1 CONCEPTUAL GROUNDWORK FOR THE ANALYSIS OF THE LINKAGE BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

1.1 INTRODUCTION

There is a close relationship between human beings and the environment. The total environmental system in which human beings exist includes not only the biosphere but also natural and the built surroundings. ‘Environment’ includes “water, air and land, and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property,” (EPA, 1986). Environment embraces not only the physical and biological aspects, but also several other aspects such as social, economic, political, religious and cultural. Human beings have a relationship with the environment and form a component of the entire eco-system.

There has been a growing consciousness over the last two decades about the relationship between a safe and healthy environment, on one hand, and the enjoyment of human rights on the other. The two issues which are topmost on the agenda of states whether on the domestic or international scene are human rights and the environment. Human rights, because without them human beings are bereft of dignity; the environment, because in the race for economic development the pollution of air, land and water is taking place at an alarming rate. Environmental degradation often leads to human rights violations. It has been observed that people harmed by environmental degradation often constitute the poor and marginalised sections of society, ethnic minorities and indigenous people, especially in developing countries. Traditional international environmental law addresses rights and obligations between nation states and has little to offer individuals harmed by environmental degradation.

Human beings have a right to enjoy a pollution-free environment for their health and well-being. At the same time they have a responsibility to protect and improve the
quality of the environment not only for themselves and the future generations, but also to ensure the sustainability of the entire eco-system.

Even though the right to safe and healthy environment is not articulated in a legally binding international instrument, the linkage between the environment and human rights is being increasingly appreciated, and several countries have recognised the right to a clean and safe environment at the national and regional levels. Several international texts also acknowledge the connection between environment protection and human rights.

In this introductory chapter, the theoretical aspects in respect of human rights, environment and the linkage between human rights and environment protection are explored. Human rights, though a modern concept are an integral part of human history. The origin, nature and concept of human rights has been discussed to place in context the developments of the present-day world and the debate surrounding the emergence of a right to environment as a third generation human right. The linkage between environment and human rights is also relevant in the context of environment degradation and human rights violations. Finally, the linkage between environment and human rights is discussed in the light of the concept of sustainable development and the growing focus on intergenerational equity and the responsibility of the present generation to protect the planet for the future generations (Weiss, 1989).

This Chapter highlights the key issues addressed in the dissertation and defines the scope and significance of the study and it’s contribution to knowledge.

1.2 THE CONCEPT OF HUMAN RIGHTS

Human rights are understood to mean the inalienable rights that human beings possess by virtue of being human and aim to secure for individuals the conditions necessary to lead a minimally good life. Everyone has a right to expect these conditions and public authorities, national and international are best placed to secure them (Nickel, 1987). Human rights recognise the dignity in every person as a human being regardless of his or her particular nationality, religion, race, gender, sexuality or ethnicity. Human rights have become the ethical yardstick against which a government’s treatment of its people is measured.
The ever-growing body of UN human rights agreements are seen by most political commentators as proof that these rights exist universally and therefore have to be respected by everyone. A broad general consensus has emerged in the twentieth century on a common understanding that all humans are entitled to certain benefits and treatment simply because they are human. Within many nations political debates range over the denial or abuse of human rights. Unfortunately, human rights are far more complicated. ‘The origin, nature and content of human rights reveal many hurdles in giving human rights a character of universality and inalienability,’ (Heard, 1991). The basic idea of human rights which people are claimed to possess simply because they are human is seen by many critics as without any reasoned foundation. The question recurrently asked is do these rights exist? Where do they come from?

There are several philosophical reflections on the concept of human rights. Although the expression ‘human rights’ is of recent origin, and it emerged from the post-second World War UN Charter and Conventions, the concept of such rights is as old as the doctrine of ‘natural rights’ founded on ‘natural law’. It was believed that certain rights were above the rights created by human authorities and had a universal application. They existed even before the formation of a political society. The drawback in the theory of natural rights, however, was that it merely signified an ideology without any legal backing. There were no agreed rights and no legal machinery to enforce them.

The concept of natural rights as derived from divine power, gave it the moral authority but its religious foundation created the difficulty in acceptance. Political philosophers challenged the theory based on religious foundations. According to Thomas Hobbes (1651), God did not have a role in the state of nature but some claim or entitlement could be derived from natural rights in the form of self-preservation. The 17th century philosopher John Locke, in his ‘Two Treatises of Government’ (1688) argued that individuals possessed natural rights irrespective of political recognition granted to them by the state. According to Locke, natural rights flowed from natural law. Natural law originated from God and everyone owed a duty of self preservation to God. Therefore each individual had to be free from threats to life, liberty and property. Locke went to the extent of saying that individuals are justified in taking arms against their government should it systematically and deliberately fail to secure individual’s possession of natural rights.
The English political writer Jeremy Bentham vehemently criticized the natural rights concept as rhetorical nonsense stating that rights can only be created by law of society. According to Bentham, ‘Right, substantive right is child of law, from real laws come real rights; but from ‘laws of nature’ (can come only) ‘imaginary rights.’

Immanuel Kant, another 17th century philosopher re-enforcing the natural rights theory, stated that human beings organised themselves into state structured society because they needed to protect each other from violence found in the state of nature. Prescribing basic rights for civil society such as respect for equality, freedom and autonomy of citizens, Kant’s political doctrine derived from moral philosophy supported the view that the state should be organised through imposition of and obedience to laws that applied universally. Kant’s moral philosophy is based on an attempt to identify those principles of reasoning that can be applied equally to all rational persons, irrespective of their own specific desires or interests. For him the basis of moral reasoning must rest upon a condition which all rational individuals are bound to assent to. For Kant human rights originate in human reason. He prescribed that basic rights were necessary for civil society.

