

Environ-Legal Frame for Sustainable Development: Emerging Issues and Judicial Response in India

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DOI: 10.5281/zenodo.1477513

Abstract:

The environment has always got a special position in human civilization, but the forms are different. Initially, it was a subject of prayer, when the trees, fire, water was worshiped by the people throughout the globe. In the passage of the and change in the lifestyle of the people, lower attention was given on environment and its protection, rather it started violating general norms of the environment in the name of development, industrialization, urbanization etc. Finally, the world civilization has awakened and has taken various commitments and adopted lots of resolutions at international as well as national level. The thought behind the commitments is not only to save the environment by adopting laws for the present generation but to keep the environment safe and protected so the future generation can also survive. Various legal frameworks have been adopted in order to enjoy the environment and protect the environment for the future generation without compromising for the present population globally. Indian judicial system has also contributed remarkably in this pious venture and issued lots of guidelines and principles in the line of international commitments and social welfare at large.

In this paper, the subject will be analysed taking a reference to the various decisions of the Supreme Court and High Courts, besides relevant national legal provisions in regard to the environment protection, sustainable development and response of Indian judiciary therein.

Keywords: Sustainable Development, Environment Protection, Sustainable Development, Environmental Jurisprudence, Human Right, Judicial Decision.

Introduction

Nowadays Environmental degradation is a serious threat to the globe. 'Save Environment' is the global slogan for protecting 'life' on the planet of "Earth". Different types of Problem of Environment protection and its solution are the burning problem in the present era. Environmental deterioration is caused havoc due to mainly some major reasons such as industrialization, urbanization, modernization, poverty, overpopulation and unnatural exploitation of natural resources etc. The term environment is not at all an abstract concept rather it has a wider sense which relates to the ecosystem, ecology, and biodiversity. So, the environment is so vital, due attention and care is the sine qua non for peaceful survival. But man is brilliant creatures; he wants to develop themselves in every moment for his comfort and leisure. He pursues development step by step. He can mold environment and create something new, did not care sufficiently for its standard level. But the time comes when environmental deterioration is one most emergent issues at every level of national, international and regional. A healthy environment is treated as one of the basic rights to live in. Development is indispensable in the name of Urbanization, modernization, and eradication of poverty but we cannot do so at the cost of environment. Priority of environment is first, then development. Since the time of industrialization, the methods of economic development has created an environmental problem. By the grace of technology

mainly, mankind has improved the economic development at the cost of natural ecological balance which affects the natural environment adversely. With the time, the concept of “Sustainable development” has been derived internationally is the need of the hour today as a panacea for the present and future generations. Mrs. Indira Gandhi, the former Prime Minister of India who addressed as the first head of State in the International Conference on Human Environment at Stockholm in 1972. Mrs. Gandhi explained that collective efforts are required to tackle problems with regard to the environment and since that period new era began towards the subject of the environment. According to the Tiwari Committee which was set up in February 1980 and submitted its report in September 1980, the following five areas to be attended for the environmental protection as follows:¹

- a. Land and water management
- b. Natural living resources
- c. Environmental pollution and Environment Impact Assessment
- d. Human settlements
- e. Environmental education and awareness.

The committee also pointed out some lacunas after reviewing existing laws with regard to the environment are as under:

1. Many laws were outdated;
2. The laws did not focus on policy objectives;
3. Some of them were mutually inconsistent;
4. Laws were not effectively implemented;
5. No such express provision or procedure to review the efficiency and effectiveness of the laws.

After considering the report of the Tiwari Committee, the Environment Department had been established in both Central and State levels with an independent Ministry and Department which had come into force in 1981.²

1. Meaning of Environment, Environmental Pollution, and Causes of Environmental Pollution

In general sense, the term ‘environment’ means what we see in our surroundings i.e the land, air, and water. The very word environment is derived from the French word ‘environner’ which means ‘to circle’ or ‘to surround’. In a broader sense, the term environment includes everything visible and invisible, known or unknown, seen or unseen, living or non-living and their interaction in, on, beneath and above the surface of the earth. It includes atmospheric temperature, wind, and its velocity.³

According to Encyclopaedia Britannica, environment means ‘the entire range of external influence acting on an organism, both the physical and biological and another organism i.e forces of nature surrounding an individual.’⁴

