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“THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT” IS A FUNDAMENTAL AND BASIC HUMAN RIGHT

AUTHORED BY - DR. KONERU ANURADHA*

“A Clean environment is a human right like any other. It is therefore part of our responsibility toward others to ensure that the world we pass on is as healthy, if not healthier, than we found it.”

- Dalai Lama

Introduction

In today’s world there has been a growing consciousness about a safe, clean, green and healthy environment on one side of the coin, and the protection and promotion of human rights on the other side. In fact, these two issues occupy the topmost priority on the agenda of every nation at both the domestic and international levels.

Human rights, being the birth rights, are therefore, inherent in nature in all the individuals irrespective of their race, caste, creed, religion, sex and nationality. These rights are essential for all the individuals and without which we cannot live as human beings. These rights allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and all other needs. The idea and practice of human rights existed from the ancient times and became the hallmark of any modern society in the world. Since time immemorial, the story of human rights jurisprudence has been the story of human revolutions. The struggle to recognize, protect and promote human rights has been changing and holds continuity in every generation in our society. The history of human rights can be classified into three generations. They are:

- The Civil and Political rights which are considered to be the ‘first-generation rights’,
- The Social, Economic and Cultural rights which are considered to be the ‘second-generation rights’ and

- The rights of minorities, the rights of nations, the right to development, the right to peace, the right to a favourable environment and the reproductive rights etc., which are considered to be the ‘third-generation rights’.

The abovementioned list of new rights keeps on extending under the influence of globalization, scientific and technological progress etc.

Human Environmental Rights Jurisprudence

The Trail Smelter case between USA and Canada, of the late 1950s, presumes to be the first international environmental dispute, and, it is the starting point for environmental jurisprudence. Later, by the modern environmental movement in the late 1960s, it was understood that environmental degradation is a fact and it affects human way of living and also it has been clear that a healthy environment is necessary for the full enjoyment of a basic human right, the right to life and health. The roots of this new right, the right to healthy and wholesome environment gained wider currency in the first International Environmental Conference, the United Nations Conference on the Human Environment, 1972. Even though this Stockholm Declaration is considered to be the ‘Magna Carta’ of human environmental rights, its origin can be traced back to the ancient customs and religious faith as human and environment are inseparable.

Undoubtedly, a healthy environment allows a person, wholesome development to grow physically, mentally and intellectually healthy. In fact, it is the dream of every person to have a healthy environment because environment is the most important factor to support not only human life but also life of many species.

But, nowadays in the name of technological and economic development, urbanization, modernization etc. man himself has been creating polluted and harmful environment around him. Even though we are witnessing earthquakes, cyclones, floods, tsunamis, radiation problems, global warming, ecological imbalance and pollution in atmosphere in case of air, water, land and space etc., men with greedy nature towards quick development causing for environmental pollution without having consciousness about environmental safety and ignoring the fact that healthy environment is quite essential for their very existence. For this, no nation in the world can claim an exception whether it is a developed country or a developing country. Unfortunately, India is also one among these countries.

In India, the concept of environmental protection has been prevalent from time immemorial in the name of morals, ethics, customs and religious rites etc. In fact, the ancient Indian mythology preaches to live in harmony with nature. But, during medieval and modern periods, the advancement in science and technology have given place for too many environmental problems. In the name of development, not only the people and organizations but also the respective governments are playing a vital role in violation of a basic human right, the right to life, by creating unhealthy environment.

As for the available evidences for the first time, the right to a healthy environment was explicitly recognized in an International environmental law document by Stockholm Declaration. Principle 1 of this declaration says that *“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 present and future generations”*. After this declaration, human rights jurisprudence has been growing at the global as well as national level till today.

