

CHAPTER - 7

EPILOGUE

The awareness about the damaging effects of the pollution of environment on human beings and quality of life has increased dramatically in the past few decades. This awareness has followed upon very substantial degradation of the world's environment - land, water and air - over a couple of centuries. While human activity has always taken a toll on the natural world, the negative impact of this activity has increased exponentially during this period of time. The concept of environmental right has become one of the live issues in a first changing International scenario. The growing awareness on human rights is the outcome of two basic interrelated causes and other resulting effects, which influenced the socio-legal order in many countries. The first cause is the phenomenal growth in science and technology and the second is the population growth, which have a direct effect on the right to life. Other resulting effects of these two causes are industrialisation, urbanisation, deforestation, poverty and above all various developmental projects undertaken by the government.

Right to life is the most important right on the basis of which all other rights are guaranteed. Right to life implies the right to live without deleterious invasion of pollution, environmental degradation and ecological imbalance. The scope and ambit of right to life are so varied that the human right aspect of life has to mitigate the challenges involved in safeguarding human environment. But the prime concern, which became the centre point in the contemporary human right regime, is the uncertainty of the nature and scope of right to environment. But the prime concern, which became the centre point in the contemporary human right regime, is the uncertainty of the nature and scope of right to

environment. Human race is dependent upon safe and pollution free environment- an environment favourable for human living and for full realisation of right to life. The co-relation between environmental protection and human right cannot be denied rather they are supplementary and complimentary to each other. Presently, the concept and content of right to environment is not very clear. The scope and ambit of right to environment is inherently obscure as well as complex, which brought various controversies and debates into forefront.

The idea of right to environment dates back to 3000 years of history and in the ancient Indian texts such as *Kautilya's Arthashastra* and the protection was available under the moral codes. *Manusmriti* prescribed different punishments for causing injury to plants. *Kautilya* is said to have gone a step further and determined punishments on the basis of the importance of a particular part of a tree. Some important trees were even elevated to a divine position. Environmental deliberations are not new, infact, we can trace it back to the days of human civilization. Destruction and over utilization of natural resources for economic development coupled with the people's dependence of the forest compelled to rethink the environmental policy. The importance of conservation and sustainable use of the natural resources have now attained importance in all the levels of the Government. Sustainable use of natural resources depends largely on effective management and public awareness.

Right to environment is essentially a human right. The idea of human right originated from individual tussle between the paramountcy of state and primacy of the individual. It has developed basically as a western concept and got international accreditation and recognition only in the late 18th century when the philosophy that "every man has a right to dignity" was embodied in the US Declaration of independence in 1776. The basis of international environmental law is the principle of Unfettered National Sovereignty Over natural resources and absolute freedom of sea. In the beginning, international environmental principles focused on the

conservation of wild life fisheries, rivers, seas, birds and seals. To understand the effects of environment on the various aspects of environment, studies were undertaken. As a result, Bi-lateral conventions took place in mid nineteenth and early twentieth century. Conservation of wild life was the first subject to achieve international attention by way of environmental protection. For conservation of migratory birds, Switzerland an International Regulatory Commission and in 1884, the International Ornithological Congress was formed. The first prevention of pollution treaty was between the United State and Canada namely the Water Boundaries Treaty 1909. The UDHR in 1948 also declared everyone the right to life, liberty and security of person. In the same year, the International Union for the Protection of Nature was set up. But no significant step was undertaken until the Stockholm Declaration 1972.

The world scholars did not pay much attention to this very important right, which was very much related to the very existence of the human being. The right to environment, as we know today is a product of modern scientific and technological development. Right to wholesome environment got attention of the world community only after the Stockholm conference 1972, when the world community sat together to chalk out ways and means to control the horrible effect of environmental pollution. Almost all the participant nations of the world inserted constitutional environmentalism in their constitutional documents. The interest shown by the judiciary by way of granting most effective remedies in environmental violations also played very important role to carve out a separate right to wholesome environment. Under Article 226 and 32 of the Indian constitution, the courts have liberally construed and expanded the scope of the fundamental right to wholesome environment as a part of the right to life guaranteed under Article 21 of the constitution. The judiciary, through various cases relating to environment applied almost all international environmental law

principles.

