

ENVIRONMENT PROTECTION FOR HUMAN LIFE –A NEED OF THE DAY

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Introduction

Environment" is a difficult word to define. Its normal meaning relates to surroundings, but obviously that is a concept which is relatable to whatever object to which it is surrounded.

Einstein had once observed, "The environment is everything that isn't me." "How can you buy or sell the sky, the warmth of the land? The idea is strange to us."¹

Some of the factors that have contributed to the destruction of environment are increase in Population, indiscriminate use of technology, lack of control on use of land etc

Art. 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Art.51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life 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 and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

In Ratlam Municipality's case, the Supreme Court paved the way for the citizens to bring action against public bodies to compel them to keep the environmental balance making it free from the pollution of whatever kind. It held that the State would realise that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties and human right has to be respected regardless of budgetary provision. The Court further said: "(The new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and therefore the people must be able to trigger off the jurisdiction vested for their benefit. . . ."ⁱⁱ

In the United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972. Proclamation was made on United Nations on Human Environment. It was stated

in the proclamation in these profound words:

"Man is both creature and moulder of his environment which gives his physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of men's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights even the right to life itself.

The protection and improvement of the human environment is a major issue which affects the well being of people and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all Governments."ⁱⁱⁱ

The declaration of Stockholm conference had two parts the first part had seven truth about man's relation with environment and second part contained 26 principles. **some of the principles are**

- 1) Man has fundamental right to quality environment
- 2) The ecosystem must be safeguarded
- 3) The state has to prevent the pollution of the sea
- 4) The state shall have the right to formulate policy to protect their environment
- 5) To give compensation for the victims of environment pollution

It is because of the declaration of Stockholm conference the majority of environmental laws in India have been enacted

- 1) Environment (Protection) Act 1986
- 2) The Water (Prevention and control of Pollution)Act 1974
- 3) The Air (Prevention and control of Pollution)Act 1981
- 4) The Wildlife (Protection) Act 1972

The 'development' is not related only to the growth of GNP.

In the classic work - 'Development As Freedom' the Nobel prize winner Amartya Sen pointed out that 'the issue of development cannot be separated from the conceptual framework of human right.'

This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of people's well being and realization of their full potential. It is an integral part

of human right.

The concept of 'sustainable development' was adopted by the World Commission of Environmental and Development (W.C.E.D.) and endorsed by 176 Nations in the United Nations Conference on Environment and Development.

The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer. In the international sphere, 'Sustainable Development' as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987, the concept was given a definite shape by the World Commission on Environment and Development in its report called 'Our Common Future'. The Commission was chaired by the then Prime Minister of Norway, Ms. G. H. Brundtland and as such the report is popularly known as 'Brundtland Report'. In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called 'Caring for the Earth' which is a strategy for sustainable living.

Finally, came the **Earth Summit held in June, 1992 at Rio**, which saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio, 'Sustainable Development' has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. 'Sustainable Development' as defined by the Brundtland Report means 'Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.' We have no hesitation in holding that 'Sustainable Development' as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

Some of the **salient principles of 'Sustainable Development'** as called out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Co-operate, Eradication of Poverty and Financial Assistance to the

developing countries.

We are, however, of the view that 'The Precautionary Principle' and 'The Polluter Pays Principle' are essential features of 'Sustainable Development'. The 'Precautionary Principle' in the context of the municipal law - means :

- (i) Environmental measures - by the State Government and the statutory 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/industrialists to show that his action is environmentally benign.

The **Polluter Pays Principle has been held to be a sound principle** by this Court in Indian Council for Enviro-Legal Action v. Union of India ((1996) 3 SCC 212) : AIR 1996 SC 1446. The Court observed (SCC p. 246, para 65).

'..... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.'

The Court ruled that :

'..... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.'

Consequently the polluting industries are 'absolutely' liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measure to remove sludge and other pollutants lying in the affected area. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution, but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.^{iv}

The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty.

Articles 47, 48A and 51A(g) of the Constitution are as under :

'47. 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 endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48A. Protection and improvement of environment and safeguarding of forests and wildlife :- The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51A(g). To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.'

- **ABSOLUTE LIABILITY PRINCIPLE**

Indian council for Enviro-legal Action v. Union of India(1996)

A PIL filed by NGO reiterated the absolute liability principle evolved in *M.C. Mehta v. Union of India(2)*, and ruled that, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

Hence the polluting industries are absolutely liable to compensate the victims of environmental pollution, caused by such industries.

In the case of this Court gave a number of directions to 292 industries located nearby Taj Mahal. This Court, in this case, observed that the old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystem have to be protected. The pollution created as a consequence of environment must be commensurate with the carrying capacity of our ecosystem. In any case, in view of the precautionary principle, the environmental measures must anticipate, prevent and attack the causes of environmental degradation.^v

During the last few years, Judicial Activism has opened up a new dimension for the Judicial process and has given a new hope to the millions who starve for their livelihood. There is no reason why the Court should not adopt activist approach similar to Court in America , so as to provide remedial amplitude to the citizens of India.

When Court welcome Public Interest Litigation, its attempt is to endure observance of social and economic programmes frame for the benefits of have-nots and the handicapped. Public Interest Litigation has proved a boon for the common men. Public Interest Litigation has set right a number of wrongs committed by an individual or by society. By relaxing the scope of Public Interest Litigation, Court has brought legal aid at the doorsteps of the teeming millions of Indians; which the executive has not been able to do despite a lot of money is being spent on new legal aid schemes operating at the central and state level. Supreme Court's pivotal role in expanding the scope of Public Interest Litigation as a counter balance to the lethargy and inefficiency of the executive is commendable.

ⁱ "Thilakan v. Circle Inspector of Police" KERALA HIGH COURT AIR 2008 KERALA 48

ⁱⁱ [Municipal Council, Ratlam v. Vardh Chand, AIR 1980 SC 1622.]

ⁱⁱⁱ "Centre for E. L. W. W. Fund for Nature (WKF), India v. State of Orissa" ORISSA HIGH COURT AIR 1999 ORISSA 15

^{iv} Indian Council for Enviro-Legal Action v. Union of India ((1996) 3 SCC 212) : AIR 1996 SC 1446

^v M.C. Mehta v. Union of India ((1997) 2 SCC 353)