

CHAPTER – 1 PRELOGUE

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CHAPTER- I

1. INTRODUCTION

"I want to make it clear, if there is ever a conflict between environmental quality and economic growth, I will go for beauty, clean air, water, and landscape."

Jimmy Carter quoted from the New York Times, September 19, 1976.

In the past few decades awareness about the damaging effects of the pollution of environment on human beings and quality of life has increased dramatically. This awareness has followed upon very substantial degradation of the world's environment - land, water and air - over the last two centuries. While human activity has always taken a toll on the natural world, the negative impact of this activity has increased exponentially during this period of time. There appears to be general agreement on the impact of a few specific changes.

The concept of enviro-human right has become one of the life issues in the first changing International scenario. The growing awareness on human rights is the outcome of two basic interrelated causes and other resulting effects, which influenced the socio-legal order in many countries. The first cause is the phenomenal growth in science and technology and the second is the population growth, which have a direct effect on the right to life. Other resulting effects of these two causes are industrialisation, urbanisation, deforestation, poverty and above all various developmental projects undertaken by the government.

Right to life is the most important right on the basis of which all other rights are guaranteed. Right to life implies the right to live without deleterious invasion of pollution, environmental degradation and ecological imbalances.¹ The scope and ambit of right to life are so varied that the human right aspect of life has to mitigate the challenges

1. Z. M. Nomani, "Enviro-Constitutional Ethos in Right Duty Discourse: Towards the Creation of an Equitable and Sustainable Socio-legal Order" *IJEL* 60 2000

involved in safeguarding human environment. Unwarranted deprivation of human beings from right to environment became the prime agenda in the modern democratic, welfare, and techno-centric societies. Diversified techno-centric paradigm coupled with urbanisation without proper planning, population growth with poor housing, political and bureaucratic idiosyncrasies and lack of distributive justice upset the equilibrium of development and environment.² The focal agenda of today's socio-legal order should be ecology and environment. Environmentalism and eco-centrism should be the main endeavour of today's legal and judicial order. But the prime concern, which became the centre point in the contemporary human right regime, is the uncertainty of the nature and scope of right to environment. There is right to development, right to trade and business, right to livelihood, right to housing and other legal and constitutional rights on the other hand and there is right to environment, on the one hand and thus there exists a never-ending conflict and confrontation between the two. However, the scope and ambit of right to environment became so wide that it became a crucial guiding dimension for plans and programmes in each sector.

Right to environmental protection is one of the important ingredients of the right to life. Human race is dependent upon safe and pollution free environment- an environment favourable for human living and for full realisation of right to life. The co-relation between environmental protection and human right cannot be denied rather they are supplementary and complimentary to each other. Presently, the concept and content of right to environment is not very clear. The scope and ambit of right to environment is inherently obscure as well as complex, which brought various controversies and debates into forefront.

2. See generally, Mohd. Sharif Uddin and Z.M. Nomani, "Water Pollution and Law"
Saloni Publication, New Delhi, 2004.

A significance question, in this respect, arises: Is right to environment merely a human right? If so, then what about the environmental right of other co-residents of the eco-system such as animals, flora and fauna? Further, right implies duty. On whom lies the corresponding duty? What is the procedure to determine and implement the right to environment of non-human entities? Like other fundamental rights, has the right to environment any limitation? Whether can reasonable restrictions be imposed on right to environment? Whether limitations embodied in express words in Article 19 (2) of the constitution are also applicable to right to environment? Is it an independent right or a means of realising already established rights, such as right to liberty, right to health, right to residence etc? Whether has any distinct right to environmental protection emerged? If so what is the concept and definition of environment? What is decent environment? What is healthful environment? What is ecological balance? Whether it's a social right or an individual right? Who is the subject of such right and upon whom the corresponding duty is imposed? Whether adequate laws have been brought about to protect this right? Whether the present environmental statutes are sufficient to protect this right? What are the lacunae of the present environment legislations? Whether these legislations are being properly implemented? Who are mainly responsible for implementation and non-implementation of these laws? What are the better possible alternatives for implementation? Whether the statutory pollution control authorities are performing their statutory duties? What are the constraints being faced by them in discharging such statutory duties? What is the role of judiciary in safeguarding and promoting the right to environment? The main thrust of this study is to seek an answer to all these questions in the light of present policy, law and justice in national and international level.

The first and foremost problem is an appropriate definition of the term environment. The Environment (Protection) Act 1986, which is

considered as an umbrella legislation, has failed to give a comprehensive definition of the term environment. The definition given under section 2 (a) of the Act is an inclusive one, which states only what, does the term 'environment' include. A universally accepted definition is not possible because the social, political, economic, philosophical, physical, cultural and religious conditions of various countries are different. Even within a country, the meaning, concept and contents of right to environment of all classes of people are not same and similar. There is a hierarchy of needs as primary and secondary needs. Foods, clothes and shelter are the three basic needs, when fulfilled, other secondary needs such as biological, social and cultural will come out as primary needs and thus it is a never-ending process. A relative definition in combination with other factors and values of economic, social and cultural character will determine the true meaning and concept of environment.

Secondly, development - economic, scientific and technological, is the non-alienable facets of modern democratic society. Development is the process of achieving greater and better state. In the United Nations Conference on Human Environment 1972 at Stockholm, the sustainability of such development or betterment in quality of such development was stressed. In *People United for Better Living at Calcutta V. The State of West Bengal*³ the Court observed that in a developing country, there shall have to be development but the development have to be in closest possible harmony with environment as otherwise there would be development but no environment, which would result in total devastation, though not in present but in some future points of time. If any situation arises where no close harmony is possible without sacrificing either development or environment, then which should be given preferences development or environment? And on what basis? What is the parameter of judging the environment? How to find out the

3. AIR 1993 Cal 125.

parameters to draw a line demarcating the area of development and environment lest the development will be at the cost of the environment. Thirdly, Shelter is a basic human need. Art. 25(1) of the Universal Declaration of Human Rights recognised the right to housing but to realise this right is a distant dream in India. A large number of Indian populations is living in slums, pavements, and railway platforms through the length and breadth of the Country in unhealthy and unhygienic conditions. Today cities are facing environmental problems like shortage of drinking water, inadequate waste collection and disposal, lack of proper drainage and sanitation, soil pollution, noise pollution, water pollution etc. Cities were once gateways of good things in life but are now presenting a picture of unhealthy and unhygienic living condition. In ecological perspective, city is a great consumer of resources and producer of waste. The slum communities are captives of an unhygienic environment. Substandard housing, unsafe water, and poor sanitation is the common feature of life in densely populated cities which is responsible for many air-borne, water-borne, food-borne and infectious diseases which take away good number of lives every year in India. Eviction of such slum dwellers will deprive the already deprived class of people from their right to housing and livelihood, which will amount to another gross violation of human right. City slums are by-products of development prospects in city areas and a development, which cannot give bare minimum need, is no real development. At this juncture, is it the responsibility of the State, as being the caretaker of the citizens, to provide shelter to them? Whether the evicted slum dweller's right to shelter is guaranteed under Article 19 (1) (e). In the *Ahmadabad Corporation case*⁴ the Supreme Court has not given a clear picture about the problem stating that it may not, as a rule, direct the State to provide shelter for those evicted persons.

4. *Maha Gujarat Hawkers Vyapar Mahajan etc. vs. Ahmedabad Municipal Corporation* 1995 (Supp 2) SCC182.

