

ENVIRONMENTAL POLLUTION AND SUSTAINABLE DEVELOPMENT- IN A VIEW OF LEGAL METHODS

Dr. Pushpa Thakur
Professor & Head of the Dept. of Law,
Govt. S.K.N.P.G. College, Mauganj, Rewa (M.P.)
Dean, Faculty of Law, A.P.S. University, Rewa (M.P.)

ABSTRACT: - There is widespread acceptance that more and more irregular environmental disasters have occurred frequently than ever in every corner of the earth. On 11 March 2011, the catastrophic 9.0-magnitude earthquake hit Japan so heavily which caused devastating tsunami ensuing Fukushima Daiichi Nuclear Power Plant radiation. This kind of unprecedented multi-disasters just happened before our eyes. There is no doubt that these current extreme environmental problems are feedbacks and also warnings from the nature. As we can see, widespread environmental problems influence the lives of Thai people every year. Environmental degradation has been an enormous challenge for government. In order to raise public awareness of environmental protection in India, Government should spend more money on educating people and providing classes in environmental literacy because public education is always the most effective tool to arm people with knowledge about the ways of how to protect environment. In order to tackle the challenges of environmental degradation and achieve greener and cleaner environmental goal, Thai people should rethink of the emergency of environmental protection and make green lifestyle choices start from rethinking, reducing, reusing, and recycling to responsible.

KEYWORDS: Environmental Problems, Green Lifestyles, Sustainable Development, Legal Methods.

INTRODUCTION

In the contemporary society in this 21st century, the problem Environment a big threat to the whole world. Environment is a dynamic concept and it has got multidimensional effect of the humanity. In the recent past, the environmental degradation has emerged as a major global concern the attention world over is the warming of the Earth and the greenhouse gases. There are several factors which are attributed to cause the global warming most prominent of which is excessive industrialization and emission of greenhouse gases.

"The process of an overall increase in Earth's temperature due to human activities resulting in release of greenhouse gases and pollution is called Global Warming." The Global Warming is the increase in the

average temperature of Earth's near surface air ocean. Since mid-20th century and its projected continuations of greenhouse gases namely Carbon Dioxide, Methane, Nitrous Oxide Hydro Fluoride resulting from human.

The Intergovernmental panel on Climate Change in its 4th Assessment Report has stated that most of the observed increase in global average temperature since the mid-20th century is very likely due to the observed increase in "Anthropogenic greenhouse gas concentration."

A major portion of the Greenhouse Gases come from the combustion of fossil fuels in automobiles power factories, manufacturing industries and during industrial processes. Agricultural sector, burning of agriculture residue and waste disposal are smaller contributors of such emission. It has been widely agreed upon by a majority of climatologists that human activities are responsible for most of the global warming since they enhance the Earth's natural greenhouse effect. Natural factors like solar activity and volcanic emissions have made an almost insignificant contributions to global warming over the past century.

Evolution of Sustainable Development

The concept of 'sustainable development' was brought into common usage by the 'World Commission on Environment and Development', otherwise known as Brundtland Commission in its report "Our Common Future" brought out in 1987. This world commission was set up by the General Assembly of the United Nations in 1983. The Brundtland Report defines Sustainable Development as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs and activities such burning of fossil, fuels, deforestation, industrial processes and other sources. Thus the greenhouse gases means a gas in the atmosphere which like the glass in green house, traps the part of the Earth's heat and produce a warming"¹. The idea of heat exchange between the Earth and the Sun was studied and researched by several scientists found that the Earth reflects most to the solar radiation that falls on its surface it was thus understood that atmosphere does something that keep the Earth warm.

British scientist Tyndale found that Carbon Dioxide, Methane and Water vapour absorb the infra-Red Rays even though the Carbon Dioxide, Methane and Water vapour are present in traces they serve a very efficient blanket to keep us warm just as a mere half thick sweater is enough to keep us warm. This call greenhouse effect.

National Academy of Science of the United States in a report has also confirmed that world temperature is rising and it is expected that the trend will and now it is sure that there will be a change in the seasons change particularly a little warmer climate than before which is also going to make our lives a little different.