By taking inspiration from the Stockholm Declaration, 1972 and several other international conferences to prevent environmental pollution and to protect and promote clean, green and healthy environment, the Indian Government passed several specific legislations and constitutional amendments to provide teeth to the existing general laws in IPC, CrPC, Factories Act etc. Moreover, the strong constitutional framework available in the Indian Jurisdiction allows the apex court to creatively develop jurisprudence on a healthy environment as part of basic human right as well as constitutional right. The responsibility regarding prevention of environmental pollution and promotion of healthy environment has taken by the Indian judiciary through ‘Judicial Activism’. The Indian higher judiciary such as the respective High Courts and the Apex Court of India, by means of various ‘Public Interest Litigations’ and even by suo moto action has been setting so many guidelines, in accordance with the growing national needs and with the global scenario like right to healthy environment, sustainable development etc. But, due to many reasons, the legal provisions and court guidelines become dead letters in our country and State failed to explicitly recognize right to healthy and wholesome environment as a *‘protected constitutional and human right’*. In fact, it is an issue not only in our country but also in many countries, where one can witness the same.

By taking into consideration of the above issues, recently on 8th October, 2021, the United Nations Human Rights Council adopted a resolution recognizing the human right to a clean, healthy and sustainable environment as an important human right. This decision is a major step forward. Although not legally binding, its near-unanimous adoption shows consensus on the formulation, content, and importance of this human right. This international recognition to right to healthy environment paves the way for its effective integration in international law and stronger implementation domestically. Therefore, it is essential for a State to adopt an active and dynamic jurisprudence and constitutional framework into its legal system.

Clean, healthy and sustainable environment

Although there were prior attempts to develop international environmental law, it did not come to reality until the U. N. Conference on Human Environment and Development took place at Stockholm in 1972. Indian nation is one of the signatory countries to this conference. Prior to this conference, even in Indian legal system, the provisions relating to environment were scattered here and there. Like, provisions relating to environmental pollution under the Indian Penal Code, the Factories Act, the Mines Act, the Criminal Procedure Code and also the Directive Principles of State Policy in the Constitution. After Stockholm conference, Indian Government passed several specific and special enactments on environment and also provided constitutional safeguards by 42nd amendment. By this amendment, the Indian Constitution indirectly through judicial pronouncements recognized pollution-free, clean and green environment as a protected right under Articles 14 and 21, positive right under Article 48A and basic duty under Article 51A(g). Moreover, if one tries to analyze several judgments of the Supreme Court from *MC Mehta v. Union of India* (1987), it is clear that it had and has been trying at its best to prevent pollution and to protect air, water, land, coastal areas, towns and cities, forest and wildlife etc. It is found that the judiciary, in its proactive attitude, has started translating the directive principles of state policy into fundamental rights, and recognized pollution-free, clean and green environment as implied fundamental right under Articles 14 and 21 of the Indian Constitution and as a primary human right under the UDHR, 1948. At the same time by introducing numerous legal doctrines and by the interpretation of constitution, it also recognized that, it is the fundamental duty of the State as well as the individual to protect environment. There are so many verdicts delivered by the apex court, through which Indian judiciary evolved numerous legal principles and doctrines for protection of environment, and prevention and control of environmental pollution. Some of them are

- Absolute Liability Principle
- The ‘Polluter Pays’ Principle (PPP)
- Precautionary Principle (PP)
- Public Trust Doctrine
- Intergenerational Equity Principle
- Doctrine of Sustainable Development etc.

Absolute liability principle:

In India, the principle of absolute liability is not a part of traditional environmental jurisprudence. Absolute liability principle is a principle in its basic sense refers to ‘no fault liability’, in which the wrong doer is not provided with exceptions which are provided in rule of strict liability¹. The strict liability principle was a decision by the [House of Lords](#) which established a new area of [English tort law](#) in the case *Rylands v. Fletcher*². Absolute liability is more stringent from of strict liability, and was recognized by Supreme Court of India in *M. C. Mehta v. Union of India (Oleum gas leak case)*³. This case originated in the aftermath of oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi⁴. This gas leak occurred soon after the Bhopal gas leak in Madhya Pradesh and created a lot of panic in Delhi⁵. Bhagwati CJ. was a pioneer in this important development, and he didn’t follow the rule laid in *Rylands v. Fletcher*, on an important ground that the principles established in the said case are not in keeping with the present day jurisprudential thinking. Justice Bhagwati also stated that the rule of strict liability was evolved in 19th century, the time when industrial developments was at primary stage, in today’s modern industrial society where industries dealing with hazardous or inherently dangerous substances, though they are necessary to carry out development programme, this rule cannot be held relevant in present day context.