Although, the constitutional right to environment and health cannot be directly enforced under some constitutions, their existence can be given a sound basis to environment and health. Right to environment is basically linked with right to life. Existence of such rights give a clear indication of a high level commitment to the protection of such rights. However, many constitutions have direct provisions on environment and health including the Indian Constitution. Though the provisions on environment in the Indian Constitution are contained under Directive Principles of State Policy and Fundamental Duty chapter, they are enforceable yet once a legislation, in pursuance of them has been passed; the courts can order the State to enforce the law, particularly when non-enforcement leads to denial of a Fundamental Right. More over, Fundamental Right should be interpreted in the light of the directive principles and directive principles should, whenever and wherever be possible, be read in to the fundamental rights. The course of development and the present state of right to environment is unsatisfactory in all aspect; as to its definition, its protection, its contents, its location, its enforcement, and limitation. Environmentalism and eco-centrism should be the main aim and objective of today's socio-legal order. But the main difficulty in the contemporary human right regime is the uncertainty of the nature and scope of the right to environment. Right to development and environment often comes in to conflict with each other. Sometimes other constitutional and fundamental rights also come into conflict with the right to environment. Thus the scope and ambit of right to environment becomes a crucial guiding dimension plans, programs and strategies in each sector of the Govt.

Right to environmental protection is one of the ingredients of right to life. For full realization of life, a favourable environment for human living is required and this way they are supplementary and complimentary to each other. The expression 'Human Right' denotes all those rights, which

are inherent in human nature without which we cannot live as human being. These inalienable rights belong to all human beings equally and as such should be protected by rule of law. Article 3 of the UDHR 1948 declares that the right to life, the right to liberty, and the right to security of persons are basic rights upon which the enjoyment of all other rights is dependent. But the complex problem is to identify the subject, object, extent, scope and ambit of the right. It is seen that each and every creature in this earth including small species flora and fauna, aquatic world, forest and wild life have the right to live in a favourable environment

For a long time the world community hardly pay any attention to lay down the parameters for protection of environment. When the level of pollution reached to an alarming level, World community sat together in Stockholm in 1972 to chalk out ways and means for protection of human environment. Life having dignity and well-being of the people is the objective set forth for the national Governments and international community to achieve. The scope and ambit of life of dignity is wide enough to include life and liberty, higher standard of living, education, social security, quality of environment etc. After the Stockholm Declaration, the right to protection of the environment took a new turn at the International and national level. The countries that participated in the conference included environmentalism in their constitutions and enacted various environmental legislations to achieve the goal set forth by the conference. India also included environmentalism in the constitution by inserting Article 48(A) and 51 A (g) by the 76th amendment to the constitution in the year 1976. In 1978, a separate Ministry of Environment and Forest was created. There after, the Government of India enacted various environmental laws. The interest shown by the judiciary all over the world in evolving the principles of law on environmental protection is also equally encouraging. The judiciary in India particularly the Supreme Court and the High Courts passed

landmark judgments, in evolving the right to environment.

There is no separate right to environment under our Constitution as a fundamental right. The right to environment is covered under Article 21 of the constitution, which includes not only the absence of a pollution free environment but also the quality of environment by justifiable entitlements. Some other aspects of right to environment are covered under civil, criminal and procedural laws, the right to environment as a separate Fundamental Right is to be protected under the constitution. Various landmark judgments on environmental protection delivered by the Courts through various Public Interest Litigations under Article 32 and 226 of the constitution also support that the right to environment is a Fundamental Right because Article 32 can only be invoked for violation of Fundamental rights. In some of the cases it is clearly and expressly declared by the court that right to environment is a fundamental right under Article 21 of the Constitution. Although there are more than 200 legislations in India, which has some bearing on, environment either directly or indirectly, but there was no specific legislation on environment until 1986. In 1970s, India started enacting specific legislation on environment and now it has a good volume of legislations on various issues of environment, which established environment related rights.

The main objection to an independent right to a healthy environment lies in the difficulty of definition. In this regard, the Indian judiciary that when a claim is brought under any article of the Constitution, this allows the Court to find a breach of this article, without the need for a definition of an environmental right as such. All that the Court needs to do is to define the Constitutional right before it. Accordingly, a Court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated. This is well illustrated by the cases that had come up before the Supreme Court, in particular in relation to the broad meaning given to the Right to Life under Article 21 of the Constitution. The right to life has been used in a

diversified manner in India. It includes, *inter alia*, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. However, it is a negative right, and not a positive, self-executory right, such as is available, for example, under the Constitution of the Philippines. Section 16, Article II of the 1987 Philippine Constitution states that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature'. This right along with Right to Health (section 15) ascertains a balanced and healthful ecology. In contrast, Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme Court expanded this negative right in two ways. *Firstly*, any law affecting personal liberty should be reasonable, fair and just. *Secondly*, the Court recognised several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