According to the United Nations Council on Environmental Quality, "Environment means that man's total environmental system including not only the biosphere but also his interactions with his natural and man-made surroundings."⁵

According to Section 2(a) of the Environment Protection Act, 1986 in India, the term ‘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.”⁶

Since the Vedic time, it has been highly recognized that social life must follow ‘to live in harmony with nature’. Environmental ethics play a vital role at that time. Environmental ethics mainly relates to moral behavior towards the components of the environment, such as air, water, land etc. The Vedas, Upanishads, Smritis, Ramayana, Mahabharata, Geeta, mythological

¹ S.C. Shastri, Environmental Law 11 (Eastern Book Company, Lucknow ,3rd edn., 2011).

² Ibid 2

³ Babu Sarkar and Ananya Ghoshal, Environmental Law in India p 1 (N.M Roychoudhury Co., Kolkata, First Edition; 2017).

⁴ Encyclopaedia Britannica

⁵ First Annual Report 6 (1970).

⁶ Section 2(a) of the Environment Act, 1986.

literature including social and moral codes showed the general guiding principles were observed by the people in their day to day life. Such as :

- a) Respect nature,
- b) Protect natural environment,
- c) Life depends on various components of nature,
- d) Maintain harmony with nature,
- e) Exploit natural resources only to satisfy the needs of people;
- f) Destruction of nature means the destruction of mankind,
- g) All must have compassion for animate objects, e.g trees, animals etc.
- h) Presence of divinity of nature in all living and non-living objects.⁷

So, from the primitive stage of civilization, nature was in a respectable position only for maintaining purity, cleanliness etc. Purity and cleanliness of nature provide a healthy environment which is cherished the desire of all. A healthy environment is the prime concern of right to life. Right to life does not mean mere animal existence. Life must have dignity.

But man is most talented in the World, he wants growth and development in all respect. As a result, science and technology were accelerated in a rapid way which affected adversely to the environment. Pollution is the main cause for the environmental degradation in reality. The term “pollution” has a specific meaning. Under Section 2 (b) of Environment (Protection) Act, 1986, deals with the term ‘environmental pollutant’ means any solid, liquid or gaseous substance present in such a concentration as may be, or tend to be, injurious to the environment.⁸ Under section 2(c) of Environment (Protection) Act, 1986 provides the definition of environmental pollution which means the presence in the environment of any environmental pollutant.⁹

Pollution is mainly of two (i) Natural Pollution includes – earthquake, flood, drought, cyclone, volcanic eruption, epidemic, fog, fires in forests etc. (ii) Man-made pollution includes—(a) Air pollution, (b) Water pollution, (c) Land pollution, (d) Noise pollution, (e) Radiation and Radioactive pollution.¹⁰

In *South Indian Salt Manufacturers Association Vs. Tamil Nadu Electricity Board*,¹¹ it was held by the Madras High Court that environmental pollution is a social problem indeed. The problem of environmental pollution is a problem affecting society at large. The environmental degradation is basically caused by several reasons. They are as under:

1.1. Industrialization

Industrialization is a process through which manufacturing, producing and processing done from raw materials which require several steps to make ultimate production. Activities such as manufacturing, processing, transportation, and consumption add limitless stress to the environmental system by creating an abnormal stock of wastes which pollutes environment indiscriminately. Greenhouse effect, global warming, and acid rain are few of the fatal consequences of industrialization. Industries pollute the environment in several ways :

- Industrial effluents are directly discharged to the watercourses and thereby making them unfit for human consumption.
- Some industries discharge pollutant gases, sometimes poisonous, in the air which affects the human health.
- Noise, also a major by-product of industries causes noise pollution.
- Fossil fuel used by industries like coal, kerosene, diesel, and atomic energy also pollutes the air in the air in the form of smoke and radioactive particles.

⁷ S.C. Shastri, Environmental Law 2-3 (Eastern Book Company, Lucknow ,3rd edn., 2011).

⁸ Section 2 (b) of Environment (Protection) Act, 1986

⁹ Section 2 (c) of Environment (Protection) Act, 1986

¹⁰ S.C. Shastri, Environmental Law 19 (Eastern Book Company, Lucknow ,3rd edn., 2011).