¹ Strict liability had 5 important exceptions like consent of the plaintiff, plaintiff’s own default, Act of stranger, act of God or Vis major, where escape caused for common benefit of plaintiff and defendant and statutory authority etc.

² (1868) LR 3 HL 330:LRI and available at : https://en.wikipedia.org/wiki/Rylands_v_Fletcher (visited on 24th August, 2022)

³ AIR 1987 SC 965

⁴ This is a case came before the Supreme Court of India through a PIL petition under Article 32 of the Indian constitution. In this case on the 4th and 5th December, 1985 there was a gas leakage from one of the units of Shriram Foods and Fertilizers Industries, Delhi. Due to this leakage, one advocate and several people were dead and many were injured. So, to provide proper remedy to victims M.C Mehta, A lawyer by profession and a committed environmentalist by choice approached the S.C.

⁵ The Bhopal disaster, also referred to as the Bhopal gas tragedy, was a [gas leak](#) incident in India, considered [the world's worst industrial disaster](#). It occurred on the night of 2–3 December 1984 at the [Union Carbide India Limited \(UCIL\) pesticide plant in Bhopal](#), Madhya Pradesh. Over 500,000 people were exposed to [methyl isocyanate \(MIC\)](#) gas and other chemicals. The highly toxic substance made its way into and around the [shanty towns](#) located near the plant. (for more details visit : https://en.wikipedia.org/wiki/Bhopal_disaster) (visited on 24th August, 2022)

So, the Supreme Court laid the rule of absolute liability in preference to the strict liability. The rule clearly held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands v Fletcher*. Court felt that through this principle there will be no burden of proof on the petitioners how it happened or it happened because of negligence of employer or employee of the particular industry which is a barrier to people to approach court and people will get relief immediately. Later, to strengthen this principle Indian government passed a statute known as “The Public Liability Insurance Act, 1991”, where this principle was recognized⁶ even in legislation.

In *Indian Council for Environmental Legal Action v. Union of India* (‘H’ acid case)⁷⁸ the Supreme court of India strictly held that absolute liability principle which laid in *olieum gas case* is not mere an obiter dicta, it should be followed strictly. In recognition of the principle of absolute liability SC had given its dynamic precedents in *Narmada Bacho Andolan v. Union of India and Others*⁹ and in *M.C. Metha v. Kamal Nath and Others*¹⁰ etc cases.

Polluter Pays Principle (PPP):

The polluter pays principle is an extension and broadens the ambit of the principle of absolute liability. The importance of this principle is that the damage to the environment may be remedied and this is extremely essential to sustainable development. "The polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology"¹¹. This principle

⁶ The public liability insurance Act, 1991, section 3 (1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in Schedule for such death, injury or damage.

(2) In any claim for relief under sub-section (1) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

⁷ AIR 1996 SC 1446

⁸ This is a case related to hazardous chemical industries, releasing highly toxic sludge and toxic untreated waste water which had percolated deep into the soil rendering the soil unfit for cultivation and water unfit for irrigation, human or animal consumption resulting in untold misery to the villagers in Bichhri village and its surrounding areas, Udaipur District, Rajasthan. SC directed the government determine and recover the cost of remedial measure from the private companies which polluted the environment by attaching all their assets and further use to restore soil, forest etc. These industries were characterized by the SC as ‘rouge industries’ and were ordered to be closed down.