Fourthly, International Law is primarily concerned with collective groups of individuals, commonly known and recognised as sovereign States, which constitute the normal subjects of International Law. Question arises as to who are subject of human right under international law? Efforts are being made to promote respect for human rights through the medium of collective bodies such as the United Nations Commission on Human Rights or the European Courts of Human Rights. Those agencies are certainly international and apply considerations of international law to individual cases. It is submitted that when individual rights are seen as rights, which may be claimed by the whole mankind, they become assimilated to a higher international law viz. the United Nations Charter. That category would also include the right to life, right to peace, right to an adequate environment, and right to sustainable development. The object and subject of almost all laws is the human being and his right to live in peace in a safe and adequate environment is a right, which relates to his very existence. Now question arises as to a right which goes to the very root of one's own human existence, how this right shall be categorised whether Fundamental Right or Natural Right or Human Right or Constitutional Right or International Right? If it is an international right, then whether it applies to the developed, underdeveloped as well as developing countries? Will it be valid in peacetime only or in condition of belligerency as well? In this study an humble attempt is made to seek a solution of this problem.

Fifthly, whether right to environment and sustainable development is available to the State or citizens? Thousands of irrigation canals and dams are being built over the century by the State bringing about different prioritization of water use, which drastically change the availability and use of both ground and surface water. There is a growing perception in India and many other countries that one of the major reasons for draughts and floods has been the State's exploitative policy of deforestation. Irrigation schemes have led to gross inequalities among

users, which also led to impoverishment of original users. In such a condition the whole question of right to environment needs to be fundamentally examined. What should be the State's rights and what should be that of the citizens? How do we make the State accountable to the people and the people accountable to each other and the State? If the State is to use the law to regulate the resources how do people use the law to regulate the State?

Jurisprudentially speaking, there is a close relationship between right and duty. There must be a right holder or the subject of legal right and a subject of legal duty, upon whom the corresponding duty is imposed. If the citizens are right holders, then the State is making use of natural resources for various developmental activities. If the State is the right holder, then the whole discussion of right to environment as a fundamental or human right is meaningless. In the proposed study, an attempt is made to determine the extent of State's rights and the citizen's right.

It is, generally, said that poverty is the great polluter. Right to livelihood is a fundamental right. Millions of population in India are dependent directly or indirectly partly or wholly on environment and natural resources, such as fishermen, wood cutters, hunters, *Jhum* cultivators etc. questioning this respect, is which will be given preference, either right to livelihood or right to environment? What is the scope and ambit of both the rights? What are the parameters of preference? The conflicting dimensions of both the rights will be examined to evolve a comprehensive solution.

A glance over the world constitution reveals mainly three things—environmental legislation is a fundamental duty; sustainable development is the principle of governance and delegation of power for environmental legislations. Under the Indian Constitution, Article 48 (A)⁵

5. Article 48 (A) reads "The State shall endeavour to protect and improve the environment and to

lays down that the State shall endeavour to protect and improve the natural environment of the country. The mandate of Article 51 A (g)⁶ is that every citizen of India has the duty to protect and improve the natural environment including forest, lakes, rivers, wildlife and to have compassion for living creature. Article 253⁷ is a general legislation, which has no special relationship with the field of environment. This Article empowered the parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any other country or countries or any decision made at any international conference, association or other body. Now question is which is the proper authority to legislate in the field of environment? Then the question is as to which law, whether Federal or provincial or Municipal or Administrative, will be more effective to save the environment. In the present work a humble attempt is made to locate enviro-constitutional responsibility in a Federal system like India.

Over a couple of decades, a number of studies have been conducted relating to the scope and ambit of the right to environment. The Supreme Court and High Courts have also delivered a good number of judicial pronouncements. In this study, the Historical Analytical methodology of research is applied and a systematic analysis is done. The research work is mainly doctrinaire which spreads over three broad areas - viz (a) to make an analysis of the opinions of academicians available in Journals and Books to draw the concept of right to environment in India, (b) to study the relevant international instruments relating to human rights to draw an inference these may be useful in India and (c) to critically

safeguard the Forest and Wildlife of the Country.”

6. Article 51 A(g) reads “It shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, wild life and to have compassion for living creature.”

7. Article 253 reads, “Parliament has power to make any for the whole or any part of the country of India for implementing any treaty, agreement or convention, with any other country or countries or any decision made at any international conference, Association or other body.”

examine the judicial decisions to evolve a conspectus thereto. For the above purpose, the law journals in India and available foreign journals have been surveyed. The cases of the Supreme Court and High Courts have been collected from the All India Reporter. The present study mainly concentrates to the Indian position with special reference to the Khasi people in the State of Meghalaya wherever relevant.

2. BACK GROUND OF THE STUDY AREA

A. Prelude to Meghalaya.

At the time of independence, two districts namely United Khasi and Jaintia Hills and Garo Hills were included, against the political desire of the people, under the administrative set up of Assam State of free India.⁸ The aspiration for a separate political identity brought fruit when the state of Meghalaya was carved out of Assam State as an autonomous state on the 2nd April 1970 under the 22nd Amendment to the Constitution of India 1969 and the Assam Reorganisation Act 1969. But due to unworkable administrative hurdles, Meghalaya was given the status of a full-fledged state with effect from January 21, 1972 under the North-Eastern Area (Reorganisation) Act 1971. Initially it comprised of the above two districts with headquarters in Shillong and Tura respectively. Within a month of its inception, the United Khasi Hills District was divided on 22nd February 1972 creating Jaintia Hills as a separate district with headquarter at Jowai. Again in the year 1976, the Garo Hills District and the Khasi Hills were divided into east and west creating four separate districts namely East Garo Hills, West Garo Hills, East Khasi Hills and West Khasi Hills Districts. In 1972, two new districts, namely Ri-Bhoi and South Garo Hills were created dividing the then East Khasi Hills District and West Garo Hills District. The following Table 1 & 2 shows the present Administration division of Meghalay. The following Table 1 and 2 shows the present Administration division of Meghalay.

8. See, "Customary law and justice in the tribal areas of Meghalaya" Indian Law Institute, New Delhi.

Table 1:- Administrative set up of Meghalaya.

Former Districts	Present Districts	Headquarters	Date of creation	Area sq km.	Density
United Khasi & Jaintia Hills	Jaintia Hills	Jowai	21-2-1972	3819	77
	East Khasi Hills	Shillong	28-10-1976	2748	234
	West Khasi Hills	Nongstoin	28-10-1976	5247	56
	Ri-Bhoi	Nongpoh	4-1-1992	2448	81
Garo Hills	West Garo Hill	Tura	23-10-1976	3677	139
	East Garo Hills	Williamnaga	23-10-1976	2603	95
	South Garo Hills	Baghmara	18-1-1992	1887	54
MEGHALAYA		Shillong	21-1-1972	22429	103

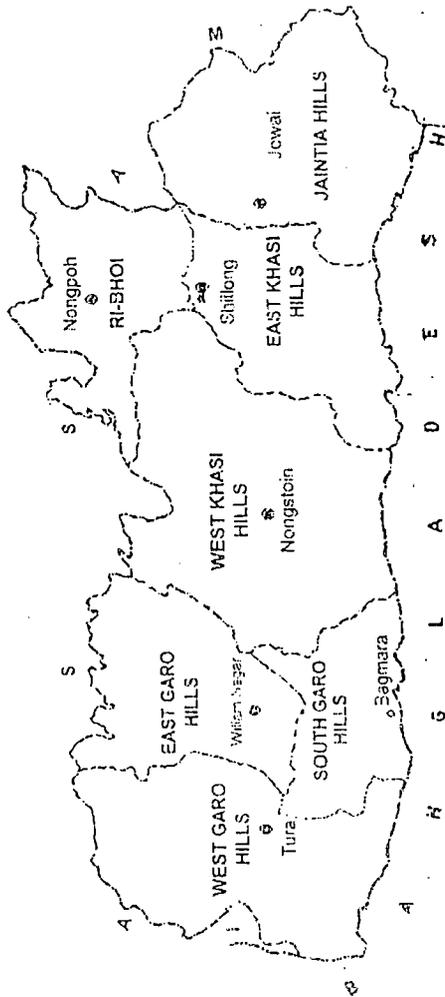
Table 2. Administrative Divisions of Meghalaya.