¹¹ 1996 (2)MLJR 175

- Many industries (cotton, textile, paper, iron, sugar, plywood, tobacco etc.) use natural products as raw materials and thus, increasing needs of industries result in overexploitation and stress on natural resources.¹²

1.2. Urbanization

Urbanization one of the most important causes of environmental pollution. The rapid growth of urbanization causes a tremendous effect on the environment. The rapid increase in urban population has adversely affected the basic needs for a hygienic and healthy human life such as clean drinking water, clean air, sanitation, schools, and transportation etc. The urban solid waste is posing a serious threat to the environment. People especially poor people suffer from several incurable diseases from environmental pollution based problems. The Indian judiciary has taken steps through Public Interest Litigation (PIL) for protecting the environment.¹³

The Supreme Court highlighted in the case **Dr. B. L. Wadhwa Vs. Union of India**¹⁴ that residents have constitutional as well as statutory right to live in a clean city. The Court held that the authorities concerned (Municipal Corporation of Delhi and New Delhi Municipal Council in this case) have a mandatory duty to collect and dispose of the garbage/ water generated from various sources in the city.¹⁵

1.3. Deforestation

Deforestation is meant the clear of forest cover to make that land available for the residential, commercial, agricultural or industrial purpose. Deforestation is responsible for ecological imbalances which invite negative impacts on the environment. Deforestation has a number of bad influences on the environment such as global warming, climate imbalance, soil erosion, unnatural floods, drought etc.

1.4. Poverty

Poverty is a circumstance when people are unable to meet one's minimum basic needs such as food, shelter, and clothing. There is inter-relation between poverty and environmental degradation. Poverty leads to exploit the environment by any means to survive. Poverty creates the problem of sanitation which gives rise to widespread cholera and diarrhea or epidemics.

Undoubtedly it can be said that poor nations and poor people are more vulnerable to effects of environmental damage than the rich. Poverty often causes people to put relatively more pressure on the environment which results in larger families, improper human waste disposal leading to unhealthy living conditions, more pressure on fragile land to meet their needs, overexploitation of natural resources and more deforestation. Insufficient knowledge about agricultural practices can also lead to a decline in crop yield and productivity etc.¹⁶

1.5. Lacking Environmental Awareness

General awareness of the people about the importance of protection of the environment is necessary. It needs to try to harmonize the developmental activities with the environment because development is also a very important aspect of life. General awareness has increased due to many agencies such as textbooks and teaching aids for environmental education in schools, mass communication, media were recognized as powerful and effective tools for increasing awareness about the environment. NGO's should include environmental education in their package of activities. Training programmes in environmental management should be set up at the regional and national levels by the regional organization. India today presents a picture of impending ecological disaster and of continuous environmental degradation. The people from many spheres such as rural, urban, poverty-stricken, illiterate and even educated have lack of awareness about the environment. United

¹² Babu Sarkar and Ananya Ghoshal, Environmental Law in India p 14 (N.M Roychoudhury Co., Kolkata, First Edition; 2017).

¹³ Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal, et.al., p. 187-188 (Allahabad Law Agency, Faridabad [Faridabad] Fourth Edition, Reprint, 2016).

¹⁴ (2004) 10 SCC 105

¹⁵ Ibid 15

¹⁶ <http://www.voicesofyouth.org/en/posts/the-relationship-between-poverty-and-the-environment>, Last visited on 30.09.17

Nations conference on human environment held in Stockholm, 1972, it was resolved that to take appropriate measures should be taken to the natural resources on the earth which inter alia included the preservation of quality of air and also control of air pollution. Another conference on control of environmental degradation was held at Rio in 1972 under the auspices of the United Nations focused the world attention on the uncontrollable situations, it also resolved for a converted multidimensional action plan.¹⁷

There is no means for any law unless it's an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness. This contention is additionally maintained by the Apex Court in the instance of *M.C. Mehta v. Union of India*, in this case, Court directed the Union Government was obliged to issue directions to all the State governments and the union territories to enforce through authorities as a condition for a license on all cinema halls, to obligatory display free of expense no less than two slides/messages on the environment in each show.

