

EMERGING RIGHT TO ENVIRONMENT IN INDIA

WITH SPECIAL REFERENCE TO THE KHASI PEOPLE IN

THE STATE OF MEGHALAYA

**Thesis submitted to the University of
North Bengal for the award of the Degree of
Doctor of Philosophy in Law**

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This is to certify that Mr. Sharif Uddin has pursued research work under my supervision for more than three years and fulfilled the requirement of the ordinances relating to Doctor of Philosophy of the university. He has completed his work and the thesis is ready for submission. To the best of my knowledge and belief, the thesis contains the original work done by the candidate and it has not been submitted by him or any other candidate to this or any other University for any degree previously. In habit and character, the candidate is a fit and proper person for the Ph.D Degree.

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LIST OF CASES

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Andrapradesh State Board for Prevention and Control of Water Pollution vs. Andrapradesh Rayon Ltd., AIR 1989, SC. 611.

Acharya Maharajsri Narendra prasadji vs. State of Gujrat AIR 1974 SC 2098

Agrawal Textile Industries vs.State of Rajasthan, SBC W.P. No. 1375/80 Rajasthan High Court.

A. R. C. Cement Ltd. Vs.State of U.P., (1993) 1 SCC 4.

Ajoy Singh Rawat Vs.Union of India, (1995) 3 SCC 266.

Andhrapradesh Pollution Control Board vs M.V. Naidu, AIR 1999, SC 812.

A. K. Gopalanen vs. State of Madras, AIR 1950 SC 27.

Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan, (1995) 1 SCC 520, AIR 1995, SC 1840.

A.M. Corporation Vs.G.K.M.K., AIR SCW 1996.

Ahmedabad Corporation Case, AIR 1996, SWR 4328/326.

Ashwin Jajal vs.Municipal Corporation Grater Bombay, AIR 1999, Bom 35

Abdul Hamid vs. Gwalior Rayaon Silk Manufacturing Company Ltd. 1989 Cr.LJ 2013.

Ajeet Mehta vs. State of Rajasthan, 1990 Cr. LJ 1596.

Animal and Environmental Legal Defence Fund vs. Union of India AIR 1997 SC 1071.

Attakoya Thangal vs. Union of India 1990 KLT 580.

B

B. Venkatappa vs. B Lovis AIR 1986 AP 582.

Bangalore Medical Trust vs. B.S Mudappa, AIR 1991 SC 1902.

Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802.

Basudev Yadav vs. State of Bihar AIR 2002 Pat 64.

Birendra Gaur vs. State of Haryana, (1995) 2 SCC 577.

Baleswar Singh vs.State of Uttar Pradesh, AIR 1999 All 84.

Biswa Nath Kumar Vs. State of U.P. (1996) 2 Cal H.N. 407.

Burra Bazar Fire Work Dealers Association Vs The Commissioner of Police, 1997 CWN 1983.

Bayer India Ltd. vs. The State of Maharashtra AIR 1995 Bom 290.

Bihar State Harijan Kalyan Parishad vs. Union of India 1985 2SCC 156

Banwasi Sewa Ashram vs. the State of UP. AIR 1987 SC 374 / AIR 1992 SC 920.

Bombay Environmental Action Group vs. The State of Maharashtra AIR 1991 Bombay 301.

C

Calcutta Gas Com Ltd vs. State of W B. AIR 1992 SC 1044

Chetriya Pradushan Mukti Morcha Sangharsha Samity vs. State of Uttar Pradesh, AIR, 1990, SCC 2060.

Consumer Research Education vs. Uni of India, 2000 2 SCC 599

Calcutta Youth Front Vs. State of W B, AIR 1988 SC 436.

Citizen's Action Committee Vs. Civil Surgeon, Mayo Hospital, AIR 1988 Bom 136.

Consumer Education & Research Centre vs. Union of India, AIR 1995 SC 922. (Agenda 21).

Chamili Singh Vs State of Uttar Pradesh, AIR 1980 SC 195.

Centre for Social Justice vs. Union of India 8529/ 99 date of order 17-2-1999.

Central Inland Water Transport Com. Ltd. vs. Brojonath Ganguly (1986) 3 SCC 156.