⁹ AIR 2000 SC 3751; (2000) 10 SCC 664

¹⁰ (2006) 6 SCC 213

¹¹ *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 212 at 215.

was probably first described by Thomas Lindhqvist who belong to Swedish government. He was the first person to describe the true meaning of this principle¹². Sometimes this principle is also known as extended producer responsibility¹³. The principle was originally only applied to those cases where one is actually involved in polluting the environment with emissions, etc., in the strict sense of the word. Subsequently it extended to apply to any activity which contributes to deterioration of the environment.

The Stockholm declaration 1972, Brundtland report 1987, Rio declaration 1992 etc clearly mentioned regarding this principle. After 1972 Stockholm declaration, India in its numerous legislations and rules clearly incorporated the polluter pays principle. The control and regulation of Hazardous and solid wastes under the environment protect act, 1986 specifically provided for the liability of the occupier, transporter, and operator of a facility handling hazardous waste and enforced the principle¹⁴. Non-compliance of this was made as civil as well as criminal liability¹⁵. The Public insurance liability act clearly specified how much compensation was to be paid for every degree of injury or death of civilians and/or workmen¹⁶ and more importantly Section 20 of the National Green Tribunal Act, 2010 clearly lays down the principle upon which this Tribunal should function.

In Indian Council for Enviro Legal Action v. Union of India¹⁷, SC allowed compensation and remedial action for loss suffered by citizenry due to pollution. In Research Foundation for Science v. Union of India¹⁸, court granted compensation under polluter pays principle. In Vellore Citizens Welfare Forums case¹⁹ and in M.C. Metha v. Kamal Nath and Others²⁰ Polluter Pays Principles interpreted by the Supreme Court means that the absolute liability to harm to the environment extends not only to compensate to the victims of pollution, but also the cost of restoring the environmental degradation. Remediation of the damage and environment is part of

¹² The International institute for industrial Environmental economics at Lund University, Sweden(2000). Available at : http://lex-warrier.in/2013/06/polluter-pays-principle/#identifier_1_3706 (Visited on 4th April, 2024)

¹³ The organization for economic co-operation and Development, environment Directorate, Paris, France (2006) defines this extended producer responsibility as “producers accepting their responsibility when designing their products to minimize life-cycle environmental impacts and when accepting legal, physical or socio-economic responsibility for environmental impacts that cannot be eliminated by design”.

¹⁴ Rule 16, the Hazardous Wastes Management and Handling Rules 1989.

¹⁵ Section 15, the Environmental protection Act 1986.

¹⁶ Section 3 read with the Schedule of the Public liability insurance Act, 1991.

¹⁷ (1996) 5 SCC 218

¹⁸ (2005) 10 SCC 664.

¹⁹ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715; (1996) 5 SCC 647

²⁰ (2006) 6 SCC 213

the process of Sustainable Development and therefore polluter is liable not only to pay the cost to the individual users but also to the cost of reversing the damaged ecology²¹.

Precautionary principle (PP):

The precautionary principle states that if there is risk of severe damage to humans and/or the environment, absence of incontrovertible, conclusive, or definite scientific proof is not a reason for inaction. It is a better-safe-than-sorry approach, in contrast with the traditional reactive wait-and-see approach to environmental protection. When there is uncertainty regarding the impacts of an activity, the precautionary principle advocates action to anticipate and avert environmental harm. It is in fact based on “Precaution is better than cure”. The term ‘precautionary principle’ had its origin in the German word *Vorsorgeprinzip*²². Though the principle had its roots in the German environmental policy, it has entered the centre-stage of the global environmental policy in the past two-and-half decades with several global environmental treaties invoking the PP for decision making. In simple terms, the PP conveys the common-sense based advice – *to err on the side of caution*. The principle intends to prevent harm to humans, environment, and ecosystem at large.

The Precautionary Principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.”