2. Sustainable Development and its Principles

Sustainable development means an integration of developmental and environmental imperatives. Sustainable development includes both economic and ecological sustainability. Sustainable development provides policies and strategies for economic and social development without damaging the environment for the present and future generations. According to the Brundtland Report, the concept of sustainable development is defined as the "ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs." and it contains within it two key concepts :

- a. The concept of 'needs', in particular, the essential needs of the world's poor, to which overriding priority should be given, and
- b. The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.¹⁸

The World summit 2002 extended the definition with the widely used three facets of sustainable development; economic, social and environmental. It created a collective responsibility to advance and strengthen the interdependence and mutually reinforcing facets of sustainable development – economic development, Social development and environmental protection at local, national and international levels¹⁹

Dominic Mc Goldrick has explained that sustainable development entails three pillars such as international environmental law, international human rights law, and international economic law. He stated that the integrated structure of sustainable development is such that it requires a support from each of the pillars. Its central pillar is international environmental law, a discipline of international law that has seen enormous growth in recent decades.²⁰

The basic objective of the principle of sustainable development focuses on three important issues from an environmental point of view, such as – a. To maintain essential ecological processes; b. to preserve genetic diversity, and c. to secure sustainable utilization of species and ecosystems.

Some of the salient features which have been traced out in Rio Declaration, 1992 and Agenda 21 are as follows ²¹:

2.1. Inter-Generational Equity

¹⁷ http://shodhganga.inflibnet.ac.in/bitstream/10603/4933/12/12_chapter%204.pdf. Last visited on 29.10.2017

¹⁸ Our Common Future-The World Commission on Environment and Development, 43 (1987).

¹⁹ The Johannesburg Declaration on Sustainable Development, 4th September 2002.

²⁰ Dominic McGoldrick, "Sustainable development and Human Rights: An Integrated Conception", 796-818 at 796-97.

²¹ Babu Sarkar and Ananya Ghoshal, Environmental Law in India p.156-157 (N.M Roychowdhury Co., Kolkata, First Edition; 2017).

Intergenerational equity is a concept that means "hold the natural and cultural environment of the Earth in common both with other members of the present generation and with other generations, past, and future". This principle of inter-generational equity pre-supposes the right of each generation of human beings to benefit from cultural and natural resources of the past generation as well as the 'obligation' to preserve such heritage for future generations. Principle 1 and 2 of the Stockholm Declaration, 1972 deal with the intergenerational equity –

The man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.²²

From the Stockholm Declaration we come to know that natural resources of the earth, including the air, water, lands, flora and fauna, and especially representative's samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.²³

Principle 3 of the Rio Declaration says about the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

2.2. Use and Conservation of Natural Resources

Use and Conservation of natural resources is also an essential principle of sustainable development which is recognized by Rio Declaration under principles of the **Rio Declaration** states about that to achieve sustainable development and a high quality of life for all people, States are under a duty to reduce and eliminate the unsustainable pattern of production and consumption. Further, the **Rio Declaration** provides that the environment and natural resources of people under oppression, domination, and occupation shall be protected.²⁴

3. Environmental Protection

Protection of the environment is an integral part of sustainable development through which a balance is made between environment and development and environmental degradation will also be checked properly. In **Citizen Consumer and Civic Action Group Vs Union of India**²⁵ the Court opined that while the Courts have social accountability in the matter of protection of the environment, there should be a proper balance between the same and developmental activities, Which are essential in progress. Development is required but should not be at the cost of environment. Both development and environment shall co-exist and go hand-in-hand.²⁶

3.1. The Precautionary Principle

From Municipal law perspectives, the Precautionary principle means:

²² Principle – 1 of the Stockholm Declaration, 1972

²³ Ibid 12 [Principle -2 of Stockholm Declaration, 1972]

²⁴ Dr. Paramjit S. Jaswal, Dr.Nishtha Jaswal, et.al., p. 138 (Allahabad Law Agency, Faridabad[Haryana] Fourth Edition, Reprint, 2016) ; [Principle 8 and 23 of Rio Declaration].

²⁵ A. I. R 2002 Mad. 298.

²⁶ Dr. Paramjit S. Jaswal, Dr.Nishtha Jaswal, et.al., p. 138 (Allahabad Law Agency, Faridabad[Haryana] Fourth Edition, Reprint, 2016).

- i. Environmental measures by the State Government and the local authorities must anticipate, prevent and attack the causes of environmental degradation.
- ii. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- iii. The “onus of proof” is on the actor or the developer/ industrialist to show that his action is environmentally benign.²⁷

The **Stockholm Declaration** provides that the discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystem. This principle is based on the precautionary principle which is one of the most important parts of sustainable development.²⁸

It also incorporates the "Precautionary principle" that science and technology as part of their contribution to economic and social development must be applied to the identification, avoidance, and control of environmental risks and the solution of environmental problems and for the common good of mankind.²⁹

Principle 15 of the Rio Declaration says that 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.