Chaitanya Pulverishing Industry Industry Karnataka State Pollution Control Board, AIR 1987 Kant 82.

Citizen's Council, Jamshedpur vs. State of Bihar AIR 1999 Pat 1

Chief Secretary, Govt. of India vs. P.K. Jain, AIR 1999 A.P 306.

Centre for Environmental Law, WWF vs. Union of India (1999) 1 SCC 263.

Consumer Education and Research Centre vs. Union of India AIR 1995 SC 922.

Church of God vs. KKRC Welfare Society AIR 2000 SC 2773

Chandan Kumar vs. State of West Bengal

D

D. D. Vyas vs. Gaziabad Developmental Authority AIR 1993 All 57.

Delhi Bottling Company vs. Central Board For Prevention & Control of pollution, AIR 1986 Delhi 152.

Damodara Rao vs. The Special Officer, Municipal Corporation, Hyderabad, AIR 1987 AP 171.

D. K. Joshi vs. State of UP (1997) SCALE 181.

Dr. M. Farooque vs. Secretary, Ministry of Communication, Government of the Peoples Republic of Bangladesh.

Dr. Ajay Sing Rawat vs. Union of India.

Dr. B. L. Wadhera vs. Union of India AIR 1996 SC 2969.

E

Environment Society vs. Union of India 1999 (1) SCALE 687

Environment Society vs. Union of India 1999 (3) SCALE 9.

F

F. B. Tarapurawala vs. Bayer India Ltd. (1996) 6 SCC 58.

Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.

F. K. Hussain vs. Union of India AIR 1990 KER 321.

Free Legal Aid Cell vs. Govt. of NCT Delhi AIR 2001 Del 455

Fatesang Gimba Vasava vs. State of Gujrat AIR 1987 Guj 9

G

General Public of Saproon Valley vs. the State of Himachal Pradesh, AIR 1993 H.P. 52.

Goa Foundation vs. Conservator of Forest, AIR 1999 Bom. 177.

G. R. Sirow Vs Union of India, AIR 1997 Del. 301.

Gujrat Navoday Mondol vs. State of Gujrat, 1982 Guj & Her 359

Godham Construction Company vs. Amulya Krishna Ghosh (AIR 1968 Cal 61)

H

Hamid Khan vs. State of Up. AIR 1997 MP 191.

I

Indian Wood Product vs. State of U. P, AIR 1999 All 222.

Indian Council of Enviro-Legal Action vs. UOI, 996 3 SCC 212.

Ivory Traders & Manufacturers Association Vs Union Of India AIR 1997
Del 267

Ivor Hyden vs. State of AP 1984 Cr.LJ 16 (NOC)

Indian handicraft Emporium vs. U. of India AIR 2003 SC 3255

J

Janaki Nathubai Charra vs. Sardarnagar Municipality, AIR 1986 Guj 49.

Jagdish Warananda vs. Police Comissioner, Calcutta, AIR SC 51

Jaydeb Kandu vs. State of W. B. (1997) CWN 403.

Jagannath vs. Union of India AIR 1997 SC 811.

K

*Kerala State Board for prevention & Control of Pollution vs. Guwalior
Rayon Ltd.* AIR 1986 Ker. 256.

Kinkri Devi vs. State of Himachal Pradesh, AIR 1988 HP 4.

K. Ramakrishna vs. State of Kerala, AIR 1999 Ker. 385.

Krishna Gopal vs. The State of M. P. 1986 Cr. LJ 396.

Krishna Paniker vs. Appukuttan Nair 1993 (1) KLJ 725.

*Kholamohan Primary Fisherman Co-operative Society vs. The Stae of
Orissa* AIR 1994 Ori191.

K.M. Chinnappa vs. Union of India AIR 2003 SC 724

Krishna Gopal vs. State of MP (1986) Cr.LJ 396.

Kachrula Bhagirath Agarwal vs. State of Maharastra (2004) Cr.LJ 4634.

L

Law Society of India vs. Fertilisers and Chemicals Tranvancor Ltd., AIR
1994 Ker 308.