Coming to the definition and scope of the right to environment it is more complex due to the fact that environment depends upon the economic political, social and cultural condition of the person in relation to whom the environment refers. The meaning and concept of environment differs from poor to rich, developed to under developed, rural to urban, tribal people to plain people. A universally accepted definition of the right to environment is not possible but a general consensus in the concept and content of right to environment in relation to a particular country is possible. The developing countries do not feel much need for environmental programmes as suggested by the developed countries. They are primarily concerned with basic and immediate needs of their people for food, shelter jobs and health care. Thus their major concern is the urgent need to accelerate economic development. According to some

scholars, the implementation of environmental policies suggested by the developed countries would perpetuate the existing gap in socio-economic development between the third world countries and the developed countries.

The Constitutional rights to environment and health exist in several countries either directly or indirectly. Many constitutions have provisions on "the right to a healthy environment," the right "to a healthy and ecologically balanced environment," or the right to a "good" or "livable environment." Some Western European countries also have a similar constitutional guarantee. Some constitutions have even more specific provisions directly on the environment and health. Many constitutions protect health as a fundamental right, either for individuals or for the community. Many constitutions contain general provisions on health protection, and preservation, equal access to health care services, hygienic and safe working conditions, which are indirectly linked with environment and health. In some other countries, provisions are there which could also be used to make link between life and health. With fundamental rights such as liberty, equality and necessary conditions for people's life, there is the right to the environment. The right to a healthy environment cannot be separated from the right to life and health of human beings. In fact, factors that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity. Almost all global and regional human rights bodies accepted the right to environment as internationally-guaranteed human rights. In every instance, the right to environment was based upon rights to life, property, health, information, family and home life. Right to environment is a relative concept. The true meaning of the right to environment depends upon the social, economic, and political status of the person concern. There is a hierarchy of needs as primary and secondary needs. Food cloth and shelter are the three basic needs, when fulfilled, other

secondary needs such as biological, social and cultural will come out as primary needs and thus it is a never ending process. Almost all the South-East Asian Countries are still at their developing stage. Development comes through industrialization which is the main cause behind degradation of the environment. The other relevant issue to be emphasized is to locate the particular law where right to environment may be properly accorded. It becomes necessary to look into other constitutions in order to find out the parameters of the right to environment in our country. In this context it is also equally desirable to attempt to understand right to environment through international instruments.

Environment protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized as 'giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood.' Here, the end is fulfilling human rights, and the route is through environmental law. It is to be noted that the Stockholm Conference, 1972 is the first international document to declare right to wholesome environment. Then the Rio Conference 1992 and subsequent international Human Right covenants and instruments also elaborated and explained the right to wholesome environment. Judiciary all over the world also supported this trend. Under the Indian Constitution, the 42nd constitution amendment 1976 inserted specific provisions namely article 48(A) and 51 (A) (g), which imposed two fold duties on the part of the Government and the Citizens to protect and improve the environment.

Environmentalism, Human rights and economic development are viewed as supplementary and complementary rather than opposing to each other. Previously, each of these three issues was viewed as separate, and at times even anti-thesis to realization of the objectives of the others. For example, human rights instruments in general were accorded minimum

attention to the environmental aspects of their subject matter. The recent consensus of the jurist is that achievement of the objectives of each area is linked to the objectives of the other areas. This realization is the result of the inadequacies of previous efforts to deal with them independently. Recent scholars are trying to provide new insights into their inter-relationships. The definition of environment and health as given by the World Health Organization Regional Office for Europe was taken from the European Charter on Environment and Health of 1989 that defined environment and health as encompassing both the direct and pathological effects of chemicals, radiation, and some biological agents, and the effects on health and well-being of the broad physical, psychological, social, and aesthetic environment, which includes housing, urban development, land use and transport. More concretely, biological, physical and chemical factors and activities which directly affect health and well-being in a working and community environment such as air, water, soil, noise, ecology, aqua system etc. are combined known as environment.