The honourable Supreme Court, from the year 1996 continuously applied the precautionary principle for protection and preservation of environment. In A. P. Pollution Control Case²³, In Narmada Bacho Andolans’ case²⁴, In Vellore Citizens Welfare Forum v. Union of India²⁵, in Godavarman Thirumal Pad v. Union of India²⁶, in K. M. Chinnappa v. Union of India²⁷, in

²¹ “...pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this court are not restricted and it can award damages in Public Interest Litigation or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner...”

²² An alternative translation of this word would mean ‘foresight principle’ – which could have given an active and positive impression, as against the reactive and perhaps negative connotation attached with precaution.

²³ A. P. Pollution Control Board v. M. V. Nayudu, (1999) 2 SCC 718; AIR 1999 SC 812.

²⁴ Narmada Bacho Andolan v. Union of India (2000) 10 SC 664

²⁵ AIR 1996 SC 2715; (1996) 5 SCC 647

²⁶ AIR 2000 SC 1636

²⁷ AIR 2002 SC 724

Noyyal River Ayacutdars Association's case²⁸ apex court applied this principle. In the Research Foundation²⁹ case, SC stated that ship breaking cannot be allowed unless the company adheres to the precautionary principle. In the Court on Its Own Motion³⁰ case, the apex court clearly stated that precautionary principle belongs to the core value of article 21 of Indian Constitution. In Orissa Mining case³¹, it was stated by the forest advisory committee before the apex court that precautionary principle is the only principle available to check the irreversible damage to the environment. In G. Sundarrajan case³², the Supreme Court stated that this principle is applicable to prevent the future environmental degradation. The precautionary principle along with other international environmental principles can be of very much help for implementation of national policy to develop, control and use of atomic energy for the mankind and for financial development of the country. In State of Tamil Nadu case³³, it was stated by the apex court that the application of precautionary principle means there must be scientific uncertainty regarding irreversible damage to the environment, therefore, competent public authority must anticipate and prevent such damage by attacking the cause for such environmental damage. Therefore, in most of the cases the honourable Supreme Court has further analysed the concept of precautionary principle and applied in different circumstances for preventing the environmental harm. The rule of EIA (Principle of Environmental Impact Assessment) based on these PP and PPP principles.

Public Trust Doctrine:

Basically, the ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. This doctrine primarily rests on the principle that certain resources like air, sea, waters and the 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 said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

²⁸ (2009) 9 SCC 737; AIR 2010 SC 3645

²⁹ Research Foundation for Science, Technology and Natural Resource Policy Vs. Union of India AIR 2012 SC 2627

³⁰ Court on Its Own Motion Vs. Union of India (2012) 12 SCC 497

³¹ Orissa Mining Corporation Ltd. Vs. Ministry of Environment and Forest (2013) 6 SCC 476

³² G. Sundarrajan Vs. Union of India (2013) 6 SCC 620

³³ State of Tamil Nadu Vs. State of Kerala AIR 2014 SC 2407

This doctrine serves two purposes; it mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources. It is also a common law concept, defined and addressed by academics in the US and the UK. It has been extended in recent years, placing a duty on the state to hold environmental resources in trust for the benefit of the public. At its widest, it could be used by the courts as a tool to protect the environment from many kinds of degradation.

Accepting public trust doctrine as a part of common law, the Indian courts have applied this explicitly in numerous cases.

*M. C. Mehta v. Kamal Nath*³⁴ was a [landmark case](#) in [Indian environmental law](#). In this case the Supreme Court held that “...public trust doctrine was founded to protect certain common properties such as rivers, sea-shore, forests and air were held by the government in trusteeship for the free and unimpeded use of general public.. These resources being a gift of nature, have a great importance to the people as a whole should be made freely available to everyone irrespective of the status on life. The state is a trustee of all natural resources and also state has a legal duty to protect them and that the resources were meant for public use and could not be transferred to private ownership...”