Districts	Sub-Divisions	Date of creation	Population 2001c	Male	Female	Sex Ratio
Jaintia Hills	Jowai	21-1-1972	295692	149376	146316	902
	Khliehriat	27-5-1982				
	Amlarem	12-11-1976				
East Khasi Hills	Shillong	21-1-1972	660994	333187	327807	984
	Sohra	22-5-1982				
Ri-Bhoi	Nongpoh	5-1-1977	192795	99315	93480	941
West Khasi Hills	Nongstoin	19-10-1976	294115	149159	144956	972
	Mairang Mawkyrwt	26-6-1982				
East Garo Hills	WilimNagr Resubelprra	30-4-1982	247555	126312	121243	960
West Garo Hills	Tura	21-1-1972	515813	259440	256373	988
	Dadengiri	17-8-1982				
	Ampati	15-10-1982				
South Garo Hills	Baghmara	7-12-1976	99105	51051	48054	941
Meghalaya	15	21-1-1972	2306069	1166840	138229	975

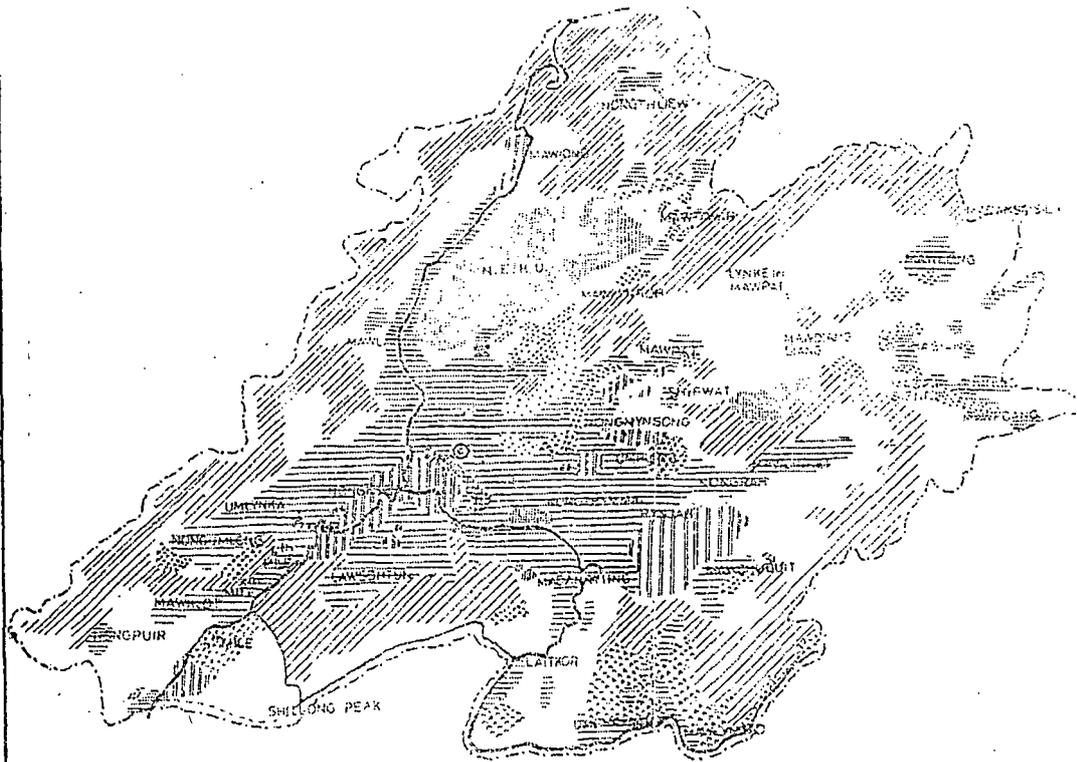
Sources:-(i) Govt. of Meghalaya, (2003), Directorate of Economics and Statistics, Meghalaya Socio-Economic Review.

(ii) Govt. of India, (2002) Basic Statistics of North Eastern Region, North Eastern Council, Shillong.

Map of Meghalaya showing the District and location of Head Quarters.



Map of East Khasi Hills District, Meghalaya showing location of Shillong city, the Capital of Meghalaya.



Enviro-geographical settings

Meghalaya, the 21st State of India, literally means the “abode of clouds”⁹ small in area as well as population, is a hilly state situated in the North-Eastern corner of the country sharing boundaries with at least three countries - Bangladesh, Myanmar and China. Meghalaya shares a 497 kilometres International boundary with Bangladesh on the south and the west. Within the country, Meghalaya shares a boundary with Assam on its north and east. Geographers described the state as a plateau exhibiting land form and terrains. Out of the total area of 22429 Sq km. 9496 sq km i.e. 69.8% is covered with forest from which 981 sq km is reserved forest, 8503 sq km is unclassed forest and 12 sq km is protected forest. Many parts of the state are characterised by gentle to steep hills, sudden steep slopes, deep gorges and some plain areas. Geographically, the state of Meghalaya is situated between 25° 47' to 26°10' North Latitude and 89°45' to 92°47' East Longitude.⁸ Meghalaya has four physical features. The mainland running from Jaintia Hills on the east to Garo Hills in the West determines the course of rivers. The northern belt runs also from one end of the state to another. The state has a plain area in Garo hills and in the southern belt bordering Bangladesh. The mainland of the state is hilly. This includes the Shillong plateau. Groves are formed in large area and turn, add beauty to the natural scenery of the state. The northern belt is fertile. Large varieties of agricultural products are grown in this area. In addition, the entire belt is clothed with thick forest. These forests are either reserved or private. In the southern belt, the main agricultural products are orange, pineapple and beetle leaf. The little plain portion of Garo Hills District suffers from flood which destroys standing crops.

In addition to the above, there are large numbers of beautiful

9. *Meghalaya Socio-economic Review*, Directorate of Economics and Statistics, Govt of Meghalaya, at-1

natural waterfalls in the state. It may be said, "Meghalaya is the Scotland of North-east." This is due to the reason that the natural beauty of the state is remained unchanged till today in spite of natural calamities like the Earthquake of 1877, which damaged the major area of the state. So also in recent time, when people resorted to earn quick bucks, large areas of evergreen forest have been converted onto barren land. Added to the above, the Jhum Cultivation practiced by the people of Meghalaya shaved a major part in damaging the natural beauty and scenery of the state.

C. Climatic condition.

The climate of Meghalaya is characterised by moderate warm, wet summer and cool dry winter. It can be classified under humid sub-tropical climate found in the eastern part of the continent. The average maximum and minimum temperature remains around 17° C and 7.5°C respectively. The average annual rainfall is about 2100 mm. The relative humidity is always above 50% and during the rainy season it is above 80%. Meghalaya has been immensely blessed with beautiful nature and pleasant environment. Meghalaya with its beautiful geography, wonderful underground caverns, and the dancing water falls mixed with exotic flora and fauna and above all the pleasant climate have attracted to visit Meghalaya.¹⁰

D. Social setup:-

The State of Meghalaya is predominantly inhabited by three indigenous communities namely the Khasi, the Jaintias and the Garos and categorised as schedule Tribes by the government. These tribes have their own district and unique culture. The Khasis are inhabited in the Khasi Hills District, the Jaintias and Khasi Pnars are found in Jaintia Hills Districts and Garos are found in the Garo Hills. There are certain

10. The State of environment of Shillong City, A Report, Meghalaya Pollution Control Board at-1.

other sub Tribes namely Khyntriams, Pnars, War, Amwi, Bhoi etc. There are certain non-Khasi tribes inhabiting the Khasi Jaintia Hills districts namely (i) the Mikirs, who are concentrated densely in the North-East of Jaintia Hills. (ii) Lalungs who are found in large number in the North-Eastern part of Jaintia hills. (iii) The Biati and Vaiphe called Hadems who are concentrated largely in the Saipung area of Jaintia Hills. (iv) The Kukis like Thodou Kukis, Khelmas, Sakoleps etc. are found in small numbers in Jaintia Hills. (v) The Lyngngams of the west and North -west in Khasi Hills who are supposed to have a Garo Origin but have embraced Khasi customs. Garos are also found in a few areas on the north and west Khasi Hills. A few Rabhas reside in the northern Khasi Hills and some Aijongs are found residing in small groups towards the south.¹¹

The Garos live predominantly in Garo Hills of Meghalaya. Garos are divided into four categories namely Sangma, Marak, Momin and Shira which constitute the major original inhabitants of Garo Hills. Other original inhabitants of Garo Hills are Rabhas, Hajongs, Kochs, Rajbonshis, Daluas, Meches and Kacharis. Ethnically and Imgnistically, the Garos belong to the great Bodo family of Assam, who are a section of the Tibeto-Burman of the Tibeto-Chinese family. but according to their own tradition, the Garos originally come from Tibet and settled down in Koch Bihar in west Bengal fro 400 hundred years and later on they entered into the Gaolpara district of Assam. In course of time, some of them entered into hills which are called the Garo Hills.

