

## SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PROTECTION LAWS

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### Introduction

Man, who is armed with advanced scientific technology and knowledge, in his unprecedented and ever increasing quest for better quality of life and materialistic comforts, and a State which claims sovereignty over its natural resources, in its zeal to develop, has been excessively exploiting and indiscriminately consuming natural resources at their command. The excessive exploitation of natural resources and their imprudent use rather, misuse, have unfortunately led to a serious ecological crisis evinced by:

(1) acid rains; (2) global warming and the consequential sea rise; (3) ozone depletion; (4) water and air pollution; (5) the extinction of numerous animal and plant species; and (6) the loss of bio-diversity. Activities of man and State are not only posing serious threats to the fragile ecosystem but also to the existence of entire human race, including future generations.

Environmental pollution now constitutes one of the biggest hazards to mankind as evident from Bhopal gas tragedy. Heavy industrialization, pollution explosion and ever-increasing urbanization apart from multifold increase in automobile have resulted in the problem assuming staggering proportion. India has, very rich tradition of concern for and protection of environment. The environment includes all parts of nature necessary for health and happiness of man. Nature reserve immense potential to maintain ecological balance. Not only the beauty but the very existence of life depends on nature. The famous hymn in the world's oldest scripture the Rig Veda portrays the beauty of the morning (ushas) and worships its glory. In ancient India worshipping the five elements of nature (Fire, Air, Earth, Sky and Water) as panchabhutas, because was a form of the greatest admiration for them in nature.<sup>1</sup>

<sup>1</sup> National Policy & Law on Environment by K.D. Gaur 1996 3&4.



Nature and its resources have their adequate capacity to feed and bear the burden of the requirements of the mankind. Once these resources are overburdened due to the undue pressure of human activities, it disturbs the equilibrium relationship between the man and the nature necessary for human existence. Consequently, it gives rise to the problem of environmental pollution.<sup>2</sup>

The world community, probably fearing that the present generation is living beyond its environmental means and realising the immediate need for a concerted effort to preserve and enhance the human environment. urged people to use their environment wisely, shape their activities in a more prudent way.<sup>3</sup>

It is really depressing to note that the water we drink, the air we breathe all are polluted. We are now facing the serious ecological crisis like acid rain, global warming, water and air pollution, the extinction of numerous animal and plant species, and the loss of biodiversity and ozone depletion. The depletion of ozone layer causes skin cancer, cataracts, damage to body's immunity system, mutation loss of crop productivity and upsetting the balance of eco-system mutation, loss of crop productivity and upsetting the balance of eco- system. The need of the day is therefore to bring greater awareness for harmonising population dynamics and socio-economic development and harnessing of natural resources with due care to see that the quality of the environment does not deteriorate.

### **Cause of Environmental Pollution:**

The basic causes for the deterioration of the environment have been identified as: (I) population explosion, (II) over industrialisation, (IN unplanned urbanisation, (M) Coal burnt thermal power generation, (M) Poverty, (VI) Deforestation and (VI) an expansion in the use of efficient new technology with its associated demands on space, food and natural resources.<sup>4</sup>

### **Adoption of New Technology is a Threat to Environment:**

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<sup>2</sup> Population Growth; Prime Cause of Environmental Pollution and its Legal Control in India by N.S: Kamboj, Jr.IL.I. Vol. XXII (1) 1995.

<sup>3</sup> Declaration of the UNO on the Human Environment 1972.

<sup>4</sup> The UN Secretary General's Report on the Problem of the Human Environment, UN Doc. E/ 4667, May 26, 1969 para 8.



The nature of productive technology in recent years is closely related to the environment crisis. The irony of the situation is that the more the economic and industrial development in the world, more danger to the environment. Man, who is armed with advanced scientific technology and knowledge, in his unprecedented and ever increasing quest for better quality of life and materialistic comfort, and a State, which claims sovereignty over its natural resources, in its zeal to develop, have been excessively exploiting and indiscriminatory consuming natural resources at their command. The excessive exploitation of natural resources and their imprudent use rather, misuse, have unfortunately led to a serious ecological crisis.<sup>5</sup>