Looking at the decision of the Supreme Court in applying the principle of sustainable development, initially the court was on a theoretical footing but some of the latter decisions created conflict that the concept of sustainable development is a reconciliation of environment and economy rather than a choosing game between the two. Moreover, the tools and methods of sustainable development must be clearly specified. The court did not accept a rigid interpretation of the principle of sustainable development in India. The concept of inter-relationship and inter-dependency which exist between human beings nature and other life forms is the essence of wellbeing of the human race. Thus, the right to freedom from pollution, environmental degradation and activities which threaten life, health or livelihood protection and preservation of the air, soil, water, flora and fauna healthy food and water; a safe and healthy working environment etc. were considered to be included in to the right

to environment.

A development strategy which does not take into account the human, social and cultural dimension could have only adverse repercussions on the environment. A national development strategy is viable from the economic, social and ecological standpoint only if it gains the active adherence of the various social strata of the population. The United Nations Conference on Environment and Development was of the view that one of the fundamental prerequisites for the achievement of sustainable development was broad public participation in decision-making. Furthermore, the Conference recognized, in the specific context of environment, "the need for new forms of participation" and "the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in (pertinent) decisions." The Conference implicitly linked the notion of real participation in the right of access to information by noting that "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures. The link between participation and information can also be found in Principle 10 of the Declaration of Rio.

Coming to the scope of the right, it is found that there is a variety of the right to environment. Some of which are traditional rights of tribal people, right against soil pollution, right against tobacco smoking, right to cultural heritage, right arising out of environmental damages, right to traditional methods of environmental protection, right against hazardous substances, right to ecological balance, right to pollution free water, right to trade, occupation and environmental protection, right to pollution free air, right against noise pollution, right to protection and conservation of forest, right of animals against hunting, right to environment and health

information, right to environment of prisoners, right to environment of mentally ill persons, right to environment of disabled persons, right to health of workers, right to environment of other species. One way or the other almost all of these rights are already recognized by a variety of legislations or the judiciary in India.

Regarding recognition of the right to a healthy environment by the Judiciary, the *Ratlam Municipality Case (Municipal Council of Ratlam Vs Wardhichand AIR 1980 SC 1622)* started the deliberation on the human right in the polluted environment. Then the *Doon Valley case (Rural Litigation & Entitlement Kendra, Dehradun Vs State of U.P. AIR, 1991 SC 2216.)* recognised the right of the people to live in healthy environment. The *Kanpur Tanneries case (M.C. Mehta vs. UOI AIR 1988 SC 1037)* is the first case where the Supreme Court categorically stated that the life, health and ecology have greater importance to the people. In *Chetriya Pradushan Mukti Sangarsha Samiti case* the court established the right of the citizens to file a petition on account of deterioration of quality of life due to environmental degradation. In *Subhash Kumar vs State of Bihar*, the court explicitly held that clean air and fresh water is necessary for full enjoyment of life under Article 21 of the constitution. In *Virendra Gour vs. State of Haryana* the Supreme Court in distinct terms stated that right to life with human dignity encompass within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can not be enjoyed. Environmental, ecological, air and water pollution etc. should be regarded as amounting to violation of Article 21. Further, in *Indian Council for Enviro-legal Action vs. Union of India (Indian Council of Enviro-legal Action vs. Union of India)*, it was established that discharge of toxic untreated waste water from chemical industry violates rights under Article 21.

Regarding remedies against violation of the right, it has been observed

that there are basically two remedies available under the parameter of law which has already been well recognized and established by the judiciary. (1) Civil Remedies (2) Criminal Remedies. Under the category of civil remedies, three kinds of action can be taken – (a) Action under the Law of Torts, (b) Writ in the Supreme Court or High Courts, and (c) Statutory Compensation under various laws. Under the Category of Criminal remedies, two kinds of actions may be taken (a) an action under The Code of Criminal Procedure Code 1973 and (b) an action under section 19 of the Environment Act. Among all these available remedies, Writ in the Supreme Court or High Courts by way of Public Interest Litigation proved very effective so far and the other modes of remedies are very less used and less effective. Almost all the landmark judgments of the Supreme Court and High Courts are the outcome of Public Interest Litigations.

About limitations of the right to environment, almost all international environmental principles are in its negative effect, a limitation on the others right to environment. For instance, the principle of sustainable development and the principle of inter-generational equity do not guarantee an absolute right to the present generation to unlimited use and exploitation of all natural resources.