At the core of Sustainable Development is the need to consider "three pillars" together society, the Economy and Environment. No matter the context, the basic idea remains the same-people, habitats and economic systems are inter-related. We may be able to ignore that interdependence for a few years or decades, but history has shown that before long we are reminded of it by some type of alarm or crisis.

Environmental Sustainability at International Level:

The United National Charter of 1945 marked the beginning of modern International Human Rights Law(1), whereas the Stockholm Declaration of 1972 is generally seen as the starting point of a right based approach to Environmental Protection(2).

(1). United National Charter of 1945.

(2). Stockholm Declaration of 1972

This declaration formulated several principles, including that "Man have the fundamental right to freedom, equality and adequate conditions of life, in an environment of equality that permit a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. For the implementation of the concept of Ecologically Sustainable Development, important documents were articulated proposing the programme of action which is signed at the UNCED.

Chapter 6 of agenda 21, adopted at the 1992, in Rio Conference(1) on Environment and Development, is entirely devoted to "Protecting and promoting human health condition," while the Rio Declaration itself proclaims that human beings are entitled to a healthy and productive life in harmony with nature.

The United Nations Climate Change Conference was held at Bali, Indonesia. The roadmap recognizes that "deep cuts in global emissions" are required there is an urgent need to reduce greenhouse gases from deforestation.

The 2009 United Nations Climate Change Conference, commonly known as the Copenhagen Summit, was held in Copenhagen, Denmark, in December 2009. A framework for climate mitigation beyond 2012 (The Kyoto Protocol expires in 2012) was to be agreed at the Conferences ended with an agreement by counties to cap the global temperature rise by committing to significant emission reductions and to raise finance to quick start action in the developing world to deal with climate change.

(1). Rio Conference-Chapter 6 of Agenda, 21 in 1992.

It does not contain any tough binding new targets or even weak ones.

Environmental Protection and the Indian Constitution :

A Constitution states or ought to state not for passing hour, but principles for an expanding future. The main cause for environment degradation is lack of effective enforcement of various Laws (1). Additionally, it can be highlighted regretfully, that there is also lack of proper, effective and timely enforcement of orders passed by the Courts. The Supreme Court in the past two decades has successfully pronounced a number of Judgments and issued various directions with the objective of securing the protection, prevention, conservation of the environment.

Thus, somewhere between worship of the past and exaltation of the present the path of safety was found through the forty-second amendment of the Indian Constitution in 1976, including the principles of environment protection in an explicit manner into the Constitution dealt under various Articles(2). These are as :

1. Fundamental Rights- Article 14, 15, 21, and 32.

2. Directive Principles of State Policy- Article 39, 42, 47, 48(A), 49, and 51.

3. Fundamental Duties-Article 51(A) (g). and

4. Relations between Union and States- Article 253.

(1) Shukla, V.N.: Indian Constitutional Law, 1950

(2) 42nd Amendment of the Constitution of India in 1976.

The right to clean environment as one of the Fundamental Right is taken under the Article. In Indian Council for- Legal Action vs, Union of India(1). In this case the Supreme Court has implemented the right to whole some environment as part of the Right to Life enshrined in Article 21.

Thus right to life envisaged in the Article, means something more than survival of animal existence. It

includes right of healthy living. The Andhra Pradesh High Court give decision in M.P. Rambabu vs. Divisional Forest Officer(2) has rightly observed- "In terms of Article 21 of the Constitution, a person has a right to a decent life ,good environment and maintenance of ecology."

Article 48A part of the Directive Principles of State Policy, obligates the state to protect and improve the environment. It is provided that-" The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country." Other hand the citizens were obliged under Article 51A (G) as fundamental Duties to equally responsible to protect the environment. There was a shift in the legislative power concerning about the "forest" and "wildlife protection" from the State list to the Concurrent list. The reference to Stockholm Conference can be clearly traced out in the enactments of the Air Act, and the Environment Act, under the Article 253 of the Constitution under which Parliament of India - a Central Legislature -having a power to make laws implementing India's International obligations as well

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- (1). A.I.R. 1996 S. C. P.1945.
 - (2). A.I.R. 1997 S.C. P. 3297.

as any of the decisions made at International Conference, association or other body.