Live Oak Resort vs. Panchgani Hill Station Municipal Corporation 2001 8
SCC 329

L. K. Koolwal vs. State of Rajasthan, AIR 1988 Raj. 3.

M

- M. C. Mehta vs. Union of India.* 273. AIR 1987 SC 273. AIR 1987 SC.1086 (Shri Ram Gas Leakage Case.)
- M. C. Mehta vs. Union of India,* AIR 1988 SC. 1115.
(Kanpur Municipality Case)
- M. C. Mehta vs. Union of India.* (1991) 4 SCC 54.
- M. C. Mehta vs Union of India* (AIR 1987 SC 96.)
- M. C. Mehta vs Union of India.* (1994) 3 SCC 717.
- M. C. Mehta vs. Union of India.* (1987) 4 SCC 464.
- M. C. Mehta vs. Union of India.* AIR 1992 SC 382.
- M. C. Mehta vs. Union of India.* AIR 1997 SC 734.
- M. C. Mehta vs. Union of India.* AIR 1999 SC 291.
- M. C. Mehta vs. Union of India.* (1996) SCC 12.
- M. C. Mehta vs. Kamal Nath* (1997) 1 SCC 388.
- M. C. Mehta vs. Union of India* (1997) 2 SCC 353.
- M. C. Mehta vs. Union of India* AIR 2002 SC 1696.
- M. C. Mehta vs. Union of India* (1998) 6 SCC 60.
- M. C. Mehta vs. UOI* AIR 1988 SC 1037.(tanneries case)
- M. C. Mehta vs. UOI* 1991 (2) SCC 137. (Vehicular Pollution Case)
- M. K. Sharma vs. Bharat Electronics* AIR 1987 SC 1792.
- Medwin Hospital vs. Atate of AP* 1992 (2) Andh.LT 471
- Mukul Roy vs. State of West Bengal* AIR 1999 Cal 293.
- Mukesh Textiles vs HR Subramanya Sastry* AIR 1987 KANT87
- Majra Singh vs Indian Oil Corporation* AIR 1999 J & K 81.
- Madhu Limaye vs. Sub- Divisional Magistrate, Monghyr* AIR 1971 SC 2486.
- Maulana Mufti Syed Barkati vs. State of W B,* AIR 1999 Cal 15
- M.I. Builder Pvt.Ltd. vs. Radhey Shyam* AIR 1999 SC 2468.
- Municipal Corporation of Delhi vs Purushuttam Das* (1983)1 SCC 9
- Maha Gujrat Hawker Vyapar Mahajans Etc. vs. Ahmedabad Municipal Corporation* 1995 (Supp 2) SCC 182.
- M/s Srinivasa Distilleries vs. Thyagarajan* AIR 1986 AP 382.
- Municipal Council of Ratlam vs. Wardhichand* AIR 1980 SC 1622.

Modi Industries vs. Union of India 1989 All. CLJ 93.

M. L. Sud vs. Union of India 1992, 2 SCC123.

Mahabir Soap & Gudakha Manufacturing Factory - Vs- AIR 1995 ori 219.

Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

Madhavi vs. Tihlakan 1988 (2) KLT 730.

Mathew Lucose vs. Kerala State Pollution Control Board (1990) 2 KER LR 686

M.P.Rambaboo vs Divisional Forest Officer AIR 2002 AP 256.

N

Narmada Bachao Andolan vs. U O I, 2000 10 SCC 664

Navin Chemical Manufacturing and Trading Com. Ltd. vs. NOIDA, 1987 All. LJ.13

Niyamvedi vs. Government of India Kerala H.C. WA No. 1427/1994-B 6th Nov. 1995.

O

Ogla Tellis vs. Bombay Municipality. AIR 1986 SC 180

Obayya Pujari vs. Member Secretary, Pollution Control Board, Bangalore, AIR 1999 Karnataka 157.

Om Birangana Religious Society vs. The State AIR, 1996 CWN 57.

P

P.C. Cherian vs. The State of Kerala, 1981 KLT 113.

P. Rami Reddy vs. the State of AP, AIR 1988 SC 1626.

Paramananda Katara vs. Union of India and others (1989)

Peoples Union for democratic Rights vs. Union of India (1983) SC 1473.

Peoples United for Civil Liberties vs. Union Of India (unreported)

Pranab Kumar Chokroborty Mohd. Akram Hussain (1991) Cr.LJ 3156.