In *M. I. Builders v. Radhey Shyam Sahu*³⁵, in *Rambabu v. Divisional Forest Officer*³⁶, and in *Intellectual Forum v. State of A.P.*³⁷ in *Andhra Pradesh State Fihserman’s case*³⁸, in *Fomento Resorts and Hotels Ltd., v. Minguel Martins case*³⁹ and more importantly in a recent and popular spectrum allocation case⁴⁰ the Supreme Court categorically reiterated this Public Trust Doctrine.

Intergenerational equity principle:

Inter generational Equity regarding environmental law can be best understood for sustainable economic development and resource conservation. Inter Generational Equity maintain that the present generation has a moral obligation to manage the earth in a manner that will not jeopardize the aesthetic and economic welfare of the forthcoming generation. Mainly this principle says that

³⁴ (2006) 6 SCC 213

³⁵ (1999) 6 SCC 464.

³⁶ AIR 2002 Kant. 123

³⁷ (2006) 3 SCC 549

³⁸ (2010) 3 ALD 300; *Balachandra Bhikaji Nalwade v. Union of India and Others*, 170 (2009) DLT 251, para. 22; (2006) 6 SCC 371, para. 83.

³⁹ (2009) 3 SCC 571 at paras. 52-55 and 65.

⁴⁰ *9 Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1.

between different generations of the human species all generations are inherently linked to other generations, past, present and future, in using the common patrimony of earth. The theory of intergenerational equity stipulates that all generations have an equal place in relation to the natural system. There is no basis for preferring the present generation over future generations in their use of the planet.

In *State of Himachal Pradesh v. Ganesh Wood Products*⁴¹, the court recognised the significance of Inter-Generational Equity and held that a government's approval is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and inter-Generational equity. In *Dighi Koli Samaj Mumbai (Regd) v. Union of India*⁴², the court reiterated the successful environmental policies require many things, the most vital being the support of the common masses and that happens only if there is an ethical commitment to environmental values. *Dr. Meenakshi Bharath v. State of Karnataka*⁴³ After all, the present generation has no right to deplete all the existing forests and leave nothing for the next generation.

The Doctrine of Sustainable development:

To be sustainable, the development must possess both economic and ecological sustainability. Sustainable development is not a new concept to India⁴⁴ as well as in other countries; many cultures over the human society realized the need for the harmony between environment, society and economy. In this 21st Century what is new is the articulation of this concept of global industrial and information society. In this regard the environmental jurisprudence which has evolved in India in the recent past is a result of judicial activism which has given shape to the aspirations of the international community.

The history of sustainable development in the international platform can be traced back to Stockholm conference 1972. This conference declared that "to defend and improve the human environment for present and future generations has become an imperative goal for mankind". by this principles were developed, which incorporated the idea of sustainable development although

⁴¹ AIR 1996 SC 149 at 163.

⁴² 2009 (5) Bom. CR 97.

⁴³ 2012 (4) Kar LJ 248.

⁴⁴ Since Vedic time the main motto of our social life was "to live in harmony with nature". The literature olden times preached in one form or other a worshipful attitude towards plants, trees, mother earth, sky, water, air, animals and to keep benevolent attitude towards them.

the phrase itself was not included.

Following on from this conference, the UN General Assembly established the World Commission on Environment and Development in 1983. This commission was chaired by the former PM of Norway, Gro Harlem Brundtland, earning it the name “Brundtland Commission”. This commission submitted their report in the year 1987 with title “Our Common Future”. Because of this commission this concept was popularized. In this report it was held that “Sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs”⁴⁵