Around the world, people have shown positive response and activism for protection of the environment and full support is given by the judiciary. People cautious of their rights to a healthy and pollution free environment have formed groups and seek directions from the court to protect the environment and it has been done so by way of Public Interest Litigation(1). The group active in environmental protection have often pressurized the executive to take decisions on certain development projects only after making proper environment-impact assessment(2).

The seventh schedule of the Constitution delineates legislative power between the Centre and States. List I (the Union list) comprises subjects to be legislative by Centre only List II (the State list) comprise subjects to be legislated by State List III(The Concurrent list) subject listed under it have to be legislated by joint efforts of the both the entities(3).

The Environment Legislation in India for Sustainable Development:

The Government of India as well as our Parliament is increasingly supportive of stringent environmental legislation and regulations. Various legislations have been enacted by the Indian Parliament to tackle the problem of environmental protection. Despite these legislations, rules and regulations, protection and

preservation of environment requires to be significantly addressed.

- (1). Babel, B.L.-On Public Interest Litigation
- (2).Chaturvedi, M.D.-Contitution of India.
- (3).Pandey, J.N.-Environmental Law.

Neither the law nor environment can remain static, both are dynamic in nature. The changing pace of environment is so fast either in form of consumption, usage, exploitation that to keep the law and enforcement in the same pace, the law are required to be amended frequently to meet and regulate the new challenges or it needs to be judicially differently interpreted which would lead towards a new direction for environment protection(1).

The deepest doctrinal roots of modern environmental law are found in common law principles of torts like tort of Nuisance, tort of Negligence, Strict Liability. .

These enactments are as follows :

1. The Indian Penal Code, 1860, has a chapter on offence affecting the public health, safety, convenience in Chapter-XIV.
2. Chapter X of the Criminal Procedure Code, 1973- Part B provides provision for public nuisance relating to environment.
3. The factories Act, 1948, Chapter IV-A was incorporated keeping in view several chemical industries dealing in hazardous and toxic substances.
4. The Wild Life (Protection Act), 1972 came into existence in September, after the United Nations Assembly Conference on Human Environment in June 1972. This Act was amended in 1991 and the Rule came into being in 1995. Under this Act, every State has to constitute a Wild Life Advisory Board.
5. The Water (Prevention and Control of Pollution) Act, 1974. The Air (Prevention and Control of Pollution) Act, 1981 came into

(1). Uppadhyay,J.J.- Environmental Laws (in Hindi) existence with the objectives to provide for the prevention and control of Water an Air pollution and maintaining or restoring of wholesomeness of Water and Air establishing Boards for the prevention and control of Water and Air pollution for carrying out these purposes and conferring on and assigning powers to such boards. The Water (Prevention and Control of pollution) Act, was amended in 1977, 2003 and additionally the Water (Prevention and Control of Pollution) Cess Rules, 1978 and the Water (Prevention and Control of Pollution) Rule, 1975 were enforced. (1)

The Air (Prevention and Control of Pollution)Rules and The Air (Prevention and Control of Pollution) (Union Territories) Rules came into existence in 1982 and 1983 respectively.

The umbrella Legislation for environment protection , Environment Protection Act,1986, *, has main objectives are as:

1. Protect the Environment,
2. Improvement of Environment,
3. Prevention of hazards to- human beings, other living creatures, plants , and property.

The Role of Judiciary in Protecting the Environment in India:

At the National level, environmental protection and the right to a healthy environment is enshrined various Articles and is also one the Fundamental Duties. Law and Environment both are dynamic by nature. The changing pace of Environment is so fast either in the firm of consumption, usage, exploitation that the keep

(1) Uppadhyay,J.J.- Environmental Laws (in Hindi)
*Ibid

the law and environment in the same pace, the law needs to be amended of frequently to regulate the new challenges. But utilizing the power and features of judicial process, judicial review and judicial activism at the time of deciding various cases, the Indian Judiciary has seized the opportunities presented by cases to protect the environment and apply the principles the precautionary, polluter pay public trust, doctrine in the various cases.