The 18th century debate centered on whether the rights were creations of particular societies or were independent of them. Modern theorists developed the notion of natural rights that do not draw their source or inspiration from a divine source. They are a product of a particular society and its legal system. The contemporary notion of human rights draws deeply from the natural rights tradition. The idea that all human beings possess human rights simply by their existence and that these rights cannot be taken away are based on natural rights.

History shows that governments do not generally grant rights willingly, in which case rights have to be secured through a successful challenge to absolutist authority. Following the thirteenth century Magna Carta which set limits on the powers of the monarchy in England, the 1976 American Declaration of Independence as well as the 1979 French Declaration on the Rights of Man and the Citizens were landmarks of how revolutionary visions could transform the political system and ensure justiciable guarantees for the people. The French declaration proclaimed certain rights as natural, inalienable and sacred to human beings.
When a right is said to be a human right, it is in essence general or universal in character and extends in theory to every person without discrimination in some instances even the unborn. (Adedeji, 2013). A human right is a universal moral right, that is, something which every human being is entitled to because one is human (Donnelly, 1985; Cranston, 1973; Wiseberg, 1996). While human rights clearly have a moral basis, they have evolved into legal rights that define the relationship between governments and the people. Human rights are universal legal guarantees which protect individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges governments and other duty-bearers to protect and promote human rights while, at the same time, refrain from doing certain things that violate human rights.

Human rights are internationally agreed values, standards or rules that regulate the conduct of States towards both their own citizens and non-citizens (Baer, 1999). The premise of international law is that these rights are inherent in a human person. They are not given to the people by the State, and the State cannot deprive the people of these rights (Wiseberg, 1996). At the international level Human Rights are rights of individuals and groups that can be claimed from the State. Human Rights are not competing claims. They are fundamental entitlements that all individuals have, such as right to life. All human rights are fundamental rights (Cullet, 2000).

Human rights theories have been criticized as emerging from the western values of political liberty and freedom whereas it is argued that in the Asian system of values there is greater emphasis on order and discipline. Political debate and ethical disputes centre on the cultural imperialism of the west. Call for universal acceptance of human rights reflects imposition of western values on other cultures. Questions are raised as to whether human rights according to the European view are rights of individuals separable from their society or whether human rights apply to collectivist or communitarian societies that view individuals as an indivisible element of the whole society. The idea of human rights as an entitlement of every human being with universal scope is a recent development.

According to Amartya Sen, the concept of universal human rights is built on an idea of ‘shared humanity’. Rights are not derived from citizenship or membership of any nation but taken as entitlements of every human being (Sen, 1998). The proclamations of human rights are really strong ethical pronouncements as to what should be done. They demand the acknowledgement of an imperative and indicate
that something needs to be done for the realization of these recognised freedoms identified through these rights. They are clearly not claims that human rights are already established legal rights enshrined through legislation or common law (Sen, 2009). Public articulations of human rights are often invitation to initiate some fresh legislation. The framers of UDHR hoped that it would serve as some kind of a template for new laws that would be enacted to legalise human rights across the world. However, regarding the legislative route, Professor Amartya Sen is of the view that if an unlegislated human right is important then it would be a mistake to presume that it should be legislated. Because of the importance of communication, advocacy, exposure and informed public discussion, human rights can have influence without necessarily depending on coercive legislation. The effectiveness of human rights perspective does not rest on seeing it invariably in terms of putative proposals for legislation.

The motivation for human rights and legitimacy has been explained on the basis of universal moral standards, as an acceptable bench mark followed by governments or cultures beyond the religious, political, and economic divide. Without universal human rights, one is left simply trying to assert that one’s own way of thinking is better than somebody else’s. The prime rhetorical benefit of human rights is that they are viewed as being so basic and so fundamental to human existence that they should trump any other consideration (Dworkin, 1978). The universal acceptability of human rights could either be justified on grounds of origin of moral value or in the alternative, the acceptance of human rights as natural rights that anyone can deduce from the nature of humankind or human society. Some philosophers are of the view that the object of human rights is to secure minimum levels of decent and respectful treatment (Orend, 2002).

The main arguments put forth by A D Heard for a universal basis for human rights theories are summarised as under (Heard, 1991):

(1) Human rights exist in order to protect the basic dignity of human life. According to the UDHR, human rights flow from ‘the inherent dignity of the human person’. Human rights must be directed to protect and promote human dignity. If human rights are meant to be universal standards, the inherent dignity that is supposed to be protected should be a common vision.
(2) Human rights are based on the requisites for human well-being. Human rights are not just a product of morality but protect the basic freedom and well-being necessary for human agency. They are essential pre-requisites for being human. Right to life is absolute and cannot be overridden or infringed and must be fulfilled without any exceptions. Humans are entitled to those rights that are proportionate to their capacity for agency (Gewirth, 1985).

(3) Human rights are based on evolution and human development. Human rights include rights to things needed for subsistence and cover aspects of intellectual and emotional development as well (O’Manique, 1990).

(4) The basis for human rights is to provide the needs for human existence. Human rights may be limited to providing all humans with the needs for their physical subsistence. Human rights would guarantee the provision of food, clothing, and shelter without which anyone would perish. In addition, human rights can cover a large array of social-welfare programs such as basic health care, guaranteeing work to all that are capable, providing education necessary to obtaining the work. Thus, quite a fundamental reformation of most political systems would occur if governments seriously addressed welfare programs as essential human rights.