In *Research Foundation for Science (18) Vs Union of India*³⁰ the Supreme Court has explained that the ‘Precautionary principle’ describes an approach to the protection of the environment or human health based on precaution even where there is no clear evidence of harm or risk of harm from an activity or substance. It is a part of the principle of sustainable development. It provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced.³¹

3.2. The Polluter Pays’ Principle

The Polluter Pays Principle is an environmental policy principle which requires that the costs of pollution be borne by those who cause it. Here polluter is liable to pay the cost to the individual sufferers and damaged compensatory mechanism because the polluter should pay for the harm inflicted by him on the environment, two, a preventive mechanism in the sense, the heavy penalty may be imposed upon the polluter.

Principle 4 of the Stockholm Declaration, 1972 provides that man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat. Nature conservation including wildlife must receive importance in planning for economic development.

The Rio Declaration in Earth Summit in 1992 which was legally and internationally recognized as an integral part of sustainable development which provides that national authorities should endeavor to promote the internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.³²

In *Indian Council for Enviro-Legal Action Vs Union of India*³³ here the Supreme Court stated that Polluters Pays Principle means that absolute liability of the harm to the environment extends not only to compensate the victims of pollution but also to the cost of restoring environmental degradation. Remediation of damaged environment is a part of the process of ‘sustainable

²⁷ Dr. Paramjit S. Jaswal, Dr.Nishtha Jaswal, et.al., p. 139 (Allahabad Law Agency, Faridabad[Haryana] Fourth Edition, Reprint, 2016).

²⁸ Principle 6 of the Stockholm Conference

²⁹ Principle 18 of the Stockholm Conference

³⁰ (2005) 13 SCC 186

³¹ Dr. Paramjit S. Jaswal, Dr.Nishtha Jaswal, et.al., p. 143 (Allahabad Law Agency, Faridabad[Haryana] Fourth Edition, Reprint, 2016).

³² Principle 16 of the Rio Declaration in Earth Summit in 1992

³³ AIR 1996 SC 1446

development' and as such polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology.

In *M.C Mehta Vs. Kamal Nath*³⁴, the Supreme Court observed that 'polluter pays principle' has been recognized as a fundamental objective of Government's environmental policy to prevent and control pollution. The Court interpreted that the calculation of environmental damages should not be on the basis of the claim put forward by the party, but it should be on the basis of examination of the situation by the Court, keeping in view the factors such as deterrent nature of the award. The Court directed that one who pollutes the environment must pay to reverse the damage caused by his actions.³⁵

3.3. The principle of Liability to help and Co-operate

Basically, environmental degradation is a global problem nowadays. It is not at all a problem for a particular State or States. It is to be solved and eradicate with the co-operation of all States throughout the Globe. Some principles of Rio-Declaration can be mentioned in this respect; they are as follows:

- a. States should co-operate to strengthen indigenous capacity – building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion, and transfer of technologies, including new and innovative technologies.³⁶
- b. the Rio Declaration states that environmental issues are best handled with the participation of all concerned citizens, at the relevant level.³⁷

Principle 12 of the Rio Declaration focuses the States to cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation.

Principle 27 of the Rio Declaration expects the people and the States to co-operate in good faith and in a spirit of partnership in the further development of international law in the field of sustainable development.³⁸

3.4. The principle of Absolute Liability

The principle of Absolute Liability has been evolved as one of the components of sustainable development after setting aside the principle of 'Strict Liability' in India in the case "M.C Mehta and another Vs Union of India"³⁹ which is known as 'Shriram Gas Leak Case' where the then Chief Justice P.N Bhagwati stated "We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that, in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes, but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognize the rule of strict and absolute liability in cases of hazardous and dangerous liability or the rule as laid down in Ryland vs Fletcher as developed in England recognizes certain limitations and responsibilities. We in India, cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done."⁴⁰

3.5. The principle of Public Trust

³⁴ (1997) 1 SCC 388

³⁵ Babu Sarkar and Ananya Ghoshal, Environmental Law in India p.171-173 (N.M Roychowdhury Co., Kolkata, First Edition; 2017).