R

Rural Litigation & Entitlement Kendra, Dehradun vs. State of U.P. AIR, 1991 SC 2216.

Rajesh Singh Budhpriya vs. Patna Regional Development Authority AIR 2002 Pat 135.

Rampal vs. State of Rajasthan AIR 1981 Raj 121.

Rajiv Mankutia vs. Secretary to the President of India (1997) 210 SCC 441.

Research Foundation for Science, Technology & Ecology -Vs- Ministry of Agriculture 1999 1 SCC 655.

Robin Mukherjee vs. The State of W.Bengal AIR,1985 Cal 222

Rural Litigation & Entitlement Kendra, Dehradun vs. State of U.P. AIR, 1985 SC 652.

Rural Litigation & Entitlement Kendra, Dehradun vs. State of U.P. AIR 1991 SC 2216.

Rural Litigation & Entitlement Kendra, Dehradun vs. State of U.P. AIR, 1999 SC 97.

Ram Krishna vs. State of Kerala, AIR 1999 Ker 385.

S

Shella Zia vs. WAPDA PLD 1994 698.

Sachidananda Pandey vs. State of W B, AIR 1987 SC 1109.

Sheela Barse vs. Union of India Air 1988 SC 2211.

Samata vs. State of Andhra Pradesh, AIR (1997) SC 3297.

Suo Mottu vs. Vatva Industries Association Ahmedabad & Others, AIR 2000 Guj 33.

Subhash Kumar vs. State of Bihar, AIR 1991 SC 420.

State of Manipur Vs.Chandan Manihar Singh (1997)7SCC 503

State of Himachal Pradesh vs. Ganesh Wood Products, AIR 1996 SC 149.

State of Himachal Pradesh vs. Umed Ram AIR 1986 SC 847.

State of Bombay vs. Narasu Appa Mali (AIR 1952 Bom 82.

State of MP vs. Kedia Leather Industry (2003) 7 SCC 398.

State of Rajasthan vs. G. Chawla AIR 1995 SC 544

Satwanl Singh vs. A.P.O New Delhi AIR 1967 SC 1867

Surendra D Sinha vs. Union of India (2003) 3 SCALE 533.

Sector14 Residents Welfare Association vs. State of Delhi, AIR1999 SC 308

S P. Gupta vs. Union of India, AIR 1982 SC 149.

Shanti Stae Builders vs. Narayan Khimlal, AIR 1980. SC 180.

Shriram Saha vs. State of West Bengal, AIR 1999 Cal 90.
Shiva Rao Shantaram Wagle vs. U O I, AIR 1988 SC 952
Smti VK Chandel vs. State of H P, AIR 1999 HP 59
Som Prakash Reikhi vs. U O I, AIR 1981 SC 212.
Suraj kund Lake Case (1997) 3 SCC 715.
Suo Mottu vs. Home Deptt. State of Gujrat, AIR 1999 Guj 326.
State of Bihar vs. Murad Ali Khan, AIR 1989 SC 1.
Sachidananda Pandey vs. State of West Bengal, AIR 1987 SCC 1109. (Taj Hotel Case) :
S. K. Garg vs. State of UP AIR 1999 All 87. *Sayed Moqsood Ali vs. the State of M.P.* AIR 2001 MP 220
Samata vs. State of AP AIR 1997 SC 3297.

T

Tarun Bharat Sangha, Alwar Vs U O I, (1993) 1 SCC 4
Tata tea Ltd. vs. State of Kerala 1984 K L T 645.
T.N. Godavarman vs. Union of India, AIR 1999 All 84.
T.N. Godavarman vs. Union of India AIR 1997 SC 1228.

U

Union Carbide Corporation Vs U O I, AIR 1987 SC 273
Uttar Pradesh Pollution Control Board vs. M/s Mohan Meaking Ltd. & Others, 2000 (2) Scale.
Utpal Barbara vs. State of Assam, AIR 1999 Gau. 78.