The advantages in basing human rights on the needs for subsistence are that there will be much less disagreement over what is meant by, or needed for, ‘survival’ than one will find for ‘dignity’, ‘well-being’, or ‘development’. Human rights based on subsistence can be much more readily applied as global standards (Heard, 1991). Nevertheless, there is still some concern with variations that will result from different societies’ views of the specific ways in which needs should be satisfied.

The common ground in all the four theories of human rights based on dignity, well-being, human development or subsistence is that they are all aimed to protect some quality of life. Because one is alive, one should lead a life filled with dignity, well-being, or continuing development.

1.3 DEVELOPMENTS WITHIN THE UN SYSTEM

The UN has been active in producing a growing number of agreements on human rights. The concept of international human rights law actually emerged with the founding of the United Nations (UN). The preamble of the UN Charter, 1945
‘reaffirms faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of all nations large and small.’

In Article 1, it commits itself to promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. In 1948, the UNGA adopted the Universal Declaration of Human Rights (UDHR, 1948) which was primarily a statement of ideals. The first sentence of the preamble to the UDHR reads as follows:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”

Article 1 of UDHR states that, “All human beings are born free in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

As per the UDHR, human rights constitute ‘a common standard of achievement for all peoples and all nations’. Human rights are internationally agreed upon minimum standards for treating humans with dignity (UNHR, 2006). The UDHR being widely accepted has attained the status of customary international law. Although the UDHR was not legally binding, nor did it entail a machinery for its enforcement, it nevertheless paved the way for subsequent treaties that drew upon its provisions and codified these rights under international law. In 1966, the UNGA produced two treaties that were meant to be the legally binding version of the UDHR. Theses were

(i) The International Covenant on Civil and Political Rights (ICCPR) and

The two treaties, together with the UDHR are sometimes referred to as the International Bill of Rights and form the bedrock of today’s human rights structure. The human rights system does not comprise a rigid legal structure. The norms inherent in it can be expanded to incorporate all issues that endanger the attainment of a full and decent life.

At the national level, the States, which are party to the international conventions on human rights, implement the internationally recognised human rights internally through domestic legislation. Enforcement is done through courts and through ombudsmen and National Human Rights Institutions (NHRIs) within the respective
countries. NHRIs also participate in discourses on human rights and cooperate with each other at the international level.

1.4 CLASSIFICATION OF HUMAN RIGHTS

The most common classification of human rights at the international level is civil and political rights, on one hand, and economic, social and cultural rights, on the other. The civil and political rights are often called the ‘first generation rights’. These are the rights of individuals relating to personal liberties such as the ‘right to life’, liberty and security of the individual; freedom from torture and slavery; political participation; freedom of opinion, expression, thought, conscience and religion; freedom of association and assembly which the States have taken upon themselves as an obligation to respect. The civil and political rights are strongly individualistic and serve negatively to protect the individual from the excesses of the state. These rights were enshrined in international law first by articles 3 to 21 of the UDHR and subsequently by the ICCPR.

The social, economic and cultural rights are called the ‘second generation rights’. These rights oriented towards security of the individual include right to work; right to education; food; shelter; healthcare and a reasonable standard of living. The States need to take affirmative action for achieving the progressive realisation of these rights in the long term. These were covered in the Articles 23 to 29 of the UDHR and subsequently entrenched in the ICESCR.

During the Cold War period the first generation rights were prioritized by the Western countries whilst the second generation rights were treated as socialist notions. It was emphasized that the first generation rights were of immediate application whereas the second generation rights were to be implemented progressively and were dependent on the resources available with the state.

The newly emerging rights, termed as the ‘third generation rights’ are ‘collective rights’ as well as rights of individuals constituting the group in the form of a solidarity. The so called ‘solidarity rights’ include the right to environment, the right to peace, and the right to development. These rights are among the most debated rights as there is no political or legal consensus on them. The ‘right to development’
received recognition by the UN in 1986 with the adoption of a declaration to this effect (UNGA, 1986).

The theory of the aforementioned three generation of rights was advanced by the Czech-French jurist Karel Vasak who aligned them with the three tenets of the French revolution, namely, liberty; equality and fraternity (Vasak, 1979).

The global politics of justice in the latter half of the 20th century became more and more involved with the second generation rights. The global recognition of removal of poverty and other economic and social deprivations as serious human rights issues has pressurised individual countries to carry out institutional and policy reforms. The argument by human rights advocates against the second generation rights are that they are not feasible to be maximally realised. The viability of this approach however, does not crumble just because further social changes may be needed at a given point of time to make more and more of these rights fully realizable and actually realized (Sen, 2009). According to Amartya Sen, if feasibility was a necessary condition for people to have economic, social and other rights, even right to life and liberty would be nonsensical given the infeasibility of ensuring life and liberty of all against transgression. ‘We cannot prevent the occurrence of murder somewhere or other every day. Nor with the best of efforts we can stop mass killings as in Rwanda in 1994, New York on Sept 11, 2001, or in London, Madrid, Bali and Mumbai. The confusion in dismissing claims to human rights on grounds of incomplete feasibility is that a not fully realized right is still a right, calling for remedial action. Non-realisation does not in itself make a claimed right a non-right, rather it motivates further social action,’ (Sen, 2009).

The third generation rights are distinguished from the first and the second generation rights as their realisation is not only dependent upon the State’s affirmative and negative duties but also upon the behaviour of all actors on the social scene, that is, the individual, public and private bodies. The third generation rights as a new category of rights are seen as motivators for the states to ensure appropriate conditions for societies, especially in the developing world to provide the first and second generation rights which are already recognised.

