

CONCEPT OF TRUSTEESHIP; SUSTAINABLE DEVELOPMENT AND CORPORATE SOCIAL RESPONSIBILITY

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Introduction

Human race has evolved for over 150 Millenia and have developed gradually over the years to reach the present state of its intellectual philosophical and scientific heights. Yet the revolutionary development came only during the last five decades that has changed the course of the world. The “development” of the human race or the advancements in science and technology has come in conflict with the interest of mother earth in the recent past than ever. Though, from the beginning of the civilisation of the human race, human responsibilities towards the environment and mother earth have been taught and passed on to generations, it seems that such responsibilities have been neglected or forgotten. The conflict has come to light more than ever and time has come to consider whether the human race wish to perish in a self made trap or whether they wish to “ live and let live” their future generation in a safer environment . Dr. C. G. Weeramantry in his preface to recent publication “Tread Lightly on the Earth¹” has thus observed -

“..... The environment has in the past century been subject to human interference and future generations are being subject to potential damage at an exponentially increasing rate. Another generation of such exponential increase will render uninhabitable the planet which has supported humanity for thousands of generations in the past. The present generation thus carries on its shoulders an awesome responsibility, the like of which has never been born by any generation since the human race began. “

Dr. Weeramantry has also warned (Global Forum of Religions Partnership for the Environmental - Moscow 1990) that;

“We are close to committing - many would argue we are already committing - what in Religious language is sometimes called Crimes against Creation”.

The development in ordinary parlance would involve infra structure development such as road networks, expanded cities, telecommunication and electrical networks, irrigation and electricity connected Hydro Power projects, medicine, food

¹ Weeramantry C.G.; Tread Lightly On The Earth, p xiii, Stamford Lake Publication, 2009

technology, Space Science, Nano technology etc. The list is not exhaustive and everyday a new form of science will be added. The end result would undoubtedly be the destruction or mutilation of the natural environment- the umbilical code resulting in reduction of forest coverage that leads to pollution of water, air and environment. Therefore, the challenge the law faces today is; how could these competing interests be balanced, not only in the interest of the world population but in the interest of the future generations.

Concept of Trusteeship

Our environment is fundamental to our survival. The environmental protection is the foundation or the very basis of all human rights including the right to life. Health of our planet cannot be separated from our own health.

**Treat the earth well: it was not given to you by your parents,
it was loaned to you by your children.
We do not inherit the Earth from our Ancestors,
we borrow it from our Children.**

**We are more than the sum of our knowledge,
we are the products of our imagination. "**

Ancient Proverb²

David Brower (Environmentalist) has said **"we are not borrowing from our children, we are stealing from them and it is not even considered a crime"**. The issue is whether we could justify what we are doing in the guise of development and modern governance. Rulers of the earth, from ancient days have been considered as the Trustees of the earth and thus has limited their powers of governance. The trees, rivers, mountains, waterfalls, sandy beaches, the wild animals, ocean living creatures are held by the rulers in trust for the benefit of the people. In the International Court of Justice (ICJ) judgement, on the dispute between Slovakia & Hungary with regard to the GABCIKOVO - NAGYMAROS PROJECT³ then vice President of ICJ, Judge Weeramantry, in his separate opinion traces the principle of Trusteeship to 223 BC. Judge Weeramatry quoting from 'Mahawansa⁴' observed; *"the ancient chronicles recorded that when King 'Dewanampiyatissa' was on a hunting trip, the 'Arahath*

² <http://www.indigenouspeople.net/quotes.htm>

³ Separate Opinion of Vice President, Judge C.G. Weeramantry – 25th September 1997

⁴ "The Great Chronicle" otherwise known as "The Great Dynasty" is the single most important work of Lankan origin (written in Pali language). It describes the life and times of the people who forged Sri Lankan nation, from the coming of Vijaya in 543 BCE to the reign of King Mahasena (334 - 361) (6th Century BC to 4th Century AD). A companion volume, the Culavamsa or Choolavansha ("lesser chronicle"), covers the period from the 4th century to the British takeover of Sri Lanka in 1815.

Mahinda's' son of Emperor Asoka of India preached to him a sermon on Buddhism which converted the King. Here are excerpts from the sermon –

“Oh great king, the birds of the air and the bees have an equal right to live and move about in all parts of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it”.

Dr. Weeramantry has observed that the said sermon contained the first principle of modern environmental law - the principle of Trusteeship of earth resources – which caused the King to start sanctuaries for wild animals and a concept which continued to be respected for over 20 centuries. He also observed that the traditional legal issues of protection of fauna and flora, based on the Buddhist Teachings, extended well into the 18 Century. Since then, there had been a steady development of the legal concept of State Trusteeship which is now known as Doctrine of Public Trust. It is almost impossible to remedy the environmental damage. Therefore, both for ecological and economical reasons, preventive/precautional principle has to be followed, which has been recognised in the Rio Declaration⁵ which influenced the Vice President Weeramantry's separate Opinion on Hungary/ Slovakia dispute. Some of the principles contained in the Rio Declaration may be regarded as third generation rights by European law scholars. Principle 15 of the Rio declaration thus proclaims; *“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.*

Almost all religious leaders have taught the people of the importance of respect to mother earth and her life - the environment- before the law imposed its sanctions.

There are many sermons, preachings, of Lord Buddha that instilled into people the importance of environmental protection.

“As the bee, not harming the flower or its colour and fragrance, takes away the pollen, even so should the sage move in the village.

‘Dhammapada – Chapter 4- 49.⁶

⁵ The Rio Declaration on Environment and Development, often shortened to Rio Declaration, was a short document produced at the 1992 United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide future sustainable development around the world.