Coming to role of the judiciary, particularly the Supreme Court and High Courts in safeguarding the environment and emerging the right to wholesome environment, it played the role of ombudsman to enforce the environmental laws in India. It assumed the role of policy maker, law giver, monitoring authority and educator to ensure adequate environmental justice to the citizens. In the Indian environmental jurisprudence, the Supreme Court inducted the concept of sustainable Development, the precautionary principle, the polluter pay principle, the strict and absolute liability principle, the exemplary damages principle, the pollution fine principle, the trusteeship principle, and the inter-generational equity principle by declaring them as a part of the law of the

land. Several new judicial tools were innovated and shaped to strengthen the above International environmental law principles to protect and ensure effectively the environmental justice in India. The rule of *locus standi* was relaxed and Public Interest Litigation was allowed so that more and more public spirited citizens can approach the Court seeking environmental justice. As a result, more important environmental justices were delivered in Public Interest Litigations. Through Public Interest Litigations the Supreme Court ensured greenbelts, and open spaces for maintaining ecological balance, forbade stone crushing activities near residential complex, earmarked a part of the reserved forest for the adivasis to ensure the protection of their habitat and means of livelihood, compelled the Municipal Authorities to perform their statutory duties, for protecting the health of the communities, compelled the industries to set up effluent treatment plants, directed the installation of air pollution control devices for preventing air pollution, ordered closure of industrial units to save the community from the hazards of environmental pollution. In delivering environmental justice the court struck a balance between environment and development. The Court declared that there can neither be development at the cost of environment nor environment at the cost of development. (*Goa Foundation vs. Diksha holding Pvt. Ltd.* Thus the Supreme Court has an excellent record in the creation of environmental right, and in the jurisprudence of environmentalism in India. In some cases the court issued directions to fill up the gaps in the existing law, to constitute environmental courts, to remove garbage and waste and clean towns and cities, reminded the statutory authorities to function effectively in the spheres allotted to them and of their responsibility to protect the environment. All these directions were meant for ensuring a safe and clean environment along with the development and to deal with such issues at the local level. The judiciary in India first tried, slowly and steadily, to enlarge the scope of the right to life under Article 21 of the constitution by including the

issues, affecting the environment because it has a direct effect on the right to life. High Courts were more active, specific and direct in declaring the right to environment as included under right to life. Decision in *Damodara Rao* is a clear pointer to this effect, where the Andhra Pradesh High Court clearly held that the enjoyment of life and its attainments and fulfillment embraces the protection and preservation of nature's gift without which life can not be enjoyed.

About the content of the right, the courts started recognizing specific environmental problems and thus a clear identification of the content of the right to environment started getting judicial recognition. In a cluster of cases it was considered as a right to protection of human health. Pollution free air and water in as an aspect of the right got articulated in a few others. From characterizing the right in a negative sounding obligation the courts have come up with the imposition of a positive obligation upon the state as to ensure enjoyment of the right to fresh, clean and potable water. What the courts achieved is that the fundamental right to life include different standard of environmental rights which are at once individual and collective in character. The indiscriminate granting of license to limestone quarries which resulted in soil erosion, deforestation and silting of river bed, as affecting the right of the people to live in a healthy environment amounted to the violation of fundamental right to life. The discharge of effluents by a chemical industry even when it was on one's own premise violating the right to clean air, water and wholesome environment. An effort of Municipal Corporation to convert the land earmarked for a residential park into building a housing complex was also held violation of right to environment. Thus, the judiciary in India took a leading part in the identification and recognition of the contents of the right to environment.

In the ultimate analysis it is the executive backed by the necessary commitments and political will that has to take up the primary

responsibility in combating environmental challenges in the country. Socio-economic development is indispensable feature of any nation. Development is the source of progress in the society. Without effecting the ecology and environment, no development is possible. Therefore, the concept of sustainable development is evolved under which the right to development should be fulfilled so as to achieve environmental needs of the present and future generations. India has a good number of environmental laws that no other country has so many laws to avert environmental degradation. But law alone cannot serve the purpose of restoring a balance in the environment and preventing environmental degradation without the true spirit of implementation and political will. A combined effort of the legislature, administration and the judiciary can bring a development without dis-balancing of the living environment. Particularly in the field of environment the administrative functioning is still unsatisfactory. The *Ratlam Municipality* decision is one of the examples of failure and inability of the authorities. In many instances the Central Government has not positively responded to many proposals made by the Supreme Court in the area of environmental protection. The encouraging judicial response by way of PIL came forward for the rescue of the right to environment under Article 21 of the constitution by giving it the status of human right. Thus slowly but steadily the courts enlarged the scope of the right to environment. But mere enlarging or granting the right is not sufficient without proper enforcement. We need both the right to environment as well as a good and clean environment in practice. The *Dehradoon Quarrying case* resolved the dichotomy of environment and development. Safeguarding the ecosystem the court ordered stopping of stone quarrying which caused irreparable damage to Hills. The survey of various cases relating to forest and ecology shows that maintaining a balance between forest, ecology and development is not a very easy task as it appears. There is a clash between right to environment and right to development which has to be harmonized so as to achieve the social

good. The Indian judiciary, particularly the Supreme Court and High Courts has performed this task quite laudably. Moreover, the policy of public participation in forest conservation and decision making shall yield more good result.