It is being increasingly realised that all rights are equally important. The people cannot fully enjoy their political and civil rights unless their social, economic and cultural rights are simultaneously realised. In other words, political and civil rights,
on one hand, and economic, social and cultural rights, on the other, must be placed on an equal footing with each other. As long as this is not done, disparity and inequality would continue to operate, leading to disturbances, tensions, conflicts and violence. It is essential to protect, promote and respect both sets of rights for achieving proper human development and global peace (Patil, 2007).

The right to environment requires states to adopt policies that promote protection of the environment, improve the quality of the life of people and ensure that they are protected from environmental risks generated by the government or the private sector (Nickel, 1993).

Justice Pathak articulated that the right to environment embodies elements found in each of the categories of rights and therefore it should not be categorized as a civil and political right or an economic, social and cultural rights or even a solidarity right (Pathak, 1992). The World Conference on Human Rights, held at Vienna in 1993, in its declaration (Vienna Declaration, 1993) affirmed that human rights are “universal, indivisible, interdependent and inter-related”. With the adoption of the universality declaration and the integration of culture into human rights, an attempt was made at the global level to ensure that human beings everywhere are treated in an equal and fair manner. It was emphasized that ‘while the differences in historical, cultural and religious backgrounds can be kept in mind, the states are duty bound to protect and promote all human rights and fundamental freedoms’.

Most governments now consider human rights to apply universally. At the World Summit held in 2005, the world leaders passed a resolution in the UN General Assembly reaffirming that the common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility are essential for maintaining international relations (UNGA, 2005).

Among the UN member countries, 162 have ratified the ICESCR while 168 have ratified the ICCPR. There are nine core human rights treaties (Box 1.1) and more than 80 per cent of the members have ratified four or more conventions. Monitoring bodies have been established within each of these treaties under the UN system to monitor the implementation of the treaty provisions by the States parties. Some treaties have also been supplemented by Optional Protocols dealing with specific concerns.
Box 1.1

The Core Human Rights Treaties

Following is an enlistment of the core human rights treaties along with the respective years of their enactment, and the number of parties that are signatories to each of these treaties:

1. International Convention on Elimination of All Forms of Racial Discrimination (1965, 177 parties);
2. The International Covenant on Civil and Political Rights (1966, 168 parties);
3. The International Covenant on Economic, Social and Cultural Rights, (1966, 162 parties);
4. Convention on the Elimination of All Forms of Discrimination Against Women (1979, 79 parties);
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, 155 parties);
6. Convention on the Rights of the Child (1989, 194 parties);
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, 47 parties);
8. International Convention for the Protection of All Persons from Enforced Disappearance (2006, 42 parties); and

Source: UN Treaty Collection 1(status as on 13 May, 2014).

Even though human rights signify internationally agreed upon minimum standards for treating humans with dignity, the manner in which different countries implement and enforce them varies. ‘There is an immeasurable distance between what we call human rights and the right of all to be human; and that this distance can begin to be traversed only if we claim the audacity to look at the human rights models from the standpoint of the historically oppressed groups.’ (Baxi, 1989). Despite the last century being described as a century of human rights, “rightless and suffering peoples’ still remain,” (Baxi, 2006).

In recent years, the human rights dialogue has expanded beyond the role of governments to also include the role of non-State actors such as transnational corporations (TNCs) and international organisations including development financial institutions such as the World Bank (WRI, 2010). Human Rights

1 Available on https://treaties.un.org/
Conditionalities are attached to development assistance and it is now common for donor states to demand that recipient states respect fundamental human rights (Thiis, 1996). The Global Compact, launched by the UN Secretary General in 1999 at the World Economic Forum annual meeting calls upon businesses to support and respect the protection of internationally proclaimed human rights within their sphere of influence and to make sure their own corporations are not complicit in human rights abuses (UNGC, 1999). In 2004, the principle that businesses should work against all forms of corruption was added to the Global Compact.

Thus, it emerges that in the context of the third generation rights, recognition of the right to a clean and healthy environment will ensure legal protection and compel the state and other state actors to act towards its actual realisation. A rights-based approach to environmental protection makes people the focus of concern. It imposes a duty on the government to regulate the activities of not only the government but of the non-governmental sector as well, and compels it to ensure that environmental quality is maintained in such a way that it meets its obligations under international human rights law in terms of respecting, protecting and fulfilling human rights (Zimmer, 2001). The global debate centres around aspects such as the right to a healthy environment (RHE) as a pre-requisite for the enjoyment of human rights; the fulfillment of procedural human rights such as access to information, full participation in decision-making, and access to justice in environmental matters; the need to add the ‘right to a safe and clean environment’ as a new substantive right to the existing internationally recognised human rights and derivation of the right from the existing range of human rights (Boyle, 2012; Shelton, 2010; UNEP, 2014). The legal aspects of the linkage between environment and human rights have been discussed in Chapter 3.

1.5 ENVIRONMENT-LINKED HUMAN RIGHTS VIOLATIONS

As already stated in paragraph 1.1 above, degradation of the environment adversely affects the quality of life. Any deprivation of individual or group rights to clean air, water, land or healthy environment involves a serious violation of human rights. (Articles 3, 17, and 25 of UDHR, 1948). In the context of transnational toxic trade and natural resource exploitation, it has been brought out that the victims of human rights abuse are the environmental activists, powerless indigenous populations and other minorities who face the danger of environmental injustice and human rights
abuse especially under authoritarian regimes. It is argued that environmental injustice needs to be included as a component of human rights instruments (Adeola, 2001).