In additions to the original inhabitants, Meghalaya embarrasses almost all people belonging to different communities like Assamese, Arunachalese, Bangalees, Beharies, Mizos, Nagas, Punjabis, most of they came for business, service and education purposes. The people of the state do not understand in one common Indian language. The Garos

11. *id* at p-3.

speak, read and write Garo language, the Khasis speak read and write Khasi language, while the Jaintias read and write Khasi language but speak their own language. A sort of broken Hindi is adopted in commercial areas like Bara Bazar, Police Bazar and other Townships. In urban areas, a good number of people speak Bengali and Assamese, keeping in view that the original inhabitants of the state could not communicate among themselves and outsiders with their own languages, English became the only media of communication and official language of the state.

E. Early background of Khasis

The precise origin of Khasis has not been established. However; oldest generations of Khasis believe that their ancestors came to these hills from Central Asia of Mongolia. Others told that Khasis are the descendants of a Chang group of China. There are other views as to the Neolithic origin and emigration of the Khasis. Khasis have many racial characteristics that are common with other descendants of the Neolithic people like Gurkhas and Bhutiyas. The language of the Mundas and Khasis belong to the same family of speech called Austric from which those of the people of Indo-China and Indonesia have been derived. According to this view these people who were originally settled in India passed gradually to the east and south-east and traversed at first the whole length of the Indo-Chinese peninsula, and then over all the eastern extremity.

Khasis constituted a sub tribe of a big horde of tribes who are believed as mentioned to have migrated from Central Mongolia through Kashmir and settled in the plains of Brahmaputra and Surma Valleys of Assam in between 4000 and 5000 B.C. Little is however known about their exact origin, no written history is available about then the origin of Khasis was the subject of many researches conducted by many Scholars in the past. According to their findings the first settlement of the Khasis was in the Jaintia Hills and in the part of Karbi Anglong and North

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Cachar Hills of Assam. The place was then known as Ummulong, a village of the Jaintia Hills. In course of time, the state was bifurcated into Hima Synteng (Jiantia Hills) and hima Shyllong (Khasi Hills). Originally, the people of Jaintia Hills were known as "Pnars" those of Khasi Hills were known as "Khyrniam", those in the Southern Slopes were called "War" and those inhabiting in the Noyhern Slopes were Bhoi. The name Jaintia derived from Jaintia Pur (now in Bangladesh) and Raja Synteng had ruled over it. The people in the neighbouring Brahmaputra and Surma Valleys used to refer them as "Jaintias". Hence the Khasis and Jiantias originally belong to one tribe. The word Khasi evolved from "grass" since these Hills were covered with grass and residents of plains used to call them people from "ghas Land" of the Hills. Later on it came to be known as Khasia. After wards the British in their record described them as "Chosyas". Only in the early part of 19th century when the British writers wrote Khasi literature in Roman Script, they mention the word "Khasi".

According to another legend Prevalent among the Khasis, they are descendents of "Hynniew Trep" (Seven Hut) which was part of the sixteen huts in heaven. These Seven huts were severed while coming down to the earth and settle down in the Khasi and Jiantia Hills. First they settled in the Jiantia Hills and after a long period, they divided themselves into separate kingdoms, the Jaintia and the Shyllong States. Originally the community owned the land in Khasi and Jiantia Hills and it was known as "Raj Land" i.e. lands, which people can occupy and use but no right to sell them. It was only after independence that these lands were converted into private lands of either individuals or clans. There were some lands which had been occupied for generation by some clans and were known as "Clan's land: Khasis believe that they originated from the same common ancestors "U Thawlang" and "ka Lawbel". Later on due to exogamy, various clans were introduced. Each clan observes various distinctive religious rites. A common rite was to reserve a special place in

which the unclaimed bones were kept under stones after cremation.

The matriarchal theory is still in full force. Inheritance comes only through mother's line. Khasis are generally liberal in out look, but in terms of the society, they are very conservative, even mindful of their customs and right accusing thereon. Khasi people are strong, healthy and honest. Thanks to the bracing climate as well as their habits of hard work. The Britishers in their record described the climate of these hills as "English Climate". They called Shillong as "Scotland of North-East". The Khasi hills are also known for heavy rainfall. Cherrapunjee records the highest rainfall kin the world. During autumn, these hills remain covered with green grass and the evergreen forest dotted with many waterfalls, present in beautiful landscapes. These scenic delights continue to attract Tourists in large numbers. The following table shows the number of Tourists visiting Meghalaya during 1991-1997.

Apart from the role Law enforcing agencies, customary law is internally embedded in the Socio-Culture of the Khasi people of Meghalaya. Social, cultural, political, moral and religious aspects guide customary law also. An analysis of the prevailing customary practices of the Khasi people is summerised here under.¹²

F. Family structure

The primary smallest social unit of the Khasi people is the family of a Clan organisatin. A Clan springs out from an ancestress and each daughter of the ancestress forms branches or KPOH. These kpoH in turn forms small family units. The Clan members are sets of matrimonial decedents and the females have a more predominant position in terms of lineage. The Khasi family consists of father, mother and children residing in a common household. If the youngest daughter happens to be the mother of the family, the family members include her unmarried brothers, sisters, childless sisters, orphan and posthumous children of

12. *Id.* at-3.

her sisters and her surviving parents. The father happens to be the executive head of the family. He looks after the welfare of the household and all his earnings spends in maintaining the family. Traditionally, the children take the name and title of their mother and the youngest daughter inherit the whole family property with the limitation that she cannot sell it out. But now-a-days sons are also given landed property if parents could afford.¹³

G. Institution of Marriage

Among the Khasis, marriage is a socially and religiously approved union, establishing a relationship of husband and wife for the purpose of procreation of children. In terms of Clan, marriage is strictly exogenous among the Khasis. Any sexual relation within the Clan members is considered as a sacrilegious act not less than incest. Incest taboo is strictly adhered to among the Khasis. Any violation in this regard is considered as an offence, punishable under the customary law. The punishment is that the couple is shaved off their head in to three parts, excommunicated from the clan invoked to supernatural punishment of the almighty and also forfeiture of inheritance. Among the Khasis, marriage exhibits a regular pattern based on the prohibited degrees and regulations governed by customary laws rather than formal laws. A Khasi man can not marry:-

- i. His father's mother
- ii. His father's sister
- iii. His father's sister's daughter
- iv. His father's brother's daughter
- v. His daughter
- vi. His mother
- vii. His mother's daughter
- viii. His foster sister or niece

13. *Id.* at- 5.

- ix. His sister's daughter
- x. His mother's sister
- xi. His mother's sister's daughter
- xii. His mother's brother's daughter
- xiii. Daughter's mother-in-law and sister-in-law
- xiv. Wife's mother
- xv. Father's brother's wife
- xvi. Mother's brother's wife
- xvii. Sister's and brother's mother-in-law
- xviii. Paternal and maternal uncle's mother-in-law
- xix. Dead wife's elder sister younger sister can be married only after one year of wife's death
- xx. Any female member of his Clan and Sub-Clan
- xxi. Any Clan with whom his Clan had any case of breach of marriage engagement or divorce through the custom of throwing of five cowries.