Coming to the question of the right to environment of the Khasi people in the State of Meghalaya, Khasis are indigenous Tribal people who have their own traditional way of living, culture and tradition. They take out their living from forest produces, take shelter from forest. To drive them out for safeguarding forest and wild life and maintaining ecological balance will infringe their right to livelihood. Some scholars expressed the view that all aspects pertaining to human right and protection of environment and ecological balance must be taken into consideration. *P. Ramireddy vs. State of Andhra Pradesh* (AIR 1988 SC 1626) is a typical decision where the Supreme Court agreed that the prohibition against transfer of land in favour of non-tribal in the scheduled area are reasonable attempt and are valid under the constitution. Supreme Court's opinion is that in the absence of a statutory protection, the economically stronger non-tribal would take over all available lands and wipe out the very identity of the tribals. In *Samatha vs. State of Andhra Pradesh* the Supreme Court made it clear that the tribals have the right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered them through the State regulated power of good government the lands in scheduled areas are preserved for social and economic empowerment of the tribals.

The advancement of the relationship between human rights and the environment would enable the incorporation of human rights principles within an environmental scope, such as anti-discrimination standards, the need for social participation and the protection of vulnerable groups. At the same time, the human rights system would be strengthened by the incorporation of environmental concerns, enabling the expansion of the

scope of human rights protection and generation of concrete solutions for cases of abuses. Of course, one of the most important consequences is to provide victims of environmental degradation the possibility to access to justice. Given the occasional haplessness suffered by victims of environmental degradation, linking human rights and the environment brings such victims closer to the mechanisms of protection that are provided for by human rights law.

It is apparent that right to environment and human rights are linked with each other. As we recognize the serious impact of a polluted environment on human health and well being, we are better placed to adjust our policies and cultural practices to reflect our enhanced understanding. As a result, we should be able to protect human rights and dignity within its broader socio-economic and cultural context by drawing from and contributing to those who are actively engaged in the environmental and public health arenas. This should also facilitate those who are working in the environment and conservation fields to develop a better working relationship with those in the human rights arena. This will eventually lead to the articulation of a more integrated approach to dealing with socio-economic and environmental problems, encouraging the development of a sustainable model for the preservation of biological resources and natural ecosystems, for the use and enjoyment of both present and future generations.

Regarding right of forest dwellers, exploitation of forest resource for industrial growth and progress can not be ruled out which has long term adverse effect on ecology climate, and national economy. At the same time for industrial growth and improved living facilities there is a great demand for electricity. Therefore, a scheme for generating electricity is of national importance and it cannot be deferred. But still the rights of the traditional forest dwellers cannot be ignored. In the second *Banawasi Sewa Ashram case*, the court imposed more responsibility on the NTPC to

find out alternative plots for resettlement and rehabilitation of displaced forest dwellers and to provide facilities of roads, water supply, health care and electricity. Tribal people have also right over minor forest. In *Fatesang Gimba Vasava Vs. State of Gujrat* it was held that the tribals have the rights to depend on forest which is the only source of their livelihood. Thus the tribal have fundamental right to social and economic empowerment. As a part of right to development, democracy offered to them through the State regulates power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals. But they do not have unrestricted right to access to all forest produce. Their rights will be subjected to conditions imposed by regulations framed by state. They may not have more rights than those they had before the formal legal system became applicable.

The working of the present environmental legislations is not satisfactory. Though India enacted various specialized legislations on almost every field of environment but their proper implementation is in a state of poor and ineffective nature. The regulatory power granted to the Pollution Control Boards is most potent weapon in the control of pollution but due to various relevant factors these powers are not properly being exercised. A close reading of the provisions of the Water Act reveals that the functions allotted to the Boards are of investigating, advisory, deliberative and research oriented nature. The expressions 'plan' 'advice' 'collect information' 'participate in investigation and research' 'inspect' 'lay down standard' 'evolve methods of treatment' 'advise government' and 'establish a laboratory' etc are used. The powers of the State Board includes construction, modification, alteration, and extension order of a disposal system along with remedial measures necessary to prevent, control, or abate pollution. Till the amendment in 1988 the Board could not exercise coercive power, except in emergency but the amendment empowered the Board to give direction for closure of any industry,

operation or process, which added dynamism and vigor in the functioning of the Board.