According to Sachs, the Worldwatch Research Associate, ‘the ravages of environmental exploitation are often backed up by brutal human rights violations’. In many countries, communities and individuals who suffer due to environmental degradation and protest against the damage are systematically victimised and subjected to human rights violations. This has been revealed in cases of human rights abuses inflicted on communities and individuals in various parts of the world (Table 1.1). The Worldwatch report documented how the poor minorities, who already face discrimination in society and who have limited means to protest or express their concerns, are the most common victims of environmental and human rights abuses (Worldwatch, 1995).

**Table 1.1 Environment-related human rights violations**

<table>
<thead>
<tr>
<th>Year</th>
<th>Details of human rights violations pertaining to the environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>Assassination of Chico Mendes, leader of the protest against the deforestation of the Amazon in Brazil.</td>
</tr>
<tr>
<td>1992</td>
<td>Women protesting peacefully against the imprisonment of environmentalists, beaten up by Nairobi police.</td>
</tr>
<tr>
<td>1994</td>
<td>Journalist in Cambodia investigating the military's illegal involvement in the country's timber industry found dead two days after being warned by police to stop investigation.</td>
</tr>
<tr>
<td>1995</td>
<td>Bomb blast in the office of an environmental organisation lobbying peacefully to protect the nesting area of an endangered turtle from damage by tourism in the coastal city of Zakynthos, Greece.</td>
</tr>
</tbody>
</table>

*Source: Compiled from Worldwatch Paper 127: 1995*

The activists who suffer such human rights abuses are mostly those who are also engaged in raising wider social issues affecting the health of local communities and the environment they live in (Table 1.2).
### Table 1.2 Community level campaigns for environmental justice

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Details of campaigns for environmental justice at the community level</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>The Ogoni peoples’ fight in Nigeria against the Government-sponsored ravages of the Shell Petroleum Development Company.</td>
</tr>
<tr>
<td>2.</td>
<td>The campaign of the Udege forest people of Siberia against Russian, Japanese, South Korean and US logging firms, whose operations destroyed the Udege’s resource base and caused severe soil erosion and siltation of river systems.</td>
</tr>
<tr>
<td>3.</td>
<td>The protest of the Yami people of Orchid Island, Taiwan, against the Government's storage of nuclear waste in rusting metal drums in a facility that the tiny ethnic minority never agreed to allow on their lands.</td>
</tr>
<tr>
<td>4.</td>
<td>The fight in China by both the environmentalists and human rights activists against the construction of the Three Gorges Dam.</td>
</tr>
</tbody>
</table>

*Source: Compiled from Worldwatch Paper 127: 1995*

The victimisation of local communities and indigenous peoples by corporations involved in extractive industries and large scale development projects in developing countries continues despite protests. For example, in Philippines where natural resource extraction is one of the main economic activities, local communities including indigenous peoples (IPs) and their lands are the most affected. While on one hand resource extraction is seen as generating economic development, on the other hand it causes human, social and environmental damage. Despite regulatory legislations for the mining sector and a Presidential Executive Order aimed at ensuring environmental protection and responsible mining, the mining activities are causing environment degradation affecting the quality of life of the communities living in and around the area of mining operation. Mining industry has direct impacts on the environment as it reduces the natural resources, the forests and water sources. It also affects negatively the livelihood of local communities and indigenous peoples due to forced displacements and violations of economic, social and cultural rights. Civil and political rights are also infringed by the fact that local populations are not given the possibility to be properly informed of and associated with extractive projects through free, prior and informed consent and that their protest is repressed with violence. A Human Rights Impact Assessment conducted by an independent

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2 No 79 of Series 2012; available at [http://denr.gov.ph/component/content/article/831.html](http://denr.gov.ph/component/content/article/831.html)
research institute\textsuperscript{3} in 2013, reported several deficiencies which triggered violent conflicts between the communities and the exploiting company. Though the main duty bearer to guarantee the enjoyment of the human rights is the Government of Philippines, the Commission on Human Rights of the Philippines (CHR) has to take an active role to promote the adherence of the Guiding Principles on Business and Human Rights to the Philippines society. These principles adopted by the UN in June 2011, provide guidance on the activities of private enterprises with regards to human rights impact (Ruggie’s Principles, 2011). As many of the environmental problems are caused by businesses they have a responsibility to ensure that their operations do not cause or contribute to human rights violations.

Gross violation of human rights is associated with development of mega dams displacing local population. The activists in India, including women and tribals, protesting in the state of Maharashtra, against their displacement due to the Sardar Sarovar Dam project on the river Narmada were subjected to excessive use of force by the police authorities, unjustified lathi charge and indiscriminate arrests (Fisher and Sharpe, 1995). In 2007, farmers and peasants protesting against the land acquisition deal for a car project by a private company in Singur in West Bengal and a similar agitation launched by farmers against the establishment of a Special Economic Zone in Nandigram were subjected to police atrocities. Several villagers were killed in the firing at Nandigram\textsuperscript{4}. A 2010 research by Human Rights Watch in four Chinese provinces found that the government detained people protesting lead pollution from factories and even parents seeking medical help for their children. In Kenya, an environmental activist protesting and seeking redress from a polluting factory in Mombasa was repeatedly subjected to threat and arrest even though the right to a healthy environment was included in Kenya’s Constitution (World Report, 2013).

According to a report published by Global Witness, a non-profit organisation, human rights violations have increased substantially. The death of those who peacefully advocated for the protection of their human right to environment and land has been documented (Global Witness, 2013). The organisation found 908 documented murders of environmental human rights defenders in 35 countries from 2002 through 2013, an average of one a week. According to Global Witness, only 10

\textsuperscript{3} Institute for Peace and Development on the Tampakan Cold-Copper Mine, in Mindanao, available at <http://www.miscereor.org/fileadmin/redaktion/HRIA>

\textsuperscript{4} ‘Nandigram violence, West Bengal Government withdraws petition.’ NDTV, 24 February, 2012
perpetrators are known to have been tried, convicted and punished. Brazil, with 448 cases was found to be the most dangerous for those who were protecting their right to land and environment, followed by Honduras (109) and Philippines (67).