³⁶ Principle 9 of the Rio Declaration

³⁷ Principle 10 of the Rio Declaration

³⁸ Dr. Paramjit S. Jaswal, Dr.Nishtha Jaswal, et.al., p. 145-146(Allahabad Law Agency, Faridabad[Haryana] Fourth Edition, Reprint, 2016). [Principle 12 & 27 of the Rio Declaration].

³⁹ AIR 1987 SC 1086

⁴⁰ M.C Mehta and another vs Union of India and Others AIR 1987 SC 1086. [Dr. Indranil Bhattacharyya p-114

The principle or doctrine of 'Public Trust' is basically based on the principle that certain resources like air, sea, water, and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The natural resources are treated as a gift of nature, they should be made freely available to anyone irrespective of his race, religion in life practically. The doctrine imposes a duty upon the government to protect the resources for the enjoyment of common people rather than to allow or permit their use for private ownership or for commercial purposes. Principle 2 of the Stockholm Conference states that the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management.⁴¹ In the case *M.C Mehta Vs. Kamal Nath*⁴², the Court held that it says "natural resources" are held by the State as a "trustee" of the public, and can be imposed of only in a manner that is consistent with nature of such trust. Article 48-A of the Constitution of India mandates that State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws.⁴³

4. Approach Towards Protection of Environment in India

Environmental pollution is a major challenge before all civilized law. Law is a means of social control, was unknown in ancient India; but environmental consciousness was not absent within the people. Every individual in the society observed the 'dharma' as part of life, which taught them to worship nature. Classical texts like 'Manu Samhita', 'Brihat Prasar Samhita', 'Brihaspati Samhita', etc. prescribed punishments for offenders for destroying trees, animals or for polluting water. In Medieval periods, people did not think of the need for the preservation of the environment.⁴⁴ India has enacted some legislation under colonial regime at the end of the nineteenth century which promotes the efforts towards the protection and preservation of the environment.

4.1. Constitutional Recognition on Protection of Environment

The Constitution of India, Supreme law of the Land has shown its keen interest towards improvement, protection, and conservation of the environment. The Constitution of India upholds in favor of equitable development in consonance with the principle of sustainable development. The State and the citizens are enjoined with a set of duties to protect the environment and to conserve the natural resources of the country. The chapter on Fundamental Duties imposes upon every citizen the duty to protect the natural resources of the country.⁴⁵ Article 48A of Constitution of India incorporates in Chapter IV i.e Directives Principles of State Policies of the Constitution through the Constitution (42nd Amendment) Act, 1976, that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.⁴⁶ The Constitution also deals with certain environmental related problems like 'public-health',⁴⁷ 'organization of agriculture and animal husbandry',⁴⁸ and 'protection of monuments and places and objects of national importance'.⁴⁹

⁴¹ Babu Sarkar and Ananya Ghoshal, *Environmental Law in India* p.162-163 (N.M Roychowdhury Co., Kolkata, First Edition; 2017).

⁴² 1997 (1) SCC 388

⁴³ Dr. J.N. Pandey, *Constitutional Law of India*, p275-276 (Central Law Agency, Allahabad, 51st Edition,2014).

⁴⁴ Dr. Raj Pal, 'Legislative Measure for Environment Protection in India'(1998) 3 SCJ 46, Pp46-47.

⁴⁵ Under Article 51A (g) of the Constitution of India, 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.'

⁴⁶ Inserted by the Constitution (Forty-Second Amendment) Act, 1976.

⁴⁷ Art. 47 i.e Duty of the State to raise the level of nutrition and the standard of living and to improve public health – *The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.*

Article 252 and 253 of the Constitution of India are a special feature with regard to making legislation for special cases. Art. 252 of the Constitution of India authorizes the Union Government to adopt national legislation at the request of two or more states.⁵⁰ Article 253 provides to claim competence over subjects in the state list in order to implement a decision taken by an international organization or a declaration adopted by an international conference.⁵¹

Before the Stockholm Conference, several legislations were enacted which incidentally contributed to the protection of the environment. They are The Factories Act, 1948, The Damodar Vally Corporation Act, 1948, The Insecticides Act, 1968 etc. But after the Stockholm Conference series of legislation have been enacted for improving and protecting environment, such as, the Wild Life (Protection) Act, 1972; the Water (Prevention and Control of Pollution) Act, 1974; the Forest (Conservation) Act 1980; Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986; Public Liability Insurance Act, 1991; The Biodiversity Act, 2002. Apart from that, the National Environmental Tribunal Act, 1995 and The National Environment Appellate Authority Act, 1997, which were enacted to create a specialist adjudicatory body which can handle the environmental pollution.