It is doubtful that the Board can take a decision against the Government independently and effectively because the chairman and the members of the Board are political appointees of the Government. The government has complete control over the nominees having the power of removal from the office or to disqualify, or even supersede the Board. Moreover, in the composition of the Board, expertise and experience necessary for environmental decision making are lacking because it is over shadowed by representation of interest. These lacunae made the Board weak.

Thus, India adopted a number of regulatory mechanisms to protect and preserve its natural resources. The legislature enacted sufficient laws for regulating every aspect of environment with effective implementation. The environmental agencies have vast powers but they are reluctant to use their powers and bring the environmental violators under law. The judiciary assumed the role of public educator, administrator and policy maker. The legislation and the role of judiciary combined together created a formal regulatory mechanism with the agencies like The Boards, state agencies and forest officers and a non-formal, citizens and court driven implementing mechanism. The environment Act 1986 and the rules there under regulated the unregulated fields like noise, coastal development, hazardous waste, transportation of toxic chemicals and environment impact assessment. The substantive law and the jurisprudence of environment in India is sound but the penalties for violation of environmental law are weak. The court seldom considered the penalties prescribed in the Environment (Protection) Act 1986 or in the Air Act or in the Water Act and that trend of the court reduced down the rigors of these Acts.

The recent regulatory regime is characterized by strengthening the enforcing agencies with enormous administrative powers to ensure

compliance. Now the Board may direct to shut down the offending factory or to withdraw water or power supply. Previously the Board could take an action against the polluter through the intervention of the court but now the board can take direct action against the polluter. Now an aggrieved polluter can initiate a court action by challenging the order of the Board. Under the Environment Impact Assessment Regulation 1994, the Union Ministry of Environment and forest is responsible for evaluating Environment Assessment reports submitted by the proposers. For large projects, a review committee of experts carries out review. A National Coastal Management Authority and corresponding state level agencies have also been established by the Union Government. The budget and the staff of the Central and State Pollution Control Board have also been increased in the last decade. As a result, there is some improvement in enforcement of the environmental legislations in some of the states and union territories.

Prevention is better than cure. The main objective of *Environment Impact Assessment* is to analyse the effect of a project in order to protect human health or to contribute by means of a better environment to the quality of life, or to ensure maintenance of the diversity of the species and to maintain the reproductive capacity of the ecosystem as a basic resource of life. Before implementing any project, the consequences by way of environmental changes must be examined; conflicting social values must be balanced, and potential dangers should be avoided. The best environmental policy is to avoid adverse effect rather than subsequent cure. In the United State of America, the National Environmental Policy Act 1985 requires an environment impact assessment for major Federal Action having a significant impact on the human environment. The New Delhi declaration, April 2-3, 1997 on Agenda-21 addressed the fact that poverty and direct dependence on natural resources are the main contributing factors to environmental deterioration in the SAARC region

which has low levels of industrialization, ill health, illiteracy, malnutrition, inadequate housing and insufficient infrastructure service facilities. Some of the major decisions adopted in this meeting are to increase regional co-operation to promote effective action on the Common SAARC Position. Some of the issues seeking regional/global support include: establishing effective environment management infrastructure, developing common framework/ approach and working out implemental proposals on bio-diversity, drafting of an understanding in trans-boundary movement of hazardous chemical/nuclear wastes in member countries and promoting regional camps, activities and program of school children in creating awareness in environment