In India, legal elements of the concept of Sustainable Development is widely applied by the Constitutional Courts and reiterated that legal elements of the concept of Sustainable Development is a fundamental governance of the state and held that there is a direct link with Article 21 of the Constitution of India and the concept of Sustainable Development. Court held that the right to have pollution free environment, flowing from the rights under Article 21 of the Constitution of India relating to the principle of customary international law concerning Sustainable Development, which is now part of the municipal law. In *Soman v. Geologist*⁴⁶, in *Thilakan v. Circle Inspector of Police and Other*⁴⁷ etc Indian judiciary accepted this principle. In *T.N. Godavarman Thirumulpad v. Union of India and others*⁴⁸, the court held that the concept of Sustainable Development is permissible and is universally accepted phenomenon. It held that “Biodiversity valuations has important implications for decision making. Since all value does not get reflected in markets, its valuation also raises methodological problems regarding the kinds of value that are being captured by the particular technique being used. This implies that biodiversity value for which a market exists must be taken note of, while simultaneously making sure that the natural capital inherent in biodiversity rich areas in preserved and values which are crucial for some stakeholders but cannot be expressed in the market are reflected in societal decision making”.

Hence, the concept of Sustainable Development helps to maintain equilibrium between economic development and conservation of resources. This can be achieved with the help of effective usage of technology. The concept of Sustainable Development is recognized as a wider concept for dignified life for all without further destroying recklessly the world's finite resources.

⁴⁵ Singh. J, Compliance and Role of Judiciary in meeting the challenge of Sustainable development, (online) Available at : <http://www.goforthelaw.com/articles/fromlawstu/article50.htm> (Visited on 3rd September, 2017)

⁴⁶ 2004 (3) KLT 577 at para 15; *Ashwani Chobisa v. Union of India and Ors*, RLW (2005) 1 Raj 389 at para. 24.

⁴⁷ AIR 2008 Ker. 48 at para 17.

⁴⁸ AIR 2000 SC 1636

In addition to the conservation of resources for achieving environmental sustainability, the apex court has also given new directions to environmental justice in numerous cases on environmental education, public awareness⁴⁹, green court....etc. Since environmental litigation are technical in nature, the apex court realized that it requires assistance of scientific experts that can also provide speedy and effective remedy against environmental pollution Green Benches were created with a specific objectives.⁵⁰ The 186th Report of the law Commission recommends the setting up of Green Courts in India with its composition, power and procedure of the court⁵¹. After long continuous demands from various sectors finally an Act came into force with effect from 18.10.2010 in the name of “The national green tribunal Act, 2010”. It is a quasi-judicial, specialized forum, which has both long term and short term objectives. The long-term objective lies in the protection of the environment, and the short-term objective involves resolution of disputes relating to environmental issues in a speedy and effective manner.

Universal recognition to clean, healthy and sustainable environment

Recently on 8th October, 2021 the UNHRC, the high commissioner described the triple planetary threats of climate change, pollution and nature loss as the single greatest human rights challenge of our era. UNHRC also adopted a resolution on the right to a clean, healthy, and sustainable environment, the first formal recognition of this right at the global level. The HRC was meeting in Geneva, Switzerland, as part of its 48th regular session. The resolution was proposed by five HRC member states Costa Rica, the Maldives, Morocco, Slovenia and Switzerland. Four governments abstained from voting – China, India, Japan, and Russia and the resolution passed with 43 votes in favour and none opposed.

The UNGA adopted the resolution on 28th July 2022 recognizing “*the right to a clean, healthy, and sustainable environment*” as a human right by a recorded vote of 161 in favour and zero against, with eight abstentions. This resolution described by many as ‘a victory for people and planet’ and said this was five decades in the making. From a ‘foothold’ in the 1972 Stockholm Declaration, where member States recognised the right to ‘an environment of a quality that permits a life of dignity and well-being,’ even though already many countries have integrated the

⁴⁹ M.C. Mehta v. Union of India, AIR 1992 SC 362

⁵⁰ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715; (1996) 5 SCC 647

⁵¹ Law Commission of India, 186th Report on Proposal to Constitute Environmental Courts, September 2003, available at <http://lawcommissionofindia.nic.in/reports/186th%20report.pdf>, (Visited on 6th September, 2022)

right into constitutions, national laws, and regional agreements by this resolution its status elevated to that of “universal recognition”.

“One of the First Conditions of Happiness is that the link between Man and Nature shall not be Broken”.

- Leo Tolstoy