V

Vellore Citizen Welfare Forum vs. U O I. AIR 1996 SC 2715.
Virendra Gaur vs. State of Haryana 1995 2 SCC 577.
V. Lakshmipathy vs. State of Karnataka AIR 1992 Kant 57.
Vijay Shree Mines Case (1991) 3 SCC 347.
Vijay Singh Punia vs. RSBPCWP AIR 2003 Raj 26.
V. Mathur vs. Union of India, (1996) 1 SCC 119

W

Wasim Ahmed Sayeed vs. Union of India and others, (2002) 9 SCC 472.
Wasim Ahmed Sayeed vs. Union of India and others, 1999 SCALE 685.
Wasim Ahmed Sayeed vs. Union of India and others, 1999 SCALE 683.

CHAPTER – 1 PRELOGUE

- 1. INTRODUCTORY**
- 2. BACKGROUND OF THE STUDY AREA**
 - A. Prelude to Meghalaya
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- 3. REVIEW OF LITERATURE**
- 4. OBJECTIVES OF THE STUDY**
- 5. LAY OUT OF THE STUDY**

CHAPTER- I

1. INTRODUCTION

"I want to make it clear, if there is ever a conflict between environmental quality and economic growth, I will go for beauty, clean air, water, and landscape."

Jimmy Carter quoted from the New York Times, September 19, 1976.

In the past few decades awareness about the damaging effects of the pollution of environment on human beings and quality of life has increased dramatically. This awareness has followed upon very substantial degradation of the world's environment - land, water and air - over the last two 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. There appears to be general agreement on the impact of a few specific changes.

The concept of enviro-human right has become one of the life issues in the 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 imbalances.¹ The scope and ambit of right to life are so varied that the human right aspect of life has to mitigate the challenges

1. Z. M. Nomani, "Enviro-Constitutional Ethos in Right Duty Discourse: Towards the Creation of an Equitable and Sustainable Socio-legal Order" *IJEL* 60 2000

involved in safeguarding human environment. Unwarranted deprivation of human beings from right to environment became the prime agenda in the modern democratic, welfare, and techno-centric societies. Diversified techno-centric paradigm coupled with urbanisation without proper planning, population growth with poor housing, political and bureaucratic idiosyncrasies and lack of distributive justice upset the equilibrium of development and environment.² The focal agenda of today's socio-legal order should be ecology and environment. Environmentalism and eco-centrism should be the main endeavour of today's legal and judicial order. 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. There is right to development, right to trade and business, right to livelihood, right to housing and other legal and constitutional rights on the other hand and there is right to environment, on the one hand and thus there exists a never-ending conflict and confrontation between the two. However, the scope and ambit of right to environment became so wide that it became a crucial guiding dimension for plans and programmes in each sector.

Right to environmental protection is one of the important ingredients of the right to life. 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.

2. See generally, Mohd. Sharif Uddin and Z.M. Nomani, "Water Pollution and Law"
Saloni Publication, New Delhi, 2004.

A significance question, in this respect, arises: Is right to environment merely a human right? If so, then what about the environmental right of other co-residents of the eco-system such as animals, flora and fauna? Further, right implies duty. On whom lies the corresponding duty? What is the procedure to determine and implement the right to environment of non-human entities? Like other fundamental rights, has the right to environment any limitation? Whether can reasonable restrictions be imposed on right to environment? Whether limitations embodied in express words in Article 19 (2) of the constitution are also applicable to right to environment? Is it an independent right or a means of realising already established rights, such as right to liberty, right to health, right to residence etc? Whether has any distinct right to environmental protection emerged? If so what is the concept and definition of environment? What is decent environment? What is healthful environment? What is ecological balance? Whether it's a social right or an individual right? Who is the subject of such right and upon whom the corresponding duty is imposed? Whether adequate laws have been brought about to protect this right? Whether the present environmental statutes are sufficient to protect this right? What are the lacunae of the present environment legislations? Whether these legislations are being properly implemented? Who are mainly responsible for implementation and non-implementation of these laws? What are the better possible alternatives for implementation? Whether the statutory pollution control authorities are performing their statutory duties? What are the constraints being faced by them in discharging such statutory duties? What is the role of judiciary in safeguarding and promoting the right to environment? The main thrust of this study is to seek an answer to all these questions in the light of present policy, law and justice in national and international level.