### Constitutional Provisions:

The original Constitution of India, which came into force in 1950. did not deal with the subject of protection of environment in the country but some indirect provisions have been found under Articles 39, 42, 47, 48 and 49 of the Constitution of India. Articles 246, 248, 252 and 253 of the Constitution (Forty Second) Amendment Act, 1976 added two important provisions to the Constitution. These provisions are Articles 48A and 51A(g). Article 48A, which finds its place in part IV of the Constitution entitled Directive Principles of State policy declares: the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of country.<sup>6</sup> The second important provision added by the Constitution (Forty Second) Amendment Act is Article 51A this provision, which finds a place in part IV-A entitled Fundamental Duties inter alia, States: it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.<sup>7</sup>

A cumulative effect of Article 48A and 51A(g) appears to be that the State as well as the citizens both are now under a constitutional obligation to conserve, preserve, protect and improve the environment.<sup>8</sup>

A regulatory mechanism for the prevention of environmental degradation through writ process is provided for in our Constitution. Under Articles 32 and 226 of the Constitution, the Supreme Court

<sup>5</sup> Environment, Present & Future Generation: Inter-generational Equity, Justice and Responsibility by K.I. Vibhute: Journal of the Indian Law Institute, Vol. 39 Part No. (1997), April-December.

<sup>6</sup> Article 48A of the Constitution of India.

<sup>7</sup> Article 51A of the Constitution of India.

<sup>8</sup> State of Tamil Nadu v. Hind Stone, AIR 1981 SC 711,



and the High Court respectively possess wide latitude to grant relief and prevent environmental damage by issuing directions, orders or writs. Under Article 32, which itself is a fundamental right as conferred by part III of the Constitution has been violated can invoke the Supreme Court's jurisdiction to enforce his right. Whereas the writ jurisdiction of the High Court under Article 226 may be invoked not only for the enforcement of a fundamental right but for any other purpose as well. For the matter, the Supreme Court jurisdiction under Article 32 is more limited than the jurisdiction of the High Courts under Article 226. As now the Supreme Court has accorded judicial recognition to the right to a wholesome environment as being implicit in Article 32, a litigant may, accordingly assert his or her right to a wholesome environment against State, by a writ petition to either the Supreme Court or a High Court. Upon the jurisdiction under Article 32 and 226 being invoked, the Courts in environmental matters generally issue writs of mandamus; the Courts in environmental matters generally issue certiorari and prohibition.

To the right to life is, Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh.<sup>9</sup> In this case the relevant issue for the purpose of our discussion is whether limestone mining activities in the Mussori Dehradun region caused ecological disturbance and does violated the right to life of the people in that region. The Supreme Court declared that these activities polluted the environment violated the right to life of the people. In this case. carrying haphazard and dangerous limestone quarrying practices in Mussori Hill range of the Himalayas, mines blasting out the hill with dynamite: extracting limestone from thousand of acres had upset the hydrological, system of the valley. The Supreme Court ordered the closing down of limestone quarrying in the valley and observed.

This would undoubtedly cause hardship to them, but it is price that has to be paid for protecting and safeguarding the right of the people to tine right to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and their cattle, homes and agricultural land and undue affliction of air, water and environment.<sup>10</sup>

<sup>9</sup> AIR 1985 SC 652.

<sup>10</sup> Subhash Kumar v. State of Bihar, AIR 1991 SC 420



In *T. Damodhar Ra v. Municipal Corporation Hyderabad*,<sup>11</sup> the High Court of Andhra Pradesh rejected to grant permission to, convert a portion of land for the construction of residential houses, which was reserved for the purpose of recreational park under the Urban Development Plan. Thus, it may be appreciated that the higher judiciary in India has, by judicial innovation and creativity, removed the anomaly by reading the right to wholesome environment in the right to life.

### Legal Control:

Environmental protection during the last few years has become not only a matter of national concern but of global importance. In India we do have a plenty of laws, which deal with various aspects of environment protection.

These laws regulates the conduct of environmentally harmful activities and provide for remedies in cases of their breach. These laws can be broadly classified into three: (A) Common Law Doctrine and the Law of Torts, (B) Constitutional Provisions, and (C) The Statutory Enactments.

### The Common Law Doctrines:

Common law is one of the oldest sources of our environmental law as it is notable that common law originally introduced into India by the British, continues to apply by virtue of Art 372(1) of the Constitution unless it has been modified or changed by legislation in India. The basis of its application Justice, Equity and good consciousness. The common law aspects of environmental law in India are Nuisance, Trespass, Negligence and Strict Liability, Pollution cases relating to reparian rights and prior appropriation also fall under this branch of law. These doctrines enshrine common law control for the liability for escape of noxious objects, careless use of noxious articles or pollutants and the infringement of property rights in water. Thus they cover cases of water, air and noise pollution. The distinct advantage of these doctrines is that they provide injunctive and compensatory relief. Without pollution it must be admitted that common law is inadequate and too difficult to operate in modern conditions.