The National Green Tribunal was established on 18.10.2010 under the National Green Tribunal Act, 2010 for effective and speedy disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multidisciplinary issues. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata, and Chennai shall be the other four places of sitting of the Tribunal.⁵²

There are three vital anti-pollution laws have been enacted by the Parliament after Stockholm period as environmental crusade, namely, the Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 with a view to fight against environmental degradation to restore the clean and healthy environment for survival peacefully. The word 'protection' in the title of the Environment Act attributes towards the sustainable development and equitable use of natural resources.

5. Judiciary on Development and Environment Controversy for Environmental Justice in India:

Constitution of India guarantees justice, liberty, and equality to all citizens in the society. In Maneka Gandhi's case, the Court extended the scope and ambit of Art. 21 where the concept of 'right to life' is not merely confined to physical existence but it includes 'right to live with human dignity'. Art. 21 also shows that 'right to get pollution free environment' is part of the 'right to life' which promotes 'sustainable development'.

From UN Sustainable Development Summit in September 2015, provides **Goal 16** to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". The proposed targets under Goal 16 provide:

- Promote the rule of at the national and international levels and ensure equal access to justice for all;

⁴⁸ Art. 48 i.e Organisation of Agriculture and animal husbandry – The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and drought cattle.

⁴⁹ Art. 49 i.e Protection of monuments and places and objects of national importance – It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

⁵⁰ Art. 252 – Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

⁵¹ Art. 253 – Legislation for giving effect to international agreements.

⁵² www.employmentnews.gov.in/ProtectionofEnvironment.pdf. Last accessed on 15.09.2017.

- Effective accountable and transparent institutions at all levels and to ensure responsive, inclusive, participatory and representative decision-making at all levels; and
- Public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.⁵³

After considering all the aspects we have witnessed that environmental degradation is serious nowadays. The existing legislation and policies with regard to environment and development project are not in a balancing position. Development is going on without caring the environmental measures which compel the judiciary for ensuring complete justice through judicial activism with special emphasis on development and environmental controversies by way of accessing public interest litigation since 1970 on the issues as development projects, mining, and quarrying, litigation concerns big dams, gas leak disaster, hazardous wastes from industries, noise pollution etc. The role of the judiciary in India has emphasized sustainable development rather than development at the cost of environment. In 'Development and Environmental' disputes fundamental rights are discussed and detailed orders were given based upon the considerations of equity when a person approached with pro bono public. The liberalization of locus standi approach provides the right of persons to access courts which justify such expansion of rights not only to its power but also the DPSP, Art. 48-A and fundamental duty, Art. 51(A) (g) of the Constitution.⁵⁴

In *Subhash Kumar Vs. State of Bihar*⁵⁵ Hon'ble Justice Kuldip Singh has opined that Article 21 includes the right of enjoyment of pollution free water and air for the enjoyment of life.

In *State of Karnataka Vs. Ranganath Reddy*⁵⁶ the Supreme Court observed that material resources of the community in the context of re-ordering the national economy embrace all the national wealth, not merely natural resources, all the private and public resources of meeting materials, not merely public possessions. Everything of value or use in the material world is a material resource and the individual being a member of the community his resources are part of those community.⁵⁷

In *Citizen, Consumer and Civic Action Group Vs. Union of India*⁵⁸, the Madras High Court held that while the Courts have social accountability in the matter of Protection of the environment, there should be a proper balance between the same and the developmental activities, which are essential for progress. But there can be no dispute that the society has to prosper, develop but it shall not be at the cost of environment.