While the human rights activists campaigning for social justice and those engaged in wider issues of environmental protection have joined hands at the local level to link human rights and environmental protection in their campaigns for environmental justice, this has not happened at the global level. Similar movements are thus required at the regional and international levels to enable campaigners from both sides to convince policy-makers all over the world of the need for including the ‘right to a clean and safe environment’ in international law. This is because it is imperative to safeguard the right of each person to a healthy and clean environment (Sachs, 1995).

The Worldwatch study suggested that the best way to guarantee a safe and healthy environment for all would be to ensure that the human rights of communities are well protected, and that the vulnerable and marginalised members of society have access to information so that they can raise their voices freely against the polluters. The polluters would then be unable to dispel their views easily, and would instead be compelled to find alternatives to their polluting activities. The environmentalists and human rights activists should join hands to ensure a safe environment for the future generation. The challenge, however, lies in the formation of a coalition that is cohesive, powerful and effective against those degrading the environment. The right to a safe and healthy environment was recognised in the US and other industrial states largely due to proliferation of grassroots activism, vigorous information campaigns, growing public awareness, efforts of various NGOs, media, exposure of environmental disasters and strong legislative and political response (Adeola, 2001).

A growing number of environmentalists, civil rights activists and environmental organisations have emphasized the need for codification of the right to a safe and sound environment at all levels. The right to a healthy environment would help to strengthen accountability of the government and other actors such as businesses, financial institutions and facilitate an understanding of the consequential effects on human rights as a result of environmental degradation (World Report, 2013).
1.6 ENVIRONMENT, DEVELOPMENT AND HUMAN RIGHTS.

Environment degradation adversely affects social progress and impacts the right to development. It thus affects human development.

The Rio declaration on Environment and Development (Rio Declaration, 1992) recognises the right to development as one of its 27 principles. Principle 3 of the declaration states that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.

The right to development, a third generation right, was first recognised in 1981 in Article 22 of the African Charter on Human and People’s Right as both an individual right as well as a collective right. In 1986, the declaration on the right to development was subsequently proclaimed by the UN and adopted by the General Assembly (UNGA, 1986). It was reaffirmed in 1993 by the Vienna Declaration and Programme of Action (Article 10) as a “universal and inalienable right and an integral part of the fundamental human rights” (Vienna Declaration, 1993). The Office of the High Commissioner for Human Rights (OHCHR) uses the expression ‘rights-based approach to development’. This approach has also been adopted by several UN agencies. It integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. In the words of Mary Robinson, former head of OHCHR, “the right to development is all-encompassing. It demands the realization of all human rights: civil, cultural, economic, political and social.” (Robinson, 1998).

The quality of life and well-being of human beings depends on the quality of the environment they live in. Access to clean drinking water and sanitation, food, energy resources, pollution and free air are all essential for human beings to be able to live a life with dignity. The environment provides the goods and services essential for human development. Malnutrition, lack of safe drinking water and environmental pollution pose serious problems to human health. Environmental problems also have a negative impact on human rights and human development. According to Merrills, conservation and improvement of the environment quality is a way to satisfy human rights (Merrills, 1996).

An assessment made by the PBL Netherlands Environmental Assessment Agency (NEAA, 2005) in respect of the Millennium Development Goals (MDGs, 2005), while
highlighting the major environmental problems that would have a negative impact on the realisation of the MDGs, indicate that environmental issues need to be addressed for human development otherwise the MDGs cannot be realised in a sustainable manner. An integrated approach to social and economic development and the environment is needed to fulfill the enjoyment of human rights.

The development approach of the 1980s presumed a close link between national economic growth and the expansion of individual human choices. Leading economists such as Dr. Mahbub-ul Haq, who played a key role in formulating the human development paradigm, came to recognise the need for an alternative development model due to many factors. In 1990, the work of Amartya Sen and others provided the conceptual foundation for an alternative and broader human development approach defined as a process of enlarging peoples’ choices and enhancing human capabilities (the range of things people can be and do) and freedoms, enabling them to live a long and healthy life, have access to knowledge and a decent standard of living, and participate in the life of their community and decisions affecting their lives. Thus, UNDP launched the idea of ‘human development’, which embraces human needs and social gains beyond material well-being, such as higher standards of education and health, wider opportunities for work and leisure, increased capabilities and choices for the individual. In the language derived from Amartya Sen, “human development is about people, about expanding their choices to lead the lives they value”.

UNDP’s human development approach employs Amartya Sen’s capabilities concept to link human rights and human development in its development policy. Quoting the UN on understanding the concept, “....human development shares a common vision with human rights. The goal is human freedom. And in pursuing capabilities and realising rights, this freedom is vital. People must be free to exercise their choices and to participate in decision-making that affects their lives. Human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others.”

Human development may not be seen as a mere economic development but must be taken as the development of the personality of an individual to enable one to live with dignity. This is possible when the human rights of all are respected and accepted.
“Human development, as an approach, is concerned with what I take to be the basic
development idea: namely, advancing the richness of human life, rather than the
richness of the economy in which human beings live, which is only a part of it.”
Professor Amartya Sen, professor of Economic, Harvard University, Nobel Laureate

and Equity: A Better Future for All’, brings out the message that equity and
sustainability are inextricably linked and that one cannot be achieved without the
other. The report emphasizes the right of human beings to a healthy environment,
the importance of integrating social equity into environmental policies, and the
critical importance of public participation and official accountability.