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<sup>11</sup> AIR 1987 A.P. 171.



The common law standard of reasonableness does not provide a satisfactory basis for regulatory pollution.

### **Sustainable Development:**

The concept of sustainable development in its original meaning has emphasised inter-generational solidarity that it to say our moral obligation to leave to the new generation as good an environment and as abundant resources, as those we have found. This is the diachronic (through time) meaning of sustainability. The report of the World Commission on Environment and Development (Our Common, 1987: The Brundtland Report) was pivotal in changing the direction of international environmental law.

Its central concern was the increasing globalisation of various crises (environmental, developmental, energy etc.) and the connections between them. As it may memorably summarized this: They are all one. The report is a landmark in respect of modern thinking about environmental problems and gives prominence to the language of sustainable development defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. However, the report provided little solid guidance on the exact components of what such a duty to future generations might entail.<sup>12</sup>

### **Public Interest Litigation and Environmental Protection:**

Since the last decade PIL, has played a unique role by which people belonging to different walks of life and especially the downtrodden are getting social justice from the Supreme Court as well as the High Courts. The PIL is now recognised as an effective instrument of social change. It is because of this new strategic of pro bono litigation that the poor and the downtrodden have been able to seek justice from Courts.<sup>13</sup> Introducing the PIL concept into pollution cases in *Ratlam Municipal Council v. Vardhichand*.<sup>14</sup> Justice Krishna Iyer observed, that social justice is due to people and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning.

### **Plea of Technicalities of Procedural Law is Untenable:**

<sup>12</sup> Ball and Bell on Environmental Law Universal Law, Publishing Company Pvt. Ltd., (2000) p. 96.

<sup>13</sup> Vindicating Public Interest through Judicial Process: Emerging Trend and Issues, Panna Nand Sing, 19 Indian Bar Review (1983) p. 688.

<sup>14</sup> AIR 1980 SC 1622.



In Dehradun Mining case the Supreme Court observed that the writ petition before the Supreme Court was not inter-parties dispute and had been raised by way of public interest litigation and the controversy before the Court is as to whether for social safety and for. Creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. The Supreme Court observed, that the Court may not be taken to have set that for a public interest litigation procedural laws do not apply but the Court laid down that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Supreme Court.

The Court observed that even if it is that there was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata.<sup>15</sup>

As a result of this development spate of environmental case have been brought the Courts through Public Interest Litigation. They have been filed either by individual, voluntary organisation or by letter pensions sent to Judges. Now we will examine some of the leading judicial pronouncements on the point.

### **Remedy Against Environmental Pollution Under Article 32:**

It is now well settled that right to a clean environment is a fundamental right of the citizen under the Constitution of India.

The aggrieved person alleging complaints regarding environmental pollution can move a petition for redressal of his grievances in the Supreme Court of India directly under Article 32 of the Constitution.

The Supreme Court can give relief in appropriate cases. In *Ratlam Municipal Council v. Vardhichand*, AIR 1980 SC 1622 the question related to the Courts power to force public bodies under public duties to implement specific plans, in response to public grievances, which related to environmental pollution came up before the Supreme Court. The Supreme Court issued mandatory direction to the Municipal Council to complete the execution of the work, to provide drainage system

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<sup>15</sup> *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1988 SC 2187.



within one year to take action to stop effluent from alcohol plant flowing into the street. to construct within six months sufficient public latrines, provide for water supply and scavenging service in the morning and evening to ensure sanitation and to fill up cess pools and other pits of filth improving Sub-Divisional Magistrate to prosecute officers responsible for non-completion of the directions.

Concluding evaluation of the eradication of the problem is that major challenge to environment crisis in India is the rapid growth or pollution. It is therefore high time to reduce the rate of pollution growth through some comprehensive legislation. Further industries generating high pollution should be relocated out of the vicinity of the city's regular monitoring of pollutants will need to be devised by establishing national network of sampling the discharge effluents, emissions.

There should be setting up of a exclusive Environmental Courts in all the States and the Union Territories for speedy and in-time disposal of environmental cases. Environmental legislation should be reviewed and amended wherever necessary to protect the environmental degradation. There is an imperative need to grow awareness among the people because pollution is a problem, which can be effectively solved through awareness and political will rather than judicial will.