Marriage is neither strictly exogamous nor strictly endogamous but inclined to tribe linguistic, religious and village endogamy. Monogamy is commonly practiced and generally accepted norm. However, a kind of informal alliance with any other individual other than the spouse may some time take place. Children of such alliance not discriminated as they belong to their mother whether illegitimate or legitimate. However, socially a man's children from the first marriage are generally recognised. Marriage is accompanied by religious rites and rituals both between Christian and non-Christians Khasis. Presumption of marriage by cohabitation prior to solemnization of marriage is recognised provided it falls outside prohibited degrees. Registration of marriage in Civil Court is not necessary. Remarriage of divorcees and widows or widower is permitted but only after one year of death of the deceased spouse.¹³

H. Divorce

An unpleasant act among the Khasis is divorce and before divorce reconciliation and mediation is attempted if divorce is unavoidable, it

takes in the presence of maternal uncles, parents and friends as witness, which is accompanied by certain procedures. Divorce may take place on one or more grounds as follows:-

- I. Adultery
- ii. Barrenness and sterility
- iii. Incompatibility of temper
- iv. Desertion and abandonment without any reasonable cause
- v. Incurable disease and unsoundness of mind
- vi. Ill-treatment and cruelty

Divorce may be unilateral or mutual in nature. In case of unilateral divorce, compensation is to be paid by the party who divorced to the other party. The amount of compensation varies from place to place and individual to individual. The most common practice is mutual divorce, which involves the procedure of throwing five cowries followed by public declaration that any one is free to marry the divorcee. After the divorce no marriage can take place between the two clans in the coming generations. A woman cannot be divorced while she is pregnant.

However, the traditional procedure of divorce is disappearing in the present changing society. If restitution of conjugal life becomes impossible, a spontaneous separation takes place without any formal divorce and a valid divorce takes place. Nowadays, the people also approach the court for divorce. In the event of divorce, the mother gets custody of all children and the family property due to Matrimonial system. Even in the present era also the customary law governs the custody.

I. Inheritance

Traditionally, the father does own or inherit landed property. The mother is the legal owner of the ancestral as well as self-acquired property. On the other hand, if the mother's mother is heir-less, she becomes the legal owner of mother's ancestral as well as self-acquired property. In case of heiress daughter, she inherits the ancestral house

and property over which she is only the custodian and to do anything regarding ancestral property, decision is not unilaterally taken by her but with consultation of the maternal uncles. Thus a Khasi man has an added responsibility to look after his mother's family as a maternal uncle.¹⁴

J. Adoption

Among the Khasis, adoption is termed as **RAPIING** which is not the same as understood in the modern terminology. Khasi, being a matrimonial society inheritance and right to property pass down to female line only. In the absence of an heiress due to barrenness or lack of female issue, adoption is done in the interest of the family property and clan to continue. The family adopts a female child from within the clan usually from the nearest female line. She attains the status of the youngest daughter and takes up responsibilities of the adoptive family. The custody of the ancestral house and property is also taken by the adopted daughter. For a valid adoption, no written agreement is necessary, only verbal agreement is sufficient. Besides *rapiing*, general adoption is also made.¹⁵

K. Maintenance

Claim for maintenance among the Khasis is not a customary practice. The mother has an obligation to maintain the children and vice-versa. The husband is also responsible to maintain his wife and children. His earning goes to his wife and children. Whatever assets he posses during marriage he leaves with them taking nothing for himself. The responsibility of maintenance falls heavily on the youngest daughter. Other than her children, she had a moral responsibility to maintain the other dependants of the family irrespective of the fact that she received property or not. Thus the rule of maintenance among Khasis has more value as a moral obligation and less as right. A person who is liable to

14. See, Generally, Hamlet Bareh, "*Meghalaya*" 1974.

15. Indian Law Institute, "*Customary Law and Justice in Meghalaya*" at- 84.

provide maintenance takes it upon himself to do so with all his capabilities and the question of claim does not arise. However, with change of time the children have started claiming maintenance from their father who is working in Govt. departments and this new practice is unknown to traditional Khasis. Besides this the children also began to claim maintenance from their father who had deserted them and such cases are dealt in the District Council Court.¹⁶

L. Minority and guardianship

The traditional age of majority for a Khasi boy is 20 and girl is 17 years and they are able to earn their livelihood independently. In case of a minor the mother has the sole authority of guardianship but in her absence or death, the guardianship goes to the eldest sister who has attained majority herself and if she in turn is a minor, the youngest maternal aunt takes up guardianship. The guardianship shares basically the same power and responsibilities, as the natural parents are responsible for their wards. Guardian can also be removed by the landsmen, though rare, if the guardian fails to protect and look after the wellbeing of the ward.¹⁷

M. Land tenure system

The Khasis believe that God is the creator of diverse races of human beings planted in their abodes on earth. So far as the legend is concern; God created sixteen families and kept them in the heaven with him. At first God was pleased to give these sixteen families the freedom to up and down to the earth and return to heaven at their own will. Later on, seven of these families (*Hynniew Trep*) choose to remain on the earth since they found that there were facilities to cultivate and earn their livelihood. Then they began to indulge in sin and crimes, which is against the will of God, and heaven was removed from them.¹⁸

16. *Id.* note 5.

17. *Ibid.*

18. *Id.* note -1.

These seven families settled on the range of "*U Lum Sohpetbneng*". As the tribes increased, they spread out to different parts of the region. They constitute fresh group to select new settlement of the then empty land. This process went on from time to time till they brought the entire area of the native hill under their own settlement. Thus we find today the existence of a separate territory with their distinct confines known by different names, following the domestic form of Government, with certain variations according to local conditions and circumstances. When any group of Clan had fixed upon a particular expanse of land, not claimed by any other group, a portion of it was set apart for the founding clans who divided it among themselves and each clan had absolute proprietary right over it.

All the lands in Meghalaya can broadly be classified in to two customary land tenure categories *i.e., Ri-Raid land* and *Ri-Kynti land*. Ri-Raid land is the land, which is given to an individual for its use, and the user enjoys no right of ownership. Ri- Raid lands belong to the whole population of a specified area, generally called Raid. The whole population does not cultivate jointly, but each individual has got the right to cultivate or otherwise use and occupy only and does not extend to transfer or sub-letting. But if the occupant makes permanent house or cultivation or digs fish ponds, then he may acquire permanent, heritable and transferable rights. But if the land is kept fallow for a period of three or more years, then the land reverts back to the community and any other person may occupy it. The management and control of ri-Raid is completely within the jurisdiction of the community through the elected members of the Village Durbar. The most important aspect of Ri-raid is that a part of it is allotted purely for use and nothing to be paid for enjoying the right to occupy and use.

Ri- Kynti land is the land with rights of ownership and succession and can be divided in to either ancestral or self-acquired land. Self-acquired Ri- Kynti is considered as property solely of a person who has

owned it out of his own earning. Such a person has the absolute right over such land and can dispose it according to his own will. Such property can also be divided among the children. When it passes to the children, it becomes Ancestral Ri-Kynti for them, which cannot be sold to others in any generation as per the Khasi custom. It can best be divided among the daughters by following the matrimonial system of inheritance. The management and control of Ri- Kynti is in the hands of the owner themselves and village durbar does not interfere, except in the settlement of disputes.