“Environmental problems can put the global progress at risk.” While noting that
remarkable progress has been made in respect of the poor countries with low
rankings on the Human Development Index (HDI), and that with the same pace of
progress, these countries would be able to enjoy the HDI of the top 25 per cent of the
countries by 2050, it cautions the world community that if environmental
degradation is left unchecked and governments do not act, it could reverse this
growth trend. People in the poorest countries are particularly vulnerable to climate-
driven disasters such as drought and flooding, as well as exposure to water and air
pollution. It is not only environmental disasters but general environmental
deterioration which threatens other factors that are crucial to human development.

“Half of all malnutrition is attributable to environmental factors such as water
pollution and drought-driven scarcity, perpetuating a vicious cycle of
impoverishment and ecological damage”, the report says.

The strong links between environmental and socio-economic issues led to the
advancement of the idea of sustainable development, a concept which while giving
priority to the needs of the world’s poor acknowledges the limitations of the
environment to meet the needs of the present as well as the future generations.

1.7 SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS

The concept of ‘sustainable development’ is the result of a growing awareness of the
link between environmental problems, socio-economic issues, poverty and inequality,
and concerns about a healthy future for humanity. The term was first mentioned in
Economic Co-operation and Development defines ‘sustainable’ as ‘capable of being maintained at a certain rate or level’ whereas ‘development’ is defined as ‘the economic advancement of a region or people, especially one which is currently under-developed’ (OECD, 2008).

Even as a debate rages on as to who coined the phrase ‘sustainable development’, it did not find a mention in the Declaration of the UN Conference on the Human Environment (Stockholm Declaration, 1972) which is usually taken as the starting point of global environmental consciousness. The modern concept of ‘sustainable development’ was articulated in 1987 through the publication of a UN report entitled, ‘Our Common Future’. This was the final report of a process called the United Nations World Commission on Environment and Development. Sustainable development is defined as “development which meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987). It defines needs from a human standpoint. As Lee argues, “it makes it unashamedly anthropocentric,” (Lee, 2000).

The WCED report further mentions that “sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change are made consistent with future as well as present needs... in the final analysis sustainable development must rest on political will.”

The WCED enunciated its first broad principle of human rights as follows: “All human beings have the fundamental right to an environment adequate for their health and well-being.” It gave over-riding priority to the essential needs of the world’s poor while acknowledging the limitations of the environment to meet both present and future needs. The definition has been the subject of much academic and public debate as to how needs may be defined, and how one should deal with the question of intergenerational equity (WCED, 1987).

In 1992, five years after the publication of the WCED report, the ‘Earth Summit’ or the UN Conference on Environment and Development (UNCED) was held in Rio de Janeiro in Brazil. The term ‘sustainable development’ was included in the Rio Declaration on Environment and Development to denote the need to balance environmental and development considerations (Rio Declaration, 1992). Sustainable
development was further articulated as having three pillars, namely, economic development, social development and environmental protection. The term has also been used to express different and often disparate world views. The developed countries use the principle to underline the importance of environmental values whereas the developing countries have used the concept to signify their right to development. Despite these misgivings, however, the principle has facilitated the reconciliation in one phrase of what earlier seemed irreconcilable, namely environmental protection and development. Thus, it brings together both the dependency of human beings on the environment and their socio-economic needs in a wider sense, thereby implying that one must bear in mind the judicious use of resources and concern for the carrying capacity of natural systems while taking developmental decisions.

The term ‘sustainable development’ also points to world-wide interconnections: environmental problems are not local but global, which is why actions and impacts have to be considered internationally to avoid displacing problems from one area to another by actions such as releasing pollution that crosses boundaries, moving polluting industries to another location, or using up more than an equitable share of the earth’s resources. It recognises that past growth models have failed to eradicate poverty globally or within countries, and has also damaged the environment upon which we depend, with a “downward spiral of poverty and environmental degradation.” Recognising this failure, Brundtland calls for a different form of growth, that is, “changing the quality of growth, meeting essential needs, merging environment and economics in decision making,” with an emphasis on human development, participation in decisions and equity in benefits (WCED, 1987). The development thus proposed is a means of eradicating poverty, meeting human needs and ensuring that everyone gets a fair share of resources. Social justice is a crucial component of the concept of sustainable development, as it would ensure the creation of a society that helps in the realisation of all human rights.

By integrating environmental protection and conservation with social justice and economic development, sustainable development aims to ensure the well-being of the individual. Thus, sustainable development aims to ensure the fulfilment of the basic human needs of the people while at the same time preserving the environment. It is a useful framework in which to debate choices for humanity. From a rights perspective, every person must have equal access to resources. Sustainable
development is a pattern of growth in which the use of resources aims to meet human needs while preserving the environment so that these needs can be met both by the present as well as the future generations. At the heart of sustainable development lies concern for the human being, and for his/her right to be able to lead a life of dignity and equality. It thus pertains to the inter-relationship between people, their habitats and eco-systems, and is thus a means of considering these relationships for the purpose of proposing viable solutions (OECD, 2008).

While the concept of sustainable development has gained some normative value in international law it has not acquired the character of customary international law. Its interpretative function is very significant. It serves to reconcile other conflicting norms related to environment protection, economic development and social development including human rights. Judicial bodies have used it for treaty interpretation, conflict resolution and to redefine conventional obligations. In the Gabcikovo-Nagymaros case sustainable development has been termed as a concept by the ICJ and in the Pulp Mills on the river Uruguay case as an objective. It forms part of the ‘object and purpose’ of many international treaties. It is included in the operative part of many treaties, which makes it technically binding. By laying down sustainable development as an objective to strive for in treaties, it mainly aims to regulate state conduct. As an objective, the obligation to achieve sustainable development is relative, not absolute. According to Barral such obligations are known as obligations of means or of best efforts. States as legal subjects have an obligation to promote sustainable development. It is an objective with which specific state conduct must be consistent and as an objective it constitutes a principle of customary international law (Barral, 2012).