The first and foremost problem is an appropriate definition of the term environment. The Environment (Protection) Act 1986, which is

considered as an umbrella legislation, has failed to give a comprehensive definition of the term environment. The definition given under section 2 (a) of the Act is an inclusive one, which states only what, does the term 'environment' include. A universally accepted definition is not possible because the social, political, economic, philosophical, physical, cultural and religious conditions of various countries are different. Even within a country, the meaning, concept and contents of right to environment of all classes of people are not same and similar. There is a hierarchy of needs as primary and secondary needs. Foods, clothes 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. A relative definition in combination with other factors and values of economic, social and cultural character will determine the true meaning and concept of environment.

Secondly, development - economic, scientific and technological, is the non-alienable facets of modern democratic society. Development is the process of achieving greater and better state. In the United Nations Conference on Human Environment 1972 at Stockholm, the sustainability of such development or betterment in quality of such development was stressed. In *People United for Better Living at Calcutta V. The State of West Bengal*³ the Court observed that in a developing country, there shall have to be development but the development have to be in closest possible harmony with environment as otherwise there would be development but no environment, which would result in total devastation, though not in present but in some future points of time. If any situation arises where no close harmony is possible without sacrificing either development or environment, then which should be given preferences development or environment? And on what basis? What is the parameter of judging the environment? How to find out the

3. AIR 1993 Cal 125.

parameters to draw a line demarcating the area of development and environment lest the development will be at the cost of the environment. Thirdly, Shelter is a basic human need. Art. 25(1) of the Universal Declaration of Human Rights recognised the right to housing but to realise this right is a distant dream in India. A large number of Indian populations is living in slums, pavements, and railway platforms through the length and breadth of the Country in unhealthy and unhygienic conditions. Today cities are facing environmental problems like shortage of drinking water, inadequate waste collection and disposal, lack of proper drainage and sanitation, soil pollution, noise pollution, water pollution etc. Cities were once gateways of good things in life but are now presenting a picture of unhealthy and unhygienic living condition. In ecological perspective, city is a great consumer of resources and producer of waste. The slum communities are captives of an unhygienic environment. Substandard housing, unsafe water, and poor sanitation is the common feature of life in densely populated cities which is responsible for many air-borne, water-borne, food-borne and infectious diseases which take away good number of lives every year in India. Eviction of such slum dwellers will deprive the already deprived class of people from their right to housing and livelihood, which will amount to another gross violation of human right. City slums are by-products of development prospects in city areas and a development, which cannot give bare minimum need, is no real development. At this juncture, is it the responsibility of the State, as being the caretaker of the citizens, to provide shelter to them? Whether the evicted slum dweller's right to shelter is guaranteed under Article 19 (1) (e). In the *Ahmadabad Corporation case*⁴ the Supreme Court has not given a clear picture about the problem stating that it may not, as a rule, direct the State to provide shelter for those evicted persons.

4. *Maha Gujarat Hawkers Vyapar Mahajan etc. vs. Ahmedabad Municipal Corporation* 1995 (Supp 2) SCC182.

Fourthly, International Law is primarily concerned with collective groups of individuals, commonly known and recognised as sovereign States, which constitute the normal subjects of International Law. Question arises as to who are subject of human right under international law? Efforts are being made to promote respect for human rights through the medium of collective bodies such as the United Nations Commission on Human Rights or the European Courts of Human Rights. Those agencies are certainly international and apply considerations of international law to individual cases. It is submitted that when individual rights are seen as rights, which may be claimed by the whole mankind, they become assimilated to a higher international law viz. the United Nations Charter. That category would also include the right to life, right to peace, right to an adequate environment, and right to sustainable development. The object and subject of almost all laws is the human being and his right to live in peace in a safe and adequate environment is a right, which relates to his very existence. Now question arises as to a right which goes to the very root of one's own human existence, how this right shall be categorised whether Fundamental Right or Natural Right or Human Right or Constitutional Right or International Right? If it is an international right, then whether it applies to the developed, underdeveloped as well as developing countries? Will it be valid in peacetime only or in condition of belligerency as well? In this study an humble attempt is made to seek a solution of this problem.