The Executive, Judiciary or the Legislature cannot act in contravention of Fundamental Right(1) as these rights are being guaranteed by the fundamental law of land. These rights are not only the rights in themselves but to move the Supreme Court for their enforcement to seek the Constitutional remedy is also guaranteed by these, thus imposing a duty on the Supreme Court to protect these rights. This Fundamental Rights part of the Indian Constitution was adopted. Denial of these basic rights means denial of all others rights because none of the other rights would have any utility and existence without it(2).

Most of the all fundamental rights is the "right to life" as embodied under Article 21 of the Constitution which reads " No person shall be deprived of his life or personal liberty except according to procedure established by law."

The right to life as guaranteed by Article 21 of the Constitution of India is a basic human right and the concept of right to life and

(1). Basu, D.D. Human Rights in Constitutional Law ,Prentice Hall of India, New Delhi, 1994 at p.56

(2). Shaialja Chander, Justice V.R. Krishna Iyer on Fundamental Rights and Directive Principles, Deep and Deep Publication, New Delhi, 1995 at p.159.

Personal liberty have been transformed into positive rights by active judicial interpretation. A new era ushered in post Maneka Gandhi case period(1) and the concept of right to life witnessed new development as new dimensions were added to the interpretation of fundamental rights embodied in Article 21 in the Maneka Gandhi's case. The impact of this case assumes much significance in the development of personal liberty as the concept of reasonableness was projected into the procedure established by law. Prior to this all the fundamental rights guaranteed in Part III of the Constitution were considered to be negative in nature and imposing only negative obligation on the State.(2) For the first time, the Supreme Court transformed these rights into positive rights in this case and imposed an affirmative duty on the State to enforce it.

The case of Society for Protection of Silent Valley vs. Union of India(3) in the late 1970s, the Silent Valley Project stirred up a hornet's nest in India's first major Environment versus Development controversy. The proposed project, now abandoned, was to dam the Kuntipzha river in Kerala's Palghat district. As it flows through the Valley, the Kuntipuzha droops 857 meters, making the Valley an attractive site for generation of Electricity. Environmentalists, on the other hand, asserted that as home to one

(1). Maneka Gandhi vs. Union of India, A.I.R.1978 S. C. 597

(2).B.Errabi, "Environment Protection: Constitutional Imperatives-Indian Experience." Khan and Bhatt, Law Science and Environment,1987 at p. 189.

(3). 3025 of 1979 of Kerala High Court of the few remaining rain forest in the Western Ghats, the Valley ought to remain pristine. They further contended that with over 900 species of flowering plants and ferns and several endangered species of animals and birds. Silent Valley was on the world's richest biological and genetic heritages. His project was abandoned due to pressure exerted on Prime Minister Indira Gandhi, within the government and from international groups and governments. A writ petition was filed before the Kerala High Court seeking to prevent the state government from constructing a hydroelectric project in Silent Valley. The petition stated that the necessary deforestation would affect climatic condition in the state and would interfere with the balance of nature .Dismissing the petition, the court held that consideration of the scientific, technical and ecological concerns was the job of the government and that it was not for the court to evaluate these considerations again as the evaluation had already been done by the government.

This view of the Supreme Court also found in Francis Carolie Mulhin vs. Administrator, Union Territory of Delhi(1) where Justice Bhagawati observed that the

right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival. He added further that:

Right to life includes the right to live with human dignity and that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for writing and expressing oneself in diverse forms with fellow human beings.

(1).A.I.R. 1981 S.C. p.746 and 753

Of course the magnitude and content of the components of this right would depend upon the extent of the economic development of the country but it must, in any view of the matter include the right to basic necessities of life.

After 15 years of the delivery of this Judgment again the Supreme Court in another case(1) while dealing with Article 21 raised the same issue and held that the need for a decent and civilized life include the right to food, water and a decent environment.