1.8 OBJECTIVES OF THE STUDY AND THE KEY ISSUES ADDRESSED

The study has the following two objectives.

(1) The main objective is to analyse the role and performance of the National Human Rights Commission in addressing environmental issues from a human rights perspective.

(2) The theoretical objective is to contextualise the linkage between environment and human rights on the basis of international legal instruments; case law of the international, regional and national courts; and examine whether there is a right to environment under the rubric of internationally recognised human rights. In the
Indian context, the research explores the extent to which the linkage between environment and human rights has been recognised and supported at the national level by the judiciary in India and taken forward by the NHRC.

The theoretical part of the study forms the background/context to the empirical study relating to the NHRC.

The study analyses the role and performance of the NHRC in addressing environmental issues from a human rights perspective on the basis of its legal mandate for the protection and promotion of human rights. The complaint redressal mechanism of NHRC has been analysed on the basis of the process prescribed under the rules; the handling of environment related complaints received from the public, taking five years archival data; the perception and expectation of the public regarding the NHRC’s role in addressing environment related complaints and the level of satisfaction regarding the redressal of their grievances.

The study brings out the strengths and weaknesses of the NHRC and the pivotal role that it can play in influencing key players in the articulation of a right to environment by focusing *inter alia* on advocacy, awareness, research, education and training. It concludes by summarising the key findings, recommends policy measures to enhance the effectiveness of NHRC and the articulation of a right to environment for the benefit of present as well as the future generations.

1.9 SIGNIFICANCE OF THE STUDY

Although the existence of a linkage between the environment and human rights has been widely recognised, its precise nature is still a matter of debate. While on one hand, environmental degradation adversely affects human rights, on the other hand, the adverse impact of human activities leads to environmental degradation. The global debate centres around a rights based approach to environmental protection and aspects relating to the right to a safe and healthy environment as a pre-requisite for the enjoyment of human rights. In this context, the National Human Rights Commission being uniquely placed in the national system between the government and the civil society can play an important role in addressing, catalysing and building awareness about the linkage between the environment and human rights. The NHRC can bridge the ‘protection gap’ between the rights of individuals and responsibilities of the state. It operates and functions independently from the government and as
such occupies a unique place between government and society. It is empowered to receive, investigate and resolve complaints of human rights violations; raise awareness and provide human rights education for all parts of the community; make policy recommendations to government; promote national laws and practices that conform to international standards; conduct inquiries into significant allegations of abuse and promote human rights in the community.

The research, based on an empirical study will have practical and policy implications for both, the Government and the NHRC. It will also be of immense interest and value to the SHRCs in India and NHRIs in other countries. Simultaneously, the research is expected to be of significance and interest to State Governments, UN bodies more specifically OHCHR and UNEP, NGOs, academia and the civil society.

1.10 SCOPE OF THE STUDY

The ten Chapters in this dissertation are organised in two parts: Part I (Chapters 1 to 5) comprise the theoretical aspects of the relationship between environment and human rights and Part II (Chapters 6-8) deals with the empirical study on the role of the National Human Rights Commission in protection and promotion of environmental concerns from a human rights perspective. Chapters 9 and 10 are concluding chapters.

Chapter 1 deals with the concepts involved in the study.
Chapter 2 deals with the objectives and the research methodology adopted to pursue the research.
Chapter 3 traces the linkage between the environment and human rights and analyses the aspects relating to a right to environment in the international context.
Chapter 4 analyses whether there is a right to environment in the Indian context.
Chapter 5 analyses the role of the judiciary in linking environment and human rights.
Chapter 6 gives the genesis of the National Human Rights Commission of India and its role and functions, in the light of the developments relating to the evolution of the National Human Rights Institutions, the principles for their establishment and their effectiveness. The role of NHRC in the protection and promotion of the right to environment has been discussed.
Chapter 7 brings out the complaint redressal mechanism of the NHRC. The focus is on environment related complaints and how they are handled by the NHRC.
Chapter 8 covers three case studies drawn from the complaints addressed by NHRC during the period under investigation which bring out the ground reality based on field visits and interviews with the complainants.
Chapter 9 brings out the conclusion, recommendations and the way forward.
Chapter 10 highlights new ideas for further research.

1.11 CONTRIBUTION TO NEW KNOWLEDGE

While some research studies have been carried out to make a general assessment of the role of the NHRC in the task of protection and promotion of human rights, this research study is the first of its kind to empirically analyse the role of the NHRC in addressing environmental concerns from a human rights perspective, and delivering justice to the victims of pollution and environmental degradation. It brings out the perception of the public and the social expectation from NHRC. The study brings out how NHRC despite its limitations and inherent weaknesses can influence national and international players in the protection and promotion of the environment from a human rights perspective. As a member of the ICC it can influence the international community. Through advocacy, it can influence the government to make the right to a safe and healthy environment a reality. The study brings out how the existing mechanism and linkages can be enhanced and made more effective.

It is hoped that the study will assist the NHRC to review its role with respect to environment protection from a rights based perspective, especially in the context of the judicial pronouncements relating to the right to environment within the meaning of the fundamental right relating to right to life; and to evolve an effective policy for addressing environmental concerns within the rubric of human rights.