio Conference on Environment and Development). In the *Corfu Channel Case*²¹, however, the ICJ endorsed the principle that sovereignty itself embodies "the obligation of every state not to allow its territory to be used for acts contrary to the rights of other states". Similarly, in the *Lac Lanoux Arbitration*²² the Tribunal held that a state has an obligation not to use its rights to the extent of ignoring the rights of others. In the *Nuclear Tests Case*²³ Australia asked the ICJ to declare that the carrying out of further atmospheric nuclear tests was inconsistent with the applicable rules of international law and would be unlawful "in so far as it involves modification of the physical conditions of and over Australian territory and pollution of the atmosphere and of the resources of the seas". The *Trail Smelter* principles were cited with approval and may well have determined the outcome of the case had the French Government not made a unilateral declaration of intent to stop testing. As a result of this declaration, the Court stopped short of issuing a decision on the merits of the action.

The Precautionary Principle: It has been described as where there are threats of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The implication of this duty is that the developers must assume from the fact of development activity that harm to environment may occur and that they should take necessary action to prevent that harm. This principle is known as precautionary principle.²⁴ This Principle appeared in the Draft Convention for the Conservation and Wise Use of Forests prepared in 1991 by the Center of International Environmental law.²⁵



The Polluter Pay Principle (PPP): It received first support in 1987 in the OECD Guiding Principles concerning International Economic Aspects of Environmental policies. The PPP was defined by it as an instrument for "allocating costs of pollution prevention and control measures".²⁶ The European community after one year followed this OECD principle by adopting the first Environment Action programme. It was included in Article 174 of the EU treaty 1997. Since 1990, when the International Convention on oil pollution, preponderance, response and co-operation was agreed upon by the International Maritime Organization, the PPP has been acknowledged as a general principle of international environmental law.²⁷ In 1992, the Rio declaration includes the PPP in principle 16.

Intergenerational Equity: The origins of the principle can be seen in the Principles 1 and 2 of the 1972 Stockholm Declaration. Principle 1 of the declaration provides that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of 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 generations²⁸. Principle 2 of the declaration provide that the natural resources of the earth including the air water land, flora and fauna and especially representative samples of ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management.²⁹ The Report of World Commission on Environment and Development popularly known as Brundtland Report (Brundtland, 1987) emphasizing the importance of sustainable development, talked not only of equity for the present but of intergenerational equity.³⁰ Principle received further wing in principle 3 in Rio summit 1992 which provide that the right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations.³¹

CONCLUSION

Laws can, of course, guide the process of sustainable development. Laws are the way human society regulates its relationships. Traditionally International Law governs the relationship among nations. Human Rights law defines each individual's rights and the duties that governments have to protect each person. Environmental Law guides the duties that governments and individual have toward nature and for maintaining a healthy environment. International Humanitarian Law governs the protection of civilians and their health needs - including environmental considerations - during times of armed conflict.

The general objective of international environmental and sustainable development law is formation of a global partnership of all peoples and nations to ensure for present and future generations. The well-being of humanity and the larger community of life by protecting and restoring the Earth's environment, of which all life is a part and apart from which humanity cannot survive or realize its creative potential. This global alliance should be founded on commitment to an integrated framework of universally recognised principles as these principles found in the base of every facet dealing with the problem of environment protection so formed a strong back bone for them.

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⁹Article 19(2).

¹⁰Article 10.

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¹²Article 9.

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