Thus, in the Khasi society, land for economic use can be acquired by way of allotment from the traditional authorities or by way of purchase from others. The land allotted by the traditional authorities is considered as Ri - Raid which becomes ancestral Ri-Kynti when the children of the allottee gets it by inheritance.¹⁹

N. Land holding system and ownership

On the basis of ownership, land can be divided in to four broad categories:-

1. Private Land
2. Land under group ownership
3. Land under community ownership and
4. Land under the Govt. ownership

Private land:- The land over which the single owner or individual family owners enjoy all rights and in no case subject to the control of any other authority. Various types of land under this category are Ri-Nongtymen, Ri-Maw, Ri- Khurid, Ri-Bitor, Ri-Dakhol, Ri-Shyiang, Ri-Phniang, Ri- Spah, Ri-Langdung, Ri-Samla, and Ri-Nongmei.

Group Land:- Group land is the land over which the owner's right to transfer is subject to the control of a group which may consist of a branch of a clan or a group of clans and each group has its own

19. *Id.* note- 5.

assembly known as 'Durbar Kur'. All the members of the concern group enjoy right to use, occupancy, and inherit at will but no one is entitled to sell the land individually without the consent of the Durbar Kur. Ri-Kinty, belonging to a clan, which has not been divided, is known as Ri-Kur. Management and control of these land rest upon the Durbar Kur. The eldest uncle of the clan acts as the head. In the absence of suitable uncle, the eldest brother is elected as the head of the Durbar. The various categories of land come under group land are Ri-Kur, Ri-Seng, Ri-Khain, Ri-Duar, Ri-Lyngdo, Ri-Lapduh, Ri-Syiem, Ri-Sniak, Ri-Kut, Ri-Law Sumar, Ri-Bam syiem etc.

Community land:- The lands which are subjected to the control of the community Assembly (*Durbar Shnong*) are called community land. A Community may consist of one or more clans covering one village or many villages. Each and every member of the community can enjoy right to use and occupancy and inherit but only after having the approval of the community Assembly and no land revenue is to be paid. The Durbar Shnong decides the period after which the property reverts back to the community. The Lands come under this category are Ri-Shnat, Ri-Kuna, Ri-Mynsian, Ri-Lynter, Ri-Law Sumar, Ri-Aiti Monsngewbha, Ri-Phlang Ri-Bamduh, Ri-Diengsaid-Ddiengjin, Ri-Law Adong, Ri-law kyntang, etc.

Govt. Land:- Lands which have been taken on lease or acquired or purchased by the Govt. are Govt. land. In the absence of cadastral survey in the Khasi Hills District, the Govt. has yet not yet prepared any record of land ownership. Hence it is very difficult to say the actual area cover under different types of land

O. Jhum cultivation

Jhum cultivation is prevalent on the high lands of Meghalaya. The length of jhum cultivation is generally four to five years but it is gradually becoming shorter due to non-availability of land. The duration of consecutive cultivation is one to two years. The people abandon the

land after two to five years of cultivation and then shift to another site for repeating the same process. The jhumians usually return to their own previous plot though they cannot claim it by any customary right. According to the custom, people cannot abandon the land. But people still practice slash and burn on the same plot of land without any rotation of land as it was in the olden days. The people now remain on the same place in contrast to the earlier days when the whole village used to shift to a new site. Now jhum cultivation is found only in a few areas of Meghalaya though some villages might have been still practicing but it is not like before. With the increase of population and scarcity of land, people with no option are now practicing settled cultivation. There are still some farmers who are still practicing especially in those areas where the land is very rugged and characterized with steep slopes and having low density.

P. Permanent cultivation

Among the Khasis permanent cultivation is also prevalent and it is mainly found on the low land known as *Pynthor* and on the hill slopes. The cultivators use wet rice and paddy cultivation in valley lands between hills and in terraced lands which crops such as rice, maize, and vegetables are grown. In the southern slopes of the War area, especially Orchard is also grown. The lands under permanent cultivation are heritable according to the customary laws of the Khasis. In the Homestead lands also permanent cultivation is found where Plums and peaches are grown. Where there is permanent cultivation on lands, permanent rights over them are recognised by the people. Valley agriculture is practiced through the hilly terrains both in low and high elevations. It is sedentary from wet rice cultivation and is a complementary system of Jhum. It is done wherever terrain permission flat lands between hill slopes.²⁰

20. *Id. note- 5.*

Q. Administration of justice:- the constitution makers had taken great care to ensure the realization of the aspirations of the tribal people. The Advisory Committee on Fundamental Rights, Minorities, and tribals of the Constituent Assembly appointed two sub-committees to examine the administration of justice of tribals. The joint report of the committees recommended for separate administration of justice for tribal people. The constituent Assembly adopted the recommendations and sought to protect the autonomy of the tribal areas by:-

1. Creating District Councils for Autonomous Tribal Districts.
2. Giving Administrative and Legislative powers in specified matters to District Councils.
3. Providing for non-application of the laws of the state of Assam to these areas unless adopted by the District Council.
4. Empowering the Governor not to apply any Act of Parliament or an Act of the Legislature of the State of an autonomous District.

Accordingly, provisions were made in the constitution to give effect to the aforesaid aims and objectives in order to safeguard the social, cultural, and economic identity of the tribal people of the North-East. Specific provisions have been made under various Articles²¹ and the sixth schedule of the Constitution. Subsequently, detailed provisions as to the judicial administration in the Khasi and Jaintia areas were laid down by the United Khasi-Jaintia Hills Autonomous District (Administration of justice) Rules 1953, which envisaged three kinds of courts namely:

- I. Village Court,
- II. Subordinate District Council Court and Additional Subordinate District Council Court,
- III. District Council Court,

The Village Court consists of the village headman along with not less than two and not more than six other members as may be decided and elected by the majority of the village adults in an open Durbar. The

Village Court has civil as well as criminal jurisdiction. In civil matters, the immovable property in dispute must situate within the jurisdiction of the village Court and in all other cases, the parties must reside or hold land within such jurisdiction.²¹

Criminal cases of petty nature such as theft, pilfering, simple assault, drunkenness, public nuisance, wrongful restraint, etc. can be decided by the village court provided; the parties must reside within the jurisdiction of the village. But a village court cannot pass a sentence of imprisonment; only it can impose fine up to fifty rupees. Subordinate District Council Court is presided over by a magistrate to be appointed and led by the executive committee with the approval of the Governor. Additional Subordinate District Council Court consist of *Syiems, Lyngdohs, Wadadars or Sirdars* listed separately and presided over by the *Syiem, Lyngdoh, Wadadar, or Sirdar* as the case may be. The cases which are not triable by the village court and suits between the parties residing within the jurisdiction of two different village courts are decided by the Subordinate District Council Court and Additional Subordinate District Council Court. These courts may pass any sentence authorized by any law for the time being in force subject to provisions of the constitution.²²

District Council Court consists of one or more judicial officer to be designated as judge appointed by the executive committee with the approval of the Governor.²³ An appeal lies to the district Council Court from the decision of subordinate district Council Court. It is a court of appeal, and can pass, on appeal any order authorized by law for the time being in force. It has revisional powers also. It can call for and examine the record of any proceeding of the other subordinate courts.²⁴

21. Articles 15(4), 29, 30, 46, 244(A), 330, 332, 334, 335,338, 339, 340, 342, 366, 371(B), of the Constitution of India.

22. *United Khasi-Jaintia Hills Autonomus District (Administration of justice) Rules 1953*

23. *ibid.*

24. *ibid.*

3. REVIEW OF LITERATURE

A complete review of the earlier studies related to the present work has been done to assess the problematic situation and gaps in the findings. This adds the relative importance of the present study. Research works related to the right to environment in general and right to environment of the Khasi tribe of Meghalaya in particular is very scanty. The following is the brief review of some of the previous works.

Singh. Nagendra, (1987) studied the issues of right to environment and sustainable development as a principle of International Law. He concluded that the right to environment has to be exercised recognizing the duties of the State towards each other n also in relation to international community as a whole and this aspect leads us to the concept of sustainable development. The most concrete suggestion he made is that we should all strive to reinforce public opinion, which is now emerging as a possible effective sanction behind international law. But this necessarily doe not mean a complete disregard of the rights of an individual citizen. Individual rights, which may be claimed by the whole mankind like right to life, right to peace, right to an adequate environment, this not only remains as political right but becomes a juridical right.