In the earliest case of Municipal Council Ratlam vs. Vardhichand and others(2), the residents of a locality within the limits of Ratlam Municipality, tormented by stench and stink by open drains and public excretions by nearby slum dwellers moved the Sub-Divisional Magistrate under Section 133 of Criminal Procedure Code,1973, to require the Municipality to construct drain pipes with the flow of water to wash the filth and stop the stench towards the members of the Public. The Municipality pleaded paucity of funds as the cause of disability to carry out its duties. The Supreme Court through Justice Krishna Iyer, upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct sufficient number of public latrines, provide water supply and scavenging services, to construct drains, cesspools and to provide basic amenities to the public. A responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty

(1). Chameli Singh vs. State of U. P.,A.I.R. 1996 S.C. p. 10511, K. Ramakrishnan vs. State of Kerala, A.I.R. 1999 Kerala.

(2). A.I.R. 1980 S.C. p. 1622
by pleading financial inability.

Under the Constitution of India, Fundamental Right mostly covers the right to a clean environment or right to a wholesome environment which is the basic and crucial part of the concept of the right to life. Here again, the Judiciary had come forward and played a vital role in interpreting this concept through their various pronouncements thereby establishing a fundamental

relation between fundamental rights and environmental protection.

In M. C. Mehta vs. Union of India(1), in this famous case, Delhi Gas Leakage case, also known as the Oleum Gase Leakage case which specially dealt with an activity causing direct threat to the life of the workers and the general public in and around "Shriram Foods and Fertilizer Industries Limited", engaged in the manufacture of hazardous products, the Supreme Court extending the scope of Article 21 in this case observed that the State had the power to place restrictions on carrying on of hazardous industrial activity for protecting the right of the people to live in a healthy environment. Similarly in the Ganga Pollution case(2) where a group of tanneries doing business on the banks of the River Ganga were alleged to do polluting the river. In his concluding observations while delivering the judgment, Justice K. N. Singh remarked---

" We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".

(1). M .C. Mehta vs. Union of India, A.I.R. 1987 S.C. p.965.

(2). M. C. Mehta vs. Union of India, A.I.R., 1988 S.C. p. 1037.

In this judgment Justice K. N. Singh maintained that preserving the habitat is a duty imposed on the State and in that way he recognized that the life, health and ecology are predominant factors influencing the existence of mankind.

Basing on the footing in Ganga Pollution case,(M.C. Mehta vs. Union of India(1) the Supreme Court in another case(2), where a petition was filed for the enforcement of the statutory duties of Municipal Authorities and the Pollution Control Boards constituted under the Water Pollution Control Act, held that the petition was in order and could be allowed as it related to protecting the lives of the people. thus, in this case the Supreme Court opined that "Person interested in protecting the lives of the people who make use of the flowing in the River Ganga, has the right to move the Supreme Court.

Thus in the above mentioned cases we could find that, the evolution of fundamental right as a right to live in clean and healthy environment by the Supreme Court. After pioneering the right to a clean environment, the Supreme Court again took the lead in declaring and asserting this as a fundamental right. In Atkoya Thangal vs. Union of India(3), the petitioner challenged Government's scheme to draw with there help of mechanical pumps in the Lakshdeep Island.

The petitioner relied on scientific studies by NEERI and Centre for Earth Science Studies which confirmed that the ground Water

(1). M. C. Mehta vs. Union of India, A.I.R., 1988 S.C. p. 1037

(2). M. C. Mehta vs. Union of India, A.I.R., 1988 S.C. p. 1115 & 1126

(3). Kerala, L.T. 1990(1) 580

tapped by mechanical pumps would deplete the only fresh Water source in Island beyond repair and salination of Wells and Water table. If this scheme is implemented, the natural resources can never be replaced by recycling.

In similar cases the High Court of Madhya Pradesh in K.C.Malhotra vs.State of Madhya Pradesh(1) and Allahabad High Court in S. K. Garg vs. State of U.P(2). and others. Thus in above mentioned cases, judgments linking environmental degradation with Article 21 in which their concern for right to life is very well reflected.