In *Sitaram Chhaparia Vs. State of Bihar*⁵⁹ the High Court directed to shift the tire retreading plant set up in the residential area. The said plant was emitting carbon dioxide gas and other obnoxious gases from its furnaces and causing harm to the environment of the locality. The Court also directed the State government to ensure the compliance of the said direction. In *Essar Oil Ltd. Vs. Halar Utkarsh Samiti and Others*⁶⁰, and in *D. Saravanam Vs. Union of India*⁶¹, and in *Dr. Meenakshi Bharath Vs. State of Karnataka*⁶² the Court strongly opined that the concept of Sustainable Development is not an empty slogan that requires a pragmatic view of implementations to conserve the resources both the present and future generations,

".....the need of ecological impact, a delicate balance between it and the necessity for development must be struck. The adherence to sustainable development principles is a sine-qua-non for the maintenance of the symbiotic balance

⁵³ www.unep.org/.../V2_01%2005%202015%20Background%20paper_Asia-Pacific%20... Last visited on 15.01.2017.

⁵⁴ http://shodhganga.inflibnet.ac.in/bitstream/10603/201575/12/12_chapter%206.pdf. Last visited on 23.09.2017.

⁵⁵ AIR 1990 SC 420

⁵⁶ AIR 1978 SC 215 at para.95

⁵⁷ Ibid 55

⁵⁸ A.I.R 2002 Mad. 298

⁵⁹ A.I.R 2002 Pat. 134

⁶⁰ AIR 2004 SC 1834

⁶¹ (2009) 4 MLJ 917

⁶² 2012 (4) Kar LJ 248

between the rights to environment and development. The right to sustainable development cannot be singled out. The concept is treated as an integral part of life under Article 21 ”.⁶³

6. Conclusion

Going through the foregoing paragraphs it can be undoubtedly stated that, world’s anxiety has been increased after intensified environmental damage that has accompanied universal development in the period of post-World War-II. Considering the facts in its actual perceptions, it has been felt that the development strategies, often actively supported by international and national development institutions, with their focus on industrialization, urbanization, and income growth, failed to screen out policies and programmes that harmed the environment, failed to address the problems of poverty and empowerment and failed to sustain local communities and indigenous people. There is increasing concern that by not acting sustainably, economic progress is being achieved at the expense of such significant damage to natural resources, environment, and social justice that future generation will be worse off than the present one. These failings of traditional economic development served as the impetus for the sustainable development movement worldwide. At the international level, the growing concern about the undesirable effects of the traditional economic development policies started in the early 1970s and was reflected in the deliberations and outcomes of a series of international conferences starting with the United Nations Conference on the Human Settlement held in Stockholm in 1972. This was followed by the World Commission on Environment and Development in 1982-1987, the United Nations Conference on Environment and Development (the Earth Summit) in Rio de Janeiro, Brazil in 1992 and the World Summit on Sustainable Development in Johannesburg, South Africa in 2002. These conferences and their reports, in particular, the Brundtland Commission 6 Report, the Earth Charter and Agenda 21 of the Rio Conference, defined and framed the imperatives of sustainable development and enunciated various principles and processes to be followed in operationalizing its objectives and principles including changes to be brought about in existing attitudes and values. In India, the movement in support of environmental concerns and sustainable development really started in the early 1980s, partly influenced by international developments but mainly due to the devastating effects of the Bhopal gas tragedy in 1984. The Bhopal tragedy was followed by a number of policy statements and legislation in order to meet environmental challenges.

Liberalization and economic reforms started in 1991 along with the forces of globalization to which the country was now exposed, no doubt accelerated the pace of Gross Domestic Product (GDP) growth but also raised concerns about inequality, poverty, damage to the environment and natural resources. In India, media is the fourth major pillar of the well-known government. It plays an unusually vital and compelling piece of the better improvement of the country. Accordingly, the problem of environmental pollution can be analysed by making mindfulness in the common population, in which media can play an extremely critical role. The fascinating agency of correspondence not just influences the intelligence of the individuals but is also capable of flourish thoughts and desirable mental outlook of the human beings for protecting environment. Media has a pivotal role in environmental aspects. Regular Inspection is the need of the hour in present time.

It can also be said that there is an urgent necessity for a standard review appliance, which can examine and scrutinize systematically every one of those exercises which are menacing the environment. This would be a favourable step towards environment care since prevention is better than cure.

Besides the efforts of strong civil society, Non-Government Organisations and other related bodies in this field are highly desired for the effective result in terms of a better environment and establishment of sustainable development. The honest and long terms judicial guidelines should also be very much useful in this matter.

⁶³ http://shodhganga.inflibnet.ac.in/bitstream/10603/201575/12/12_chapter%206.pdf. Last visited on 23.09.2017



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