Singh Chatrapati, (1990) studied the issue of water right in India and he viewed that right to water is not an absolute right against which no prescription can be obtained. Rights becomes co-related with duty and the duty of the State, in the use of water especially where people's natural right is violated, need to be very clearly specified in the statutes itself. He suggested that it should clearly be defined who the benefiting public is and how the original users are to be included in the word 'public' and how their rights are to be respected, if they are not going to a part of public. The public purpose should also be legally justified. The planners can not arbitrarily plan projects whose worth can not be evaluated by the public.

Jariwala, C. M. (2000) studied the judgments and orders delivered by the Supreme Court of India in the administration of environmental justice in the year 1999 and found that in the period 1999, the judiciary has played its role very well. The Supreme Court delivered 32 judgments out of which 24 were in favour of the environment in the way of Public Interest Litigations. The environmental justice in 1999 brings the emergence of lawyers, judges and social interest groups, speedy environmental justice, increasing recourse to Public Interest Litigations, and successful handling of new challenges posed by emerging problems. Case law shows judicial concern for the protection and enforcement of the Indian environment. Thus, the judiciary during the present period withstood its constitutional commitment to protect and improve the environment.

Noomani, Z. M. (2000) studied on the issue of constitutionalism and environmentalism in the monistic perspective, where constitutional stewardship with relation to ecological movement is explored. He opined that environmental justice is the need of the day. Member states, traditional and indigenous communities, NGOs and opinion makers are already engaged in implementing socio-ecological restraint to commitment to environmentalism and translation of these values in to constitutional ethos, enviro-legal ideologies, and right-duty discourse are very essential. He opined that on the sole strength of Article 144 Of the constitution of India, the Supreme Court urged the authorities to act in talking environmental degradation and atmospheric pollution.

Medhi, K (2000) studied the issue of Human rights in North-East India as a contemporary perspective and concluded that the new beginning could be made by the people across the globe, despite cultural diversities to contain Human Right violations. A new paradigm is to be developed to educate one and all right from childhood to understand the concept of human right, the modalities of which could be decided in such highly prestigious international forums of human rights.

Sabarwal, Justice Y. K. studied the contribution of the Supreme Court in the Field of Environment. The Supreme Court occupies a unique position in the field of environment. He studied judicial initiatives, role of PIL, application of international environmental law principles, the right to livelihood. He concluded that the arrangement of environmental management is composed of legislature, executive and judiciary. The higher judiciary plays a stalwart role owing to its unique position and power and due to the circumstances of inefficiency within the executive and legislative framework. The principles of Indian environmental law are resident in the judicial interpretation of laws and the constitution and encompass several internationally recognized principles, thereby providing some semblance of consistency between domestic and international environmental standards. The prevailing situation of primacy of higher judiciary and the Supreme Court of India in particular, while providing legal theorists with cause for some concern has been vindicated by its success in achieving hitherto ignored environmental goals.

Singh, Surendra (1995) studied the environmentally sound and sustainable development. He opined that the development necessarily entails the use of environmental resources, which are not unlimited. As long as due attention, care and caution with regards to various dimensions of baneful effect of development are exercised, particularly with a view to maintaining the age-old harmony between man and nature, by not disturbing any of its important links in the inextricably interrelated chain of all living and non-living beings, development remain conducive for the mankind but the moment any kind of attempt is made, to over-use or abuse and exploit environment either for adding to the luxuries or for achieving and /or maintaining hegemony and supremacy or for quenching the thrust for knowledge through advancement in science and technology through new kinds of experimentation, a situation of grave danger is created which requires

some conscious, planned, deliberate, and organized efforts to be made to avert the crisis. He suggested some measures for controlling the effect of development, such as EIA, separate industrial and residential area, encouragement to establish small scale industry in the villages, utilisation of by-product, adequate measures for checking pollution, use of non-conventional source of energy, massive plantation drive, regulation of density of population, and checking growth of population.

Noomani, Z. M. (1996) studied the legal dimensions of water pollution control and public participation. He opined that the parliament enacted laws but water pollution is in rise. The Pollution Control Boards are indifferent, callous, and lethargic in carry out its functions. Community participation through PIL and NGOs holds great promise in eradication of this evil. He concluded that strict law and more rigorous enforcing machinery is the need of the hour. The role of the Board is not up to the mark. It is also realized that deterrent punishment has also not achieved much success. The remedy lies in the evolution of participatory model of legal regime. It calls for a fresh look in to law to make it more effective.

Mehdi, Ali (2000) studied the judicial vindication of the right to environment and opined that the scope of fundamental right got a liberal and horizontal expansion to cover all those areas which are not otherwise provided in the constitution but somehow connected with the persons and personality. He concluded that the right to life and personal liberty embodied in Article 21 of the constitution has been transferred into a positive right by an active judicial interpretation. Until 42nd amendment 1976, the right to environment did not find a place in the scheme envisaged in the constitution. Article 21 has been transformed in to positive rights by an active judicial interpretation, which started from Maneka Gandhi's case. He submitted that in the final analysis, the apex court has rightly and convincely recognized the horizons of right to life include right to environment.

Farooqui, M. A. (2000) the issue of healthy environment as a human right and concluded that for rapid and sincere solution of environmental pollution, a National Environmental Commission and Environmental Ombudsman is required to be established.

Rajyalakshmi, Dr. V. studied the issue of right to housing. He said that the need for shelter and the right to have it are two sides of the same coin. He suggested that the planners should do better in combining social and environmental factors in conceiving development models.

Pattanaik, Pradeep Ranjan studied on Human Rights: A Protein perspective and expressed the view that the idea of human right originated from the genesis of individual tussle between the paramountcy of the state and the primacy of the individual. It has developed basically as a western concept and got international recognition when the US declaration of independence 1776 declared that every man has a right to dignity. He concluded that in the Indian scenario, mere super imposition and wholesome adoption of foreign models on human rights in their entirety is but to create disorder and disruption in the society.

Jain, Rabi Kiran studied the issue of emerging human right situation in India in the context of socio-political and economic changes. He concluded that National Human Right Commission recognizes that corruption in politics, communal and caste politics are issues directly related to the questions of violation of human rights and the concept of human right cannot be confined to civil liberties.

Thakur, Balak Ram (2004) studied the legislative measures for environmental protection in India with special reference to the state of Himachal Pradesh. He expressed his opinion that the existing legal framework for environmental protection is sufficient to meet the challenges posed in terms of ecological imbalances, provided, it is vigorously enforced. The environmental laws in India have failed to

produce required result mainly because of the lack of commitment on the part of implementing authorities. He felt the need of effective supervisory machinery for the implementation of environmental law. The enforcement of environment protection laws will be possible only when the people themselves become conscious of the problem.

Mukhopadhaya, S. C, (2004) studied the Environmental Appraisal of North-East India with Special Reference to its Water Resource Management. The growing needs of the millions of North-East to yield water at economic cost in adequate quality and of suitable quality evolved the need of water resource management. He suggested a basin wise or catchments wise approach inclusive of the ideas on the linking of river basin, which are believed to yield the best result.

Bandhopadhaya, M. K. (2004) studied the Man-Environment Relation -ship in the North-East and its impact on development, with special reference to Manipur. He opined that the tribal people remain isolated and the plain people developed contacts with the outside world and developed better standard of living. He concluded that the main hindrance to the development of the region is the insurgents groups, which can only be solved through negotiation table, which will bring peace and happiness in the region.

Behera, Vijayananda (2004) studied on the issue of Forest Dwellers and Ecological Stability and expressed the opinion that over the years, tribal communities have emerged which are no longer amenable to the traditional tribal discipline, their tribal values have eroded leading to ecological instability. They are neglected by the forest department, exploited by the settlers and corrupted by the plainsman. He concluded that judicial attitude in India has been for protecting the traditional rights of the forest dwellers but not at the cost of environment and development. Undoubtedly, every effort should be made to ensure that the forest dwellers are able to earn their livelihood and promote the better living standard.