A close reading of the spate of cases discussed above reveals the fact that the Judiciary in our country has done a great service by declaring the right to a pollution free environment as fundamental right thereby emphasizing the prioritisation of human needs and new value system in these broad areas. In M.C. Mehta vs. State of Orissa(3) a writ petition was filed to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal Committee Cuttack and the SCB Medical College Hospital, Cuttack. The main contention of the petitioner was that the dumping of untreated waste Water of the hospital and some other parts of the city in the Taladanda canal was creating health problem in the city. The State, on the other hand contended that a central sewerage system had been installed

(1). A.I.R. 1994 M.P. 48,

(2).A.I.R. 1999 All 41

(3). A.I.R. 1992 Ori. 225.

in the hospital and that is no sewage flow into the Taladanda canal as alleged. Further, it was asserted that the State had not received any information relating to either pollution or of epidemic of Water borne diseases caused by contamination of the canal. Also, the health department shrugged off the responsibility for supply of drinking Water and passed the buck to the Municipality which refuted the contentions of carelessness and callousness. The Court reprimanded the authorities and directed the Government to immediately act on the matter. Also, the Court recommended setting up of a committee to take steps to prevent and control Water pollution and to maintain wholesomeness of Water

meant for human consumption amongst others things. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working conditions cannot be avoided by pleading financial inability.

The case of K. Ramakirshanan vs. State of Kerala(1) was an original petition highlighting public health issue of the dangers of passing smoking and in which prayers were made to declare that smoking of tobacco in any public places is illegal, unconstitutional violative of Article 21 of the Constitution of India. The High Court allowing the petition issued following directions:

1. Directed the State of Kerala to promulgate and under Section 133(4) of the Criminal Procedure Code, 1973, prohibiting public place smoke within one month.

(1). A.I.R. 1999 Kerala.

- 2 Tobacco smoking in public places falls with mischief of the penal provisions relating public manners.

3. The State Government to enforce the penal provisions that the individuals practice the individual practice of smoking in public place is discouraged.

4. The continued omissions and inaction of respondents to comply with the Constitutional Mandate to countenance smoking amounts to a negation Constitutional guarantee of decent living as provided under Article 21 of the Constitution.

Later on again a Writ petition was filed in order to protect the health of the non-smokes from passive smoking in public places, the Supreme Court in Murali S. Deora vs. Union of India(1), observing that non-smokers cannot be compelled to become helpless victims of pollution caused by Cigarette smokers, directed to prohibit smoking in public places.

Indian Judiciary has seized the opportunities presented by cases to protect the environment and apply the principles the precautionary, polluter pay, public trust, doctrine in various cases they are in Vellore Citizens Welfare Forum vs. Union of India(2), where Supreme Court passed a judgment placing development and environment on equal footing explaining the "The Polluter Pays Principle" and " precautionary Principle" as salient features of sustainable development and its sources form Constitutional provisions under

1. (2001)8 S.C.C., p 765

2. (1996)5 S.C.C. p647

Article 21, 47,48-A and 51A (g). The Supreme Court once again confirmed the precautionary principle in M. C. Mehta vs. Kamal Nath(1),

In the case of Indian Council for Enviro Legal Action vs. Union of India(2), the Supreme Court passed an order to compensate the people by incurring the costs to clear the polluted surrounding and incur costs revising the damaged environment. The Court observed that

enactment of Law is inevitable but tolerating its infringement is worse than not enacting the law at all. In *Samantha vs. State of Andhra Pradesh*(3), applied the Public Trust Doctrine and stated that the resources are of public good and for the benefit of the general public, the same cannot transfer to private parties. The above discussion it is now clear that sustainable development is balancing factor between Right to Development and Right to Clean Environment.

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- (1). A.I.R. (2000) S.C. p.812
 - (2). A.I.R. (1996) S.C. p.1446
 - (3). A.I.R. 1997 S.C. p. 3297.

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