⁶ The Dhammapada is a versified Buddhist scripture traditionally ascribed to Lord Buddha himself. It is one of the best-known texts from the Theravada canon.

Lord Buddha's first lesson to respect plants & trees was his second week after enlightenment where he paid his respect to the tree, under which He attained enlightenment, for one week. Lord Buddha prohibited monks with higher ordination from destroying trees and creepers, and according to 'Samannaphala Sutta'⁷; Destruction of the organic environment is a breach of the 'seela' (virtue) of monks. In 'Kutadantha Sutta'⁸ Buddhism points out that it is the responsibility of the Government to protect trees and other organic life. In fact it is described as one of the most 10 important duties of a King (Dasa Raja Damma)

Similarly there are many such principles that can be extracted from the teachings of Hinduism. Ancient Hindus felt Brahman's presence in everything around them. Since these divine forces sustained all living creatures and organic things on this earth, to please God, they felt they must live in harmony with His creation including earth, rivers, forests, sun, air, and mountains. Most Hindus, before the foundation of a building is dug, invite a priest to perform the Bhoomi Pooja in order to worship and appease mother earth and seek forgiveness for violating her. Most rivers are considered sacred, and worshipped in festivals by Hindus. "Do not cut trees because they remove pollution (Rigveda 6:48:17)⁹

In Redemptor Hominis¹⁰ The Pope John Paul the II made reference to the unconditional development of Technology and went on to observe: "Man often seems to see no other meaning in his natural environment than what serves for immediate use and consumption. Yes it was the creator's will that man should communicate with nature as an intelligent and noble "Master" and "Guardian" and not as a headless "exploiter" and "destroyer". Many Christian places of worship are decorated with flowers for worship services. Hymns and songs over hundreds of years celebrate God's creation. Prayers recall the wonderful world he has made, as well as many of the Psalms from the Bible, which may be prayed or sung.

The doctrine of Public Trust which was developed through the concept of Trusteeship of the Kings and Rulers is now a well accepted legal principle in many parts of the world. In *Bulankulame and others vs. Secretary, Ministry of Industrial Development and others*¹¹, the Supreme Court of Sri Lanka (Amarasinghe J) observed the organs of State are guardians to whom the people have committed the care and preservation of the resources of the people.

⁷ Deega Nikaya -01- Seela Skandha Wargaya

⁸ Deega Nikaya-01- Seela Skandha Wargaya

⁹ The **Rigveda** is an ancient Indian sacred collection of Vedic Sanskrit hymns

¹⁰ Weeramantry C.G.; Tread Lightly On The Earth, p 164, Stamford Lake Publication, 2009

¹¹ Sri Lanka Law Reports [2000] Vol 3 page 243

In modern concept of separation of powers, it is not the Executive who is solely responsible of the natural resources of a state. The management of natural resources are not exclusively in the hands of the Executive. The legislature and the judiciary are equally responsible and accountable as a Joint Trustees. Therefore, the judiciary has a more important role to play in balancing the conservation of natural resources and the development which is also essential for the sustenance of the human race.

Sustainable Development and Corporate Social Responsibility

In the past it was the sole responsibility of the governments to provide social security, stability in civil society, employment, health facilities education and infrastructure for its people; that is to provide its people with a "Welfare State". The State played the primary role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life.

The governments relied on legislation and regulations to deliver social and environmental objectives in the business sector and in the past there was no recognition to the private sector providing or contributing to the responsibilities of a welfare state. However, in the recent past private sector has become the engine of growth in an open economy and are vested with most of the social welfare functions of a state.

The concept of Corporate Social Responsibility (CSR) is underpinned by the idea that the private sector business corporations can no longer act in isolation. Today, they performed most of the state responsibilities of a welfare state. As a result, the concept of trusteeship is also applicable to the private sector business corporations as an agent of the state in discharging the welfare functions of the state.

CSR promotes a vision of business accountability to a wide range of stake holders, besides shareholders and investors of such business. Environmental protection, wellbeing of employees, rights of the civil society is some of the concerns of a modern business. Profit making can no longer be the sole intention of the corporate/private sector.

Non sustainability is a major risk of unplanned and uncontrolled development. Many parts of South Asia have undergone unrestrained development. Capital city of India, New Delhi, is one such place where unrestrained development has taken place. Many parts of this city have experienced shortage of water in the recent past due to the increase of density of population and green belt being destroyed and

replaced by concrete jungles. The air in cities such as Bangkok and even Delhi is no longer safe to breath.

The corporate sector who had not understood its social responsibilities but motivated only on factors relating to profitability of the venture has over exploited the natural resources commonly owned by the mankind. In most of the 3rd world countries, it is rather unfortunate that the concept of CSR and environmental sustainability is not sufficiently promoted by the respective governments. Most of the South Asian countries are bound by the Rio Declaration to which they are signatories. There appears to be a growing demand for governments of the states to impose these responsibilities as obligation under the law by way of compelling legislation. In this regard, the writer is strongly of the view that Regional Corporation of the South Asian states should be made use of in implementing or enforcing laws in relation to CSR.

Telecommunication and mobile technology has been the fastest growing sector in the world during the past two decades. The uncontrolled development of this sector has created serious threats to the human health in numerous ways. It has now been proven that the waves emanating from mobile telecommunication towers have caused a major threat to the health to the people living in the vicinity. E waste that includes discarded mobile phones, mobile batteries has further complicated the health issues arising out of the mobile technology. This is just one example of technology overtaking the environment sustainability and law.

Having regard to the actual working of the CSR in this region it has become necessary for the governments to intervene and bringing in legislation that protects the environment whilst promoting corporate sector. If no action is taken promptly by the South Asian states individually and collectively each one of us will be guilty of denying rights our children and of the generation yet to be born for a safer environment.