Chandrasegaran, Dr. K, (2001) studied on Environmental Degradation in India : A System Failure or Human Failure and expressed the view that the laws passed in India are more or less similar but the Environment Protection Act was enacted with a wider purpose of protecting and improving human environment. He opined that the judiciary played an important role in the evolution of environmental jurisprudence through the instrument of Public Interest Litigation. He concluded that the state has failed to discharge its responsibilities. The integrity of the executive should be ensured. It is desirable to constitute accountability bench in the Supreme Court and High Court for exclusive adjudication of cases involving inaction for the purpose of fixing responsibility.

Noomani Z. M. studied the various aspects of human right to environment in India and concluded that Public Interest Litigation has a galvanizing effect in promotion of the enviro-human right and eco-justice in India.

Alam, A studied the issue of emerging dimension of human rights and discussed the various issues relating to human rights in India including the right to environment as a human right.

Rajyalakshmi Dr. V (2000) studied the issue of human right to environmental protection and concluded that States should take measures more to the direction of mobilizing the people rather than suppression.

Krishna, Gopal, (1995) studied the issue of environment and development. He concluded that in the national efforts to foster economic development, the environmental considerations have generally ignored.

4. OBJECTIVES OF THE STUDY

The objectives of the study are as follows:-

2. to study the Scope and ambit of the right to environment in India
3. To examine the role of the judiciary in promotion, protection, and

development of the right to environment in India.

4. To study the nature, achievement, performance and lacunae of the existing environmental legislations in India in promoting and protecting the right to environment.

5. to study the main hindrances or difficulties in implementation of environmental legislations in India

6. to suggest future strategies for better promotion and protection of the right to environment in India

Research Methodology

Over the last few decades, the scholars have conducted a number of studies relating to the definition, scope, ambit, nature and content of the right to environment. The Supreme Court and the High Courts on the topic have also delivered a considerable number of judicial pronouncements. In this study, the historical analytical methodology of research is applied and a systematic analysis is made regarding the historical development of the right to environment. The research work is mainly doctrinaire which spreads over three broad areas – (a) to make an analysis of the opinion of the academicians available in journals and books, to the concept and content of the right to environment in India (b) to study the relevant international instruments and national laws rules and regulations and (c) to critically examine the judicial decisions to evolve a conspectus thereto. For the above purpose, the law journals in India and available foreign journals has been surveyed. The cases of the Supreme Court and High Courts have been collected and surveyed from the All India Reporter. The present study mainly concentrates on the Indian position with reference to the Khasi people in the State of Meghalaya.

Research Questions:-

The nature, scope and ambit of the right to environment is inherently obscure as well as complex which brought various controversies in to forefront.

Firstly, is the right to environment merely a human right? If so, then what about the right to environment of the other co-residents of the ecosystem such as animal, flora and fauna? What are the traditional rights of the tribal people? if the right to environment comes in conflict with the right to livelihood, or other constitutional rights, then which will be given preference?

Secondly, right implies duty. On whom lies the corresponding duty? What is the procedure to determine and implement the right to environment of non-human entity? No right is absolute. Like other Fundamental rights, has the right to environment any limitation? Whether reasonable restrictions can be imposed on the right to environment? Whether limitations embodied in express words in Article 19(2) of the constitution are also applicable to the right to environment?

Thirdly, is it an independent right or the means of realizing already established rights such as right to health, right to livelihood, right to housing, right to liberty etc. whether any distinct right to environment has emerged? If so, what is the concept and definition of the environment? What is decent environment? What is healthful environment? What is ecological balance?

Fourthly, whether adequate laws have been brought about to protect this right? Whether the present environmental statutes are sufficient to protect this right? What are the lacunae of the present environmental legislations? Whether these legislations are being properly implemented? Who are mainly responsible for non-implementation of these laws? Whether the regulatory authorities are performing their statutory duties? What is better possible alternative for proper implementation? What are the constraints being faced in discharging such statutory duty?

Fifthly, whether it is a social right or individual right? Who is the subject of such right and upon whom the corresponding duty is imposed? Whether the State or sovereign authority has any right to destroy or enjoy

the natural resources?

Finally, what is the role of the judiciary in emerging, realizing, understanding, and promoting the right to environment?

The main thrust of the study is to seek an answer to all these questions in the light of present policy, law and justice in national and international level.

5. LAY OUT OF THE STUDY

The study has covered important aspects, scope and ambit of the right to environment under the present international, national and regional framework. The main thrust area of the study is to locate environmental ethos of right to environment. The study is coached in seven chapters. After having analysed the need of right to environment in the context of international, national and regional level, the first chapter introduces and sets forth the parameter of the study in both theoretical and problematic framework. It also highlights the objectives framed, methodology adopted for collection of data and technique used for analysis. A brief overview of available literature on the topic has also been highlighted to understand the nature and gravity of the topic under research. The present study mainly concentrates to the Indian position with special reference to the Khasi people in the State of Meghalaya. A historical background of the study area has also been given. Conceived with the framework of the study, chapter two, namely historically retrospect is devoted on detail historical analysis of the genesis and subsequent developments of the right to environment in the international and national level. It covers various national and international conventions reports, committee recommendations, instruments, theories and opinions of Jurists, judges and environmentalists. Taking the queue from the earlier chapters, chapter three discusses the conceptual and definitional aspect of the right to environment. Various national enactments, international covenants, and judicial pronouncements

conceived the definition, nature and content of the right to environment. The true meaning of the right to environment depends upon the social, economic, and political status of the person concern. There is a hierarchy of needs as primary and secondary needs. Food cloth and shelter are the three basic needs, when fulfilled, other secondary needs such as biological, social and cultural will come out as primary needs and thus it is a never ending process. The meaning of right to environment differs for rich and poor, tribal people and plain people, villagers and city dwellers, developed and under developed countries. The scope of the right to environment is a analysed in chapter four. The main issues, which are to be covered under the right to environment such air, water noise forest etc. The chapter also highlights the comparative evaluation to various rights covered under the present human right contents. Whether this right is available to the natural persons only or to animals and other organisms, a reference has been made in this chapter. A right without remedy is useless. Right also requires remedy which is the protection of the right. For effective enforcement of a right it becomes necessary to provide for an effective remedy. This chapter also highlights the kinds of remedies, which are available under the parameter of various laws. Therefore, in case of violation of the right to environment what kinds of remedies are available, a brief reference thereof has been made in this chapter. Every right has to operate within certain limitation. An attempt has also been made to delineate and prescribe the limits within which the right to environment should operate. On the basis of the scope of the right to environment, chapter five analyses the role of judiciary in the development of present environment jurisprudence in India. Side by side this chapter also highlights areas of right to environment, which have already received judicial recognition. The contribution of the higher judiciary in the development of the environmental jurisprudence is very much important to understand the stages of development and the present position of the right to environment in India. The interest shown by the

judiciary in the protection of the environment is also equally necessary to dig out the importance of the right to environment. Therefore, the important decisions, which laid down the backbone of the right to environment, have been discussed in this chapter. The deficiencies and difficulties of judiciary in the administration of environmental justice have also been discussed so that some changes may be suggested in the administration of environmental justice. Chapter six analyses the working of the environmental legislations in India. India, being a developing country, adopted various measures and enacted various laws for, conservation, up gradation and protection of the environment. The success of all these laws depends upon proper implementation. The successfulness or otherwise of the environmental laws are discussed on a theoretical and practical basis in this chapter. Under the present regulatory regime, the authorities responsible for the implementation of environmental laws are also facing some difficulties and constrains, a reference has also been made in this respect. Lastly, Chapter seven gives a brief summery of main findings and some workable suggestions for further improvement to the right to environment. The study is expected to be a piece of document before the appropriate authorities for future policy framing in the field of environment.