Health as a basic human right which should be viewed holistically and its positive aspect, that is, wellbeing should be acknowledged which would lead to achievement of a socially and economically productive life. The right to equality encompasses within itself the right of a poor patient to get adequate treatment and medicines from the State irrespective of their costs. The citizens have a right to quality health care, treatment and medication regardless of race, religion, social status and ability to pay. The duties of the State and Municipal authorities can be enforced through the Courts whenever a breach occurs. It is in the enforcement of these obligations of the State and local authorities that the Courts can play an effective role in safeguarding the rights of the citizens to prevent and cure diseases. The standards of cleanliness and hygiene in public hospitals leave greatly to be desired. The maintenance of sterile aseptic conditions in hospitals to prevent cross-infections should be ordinary, routine and minimal incidents of maintenance of hospitals. Purity of the drugs and medicines intended for man-use would have to be ensured by prior tests and inspection. However, "owing to a general air of cynical irreverence towards values that has, unfortunately developed and to the mood of complacency with the continuing deterioration of standards, the

very concept of standards and the imperatives of their observations tend to be impaired", lamented the Apex Court. The remedy lies in the awareness and enforcement of the Health rights of the citizens through Courts, but it easily lies in the cure of improper and corrupt approaches in the seemingly healthy ones whose obligation is to provide for adequate health care.

The first major international response to environmental degradation came in 1972 with the UN conference on the Human Environment in Stockholm, Sweden. The major achievements of this conference were to address global environmental issues and the establishment of United Nations Environment Program (UNEP) to deal with major environmental issues worldwide. After 20 years of this conference, it was further stressed that the continuing deterioration of the state of the environment and the serious degradation of the global life support system, if allowed to continue, could disrupt the global ecological balance, jeopardize the life sustaining qualities of the earth and lead to a catastrophe. Two major conflicting views emerged for such a catastrophe at global fora. One camp says that poverty causes environmental destruction and that a crash program to bring western development to poor nations is the best way to save us all. Whereas another, a more radical camp says western style development is the main problem. Both developing and developed countries, however, came to the common conclusion that hopes for sustained economic growth can be fulfilled only if the environment is considered as a major factor. As a matter of fact, the Stockholm conference focused principally on environmental issues where as the 44th UN General Assembly decided to convene the UN Conference on Environment and Development (UNCED) in 1992 at Brazil, with particular emphasis on environmentally sound development, international trade and third world debt. This Earth Summit was in fact the biggest global forum to device strategies/measures to halt/reverse

the effect of environmental degradation by promoting sustainable and environmentally sound development throughout the world.

In brief, the General Assembly resolution 44/228 specified nine major environmental issues (areas) in maintaining the quality of the earth environment and especially in achieving environmentally sound and sustainable development in all countries. The major environmental concerns are:

- a) Protection and management of land resources by *inter alia*, combating deforestation, desertification and drought;
- b) Conservation of biological diversity;
- c) Protection of the quality and supply of freshwater resources;
- d) Environmentally sound management of biotechnology;
- e) Environmentally sound management of wastes, particularly hazardous wastes and of toxic chemicals, as well as prevention of illegal international traffic in toxic and dangerous products and wastes;
- f) Protection of atmosphere by combating climate change, depletion of ozone layer and trans-boundary air pollution;
- g) Protection of the oceans and supply, including enclosed and semi-enclosed seas and of coastal areas and the protection, rational use and development of their living resources;
- h) Protection of human health conditions and improvement of the quality of life;
- i) Improvement of the living and working environment of the poor in urban slums and rural areas.

In view of the above discourses, we conclude that the right to environment is emerging as a Fundamental Right under the constitution. It has been considered to be a part of the right to life and personal liberty under Article 21 of the constitution. Some of the important aspects are covered under Article 19 as well. However, like other Fundamental Rights, right to environment is subject to limitations. The constitutional trend of right to environment may create confusion and uncertainty. In order to remove difficulty and uncertainty, it is pointed out that right to environment with its parameters and grounds of restrictions should be separately incorporated in Part III of the constitution by appropriate constitutional amendments. For effective protection of this right it is suggested that either a new clause may be inserted under Article 19 viz. Article 19(1) (h) or an independent Article after Article 21(A) viz Article 21(B). The amendment may be as follows: "the right to environment in relation to water, air, land, ecology, forest and domestic."

The amendment should, in case of Article 19, also provide for reasonable restrictions under Article 19 (7) or under an independent Article as the case may be in the following words: "nothing in the above clause/Article shall affect the operation of any law or prevent the state from making any law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said clause/ Article either in the interest of the general public or security of the state." The term "interest of the general public" here means public health, morality, or prevention of crime. The state may be able to impose restrictions on the above-mentioned grounds. At the same time reasonableness of restrictions shall be subject to judicial review. In a welfare state like India it is important to strike a balance between the individual liberty and the social control. The proposed amendment would be adequate to protect the individual's right to environment and provide for state regulation subject to judicial review. The proposed amendment should also provide for inclusion of 'environmental protection' as a specific entry in the concurrent list.