Fifthly, whether right to environment and sustainable development is available to the State or citizens? Thousands of irrigation canals and dams are being built over the century by the State bringing about different prioritization of water use, which drastically change the availability and use of both ground and surface water. There is a growing perception in India and many other countries that one of the major reasons for draughts and floods has been the State's exploitative policy of deforestation. Irrigation schemes have led to gross inequalities among

users, which also led to impoverishment of original users. In such a condition the whole question of right to environment needs to be fundamentally examined. What should be the State's rights and what should be that of the citizens? How do we make the State accountable to the people and the people accountable to each other and the State? If the State is to use the law to regulate the resources how do people use the law to regulate the State?

Jurisprudentially speaking, there is a close relationship between right and duty. There must be a right holder or the subject of legal right and a subject of legal duty, upon whom the corresponding duty is imposed. If the citizens are right holders, then the State is making use of natural resources for various developmental activities. If the State is the right holder, then the whole discussion of right to environment as a fundamental or human right is meaningless. In the proposed study, an attempt is made to determine the extent of State's rights and the citizen's right.

It is, generally, said that poverty is the great polluter. Right to livelihood is a fundamental right. Millions of population in India are dependent directly or indirectly partly or wholly on environment and natural resources, such as fishermen, wood cutters, hunters, *Jhum* cultivators etc. questioning this respect, is which will be given preference, either right to livelihood or right to environment? What is the scope and ambit of both the rights? What are the parameters of preference? The conflicting dimensions of both the rights will be examined to evolve a comprehensive solution.

A glance over the world constitution reveals mainly three things—environmental legislation is a fundamental duty; sustainable development is the principle of governance and delegation of power for environmental legislations. Under the Indian Constitution, Article 48 (A)⁵

5. Article 48 (A) reads "The State shall endeavour to protect and improve the environment and to

lays down that the State shall endeavour to protect and improve the natural environment of the country. The mandate of Article 51 A (g)⁶ is that every citizen of India has the duty to protect and improve the natural environment including forest, lakes, rivers, wildlife and to have compassion for living creature. Article 253⁷ is a general legislation, which has no special relationship with the field of environment. This Article empowered the parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any other country or countries or any decision made at any international conference, association or other body. Now question is which is the proper authority to legislate in the field of environment? Then the question is as to which law, whether Federal or provincial or Municipal or Administrative, will be more effective to save the environment. In the present work a humble attempt is made to locate enviro-constitutional responsibility in a Federal system like India.

Over a couple of decades, a number of studies have been conducted relating to the scope and ambit of the right to environment. The Supreme Court and High Courts have also delivered a good number of judicial pronouncements. In this study, the Historical Analytical methodology of research is applied and a systematic analysis is done. The research work is mainly doctrinaire which spreads over three broad areas - viz (a) to make an analysis of the opinions of academicians available in Journals and Books to draw the concept of right to environment in India, (b) to study the relevant international instruments relating to human rights to draw an inference these may be useful in India and (c) to critically

safeguard the Forest and Wildlife of the Country.”

6. Article 51 A(g) reads “It shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, wild life and to have compassion for living creature.”

7. Article 253 reads, “Parliament has power to make any for the whole or any part of the country of India for implementing any treaty, agreement or convention, with any other country or countries or any decision made at any international conference, Association or other body.”

examine the judicial decisions to evolve a conspectus thereto. For the above purpose, the law journals in India and available foreign journals have been surveyed. The cases of the Supreme Court and High Courts have been collected from the All India Reporter. The present study mainly concentrates to the Indian position with special reference to the Khasi people in the State of Meghalaya wherever relevant.

2. BACK GROUND OF THE STUDY AREA

A. Prelude to Meghalaya.

At the time of independence, two districts namely United Khasi and Jaintia Hills and Garo Hills were included, against the political desire of the people, under the administrative set up of Assam State of free India.⁸ The aspiration for a separate political identity brought fruit when the state of Meghalaya was carved out of Assam State as an autonomous state on the 2nd April 1970 under the 22nd Amendment to the Constitution of India 1969 and the Assam Reorganisation Act 1969. But due to unworkable administrative hurdles, Meghalaya was given the status of a full-fledged state with effect from January 21, 1972 under the North-Eastern Area (Reorganisation) Act 1971. Initially it comprised of the above two districts with headquarters in Shillong and Tura respectively. Within a month of its inception, the United Khasi Hills District was divided on 22nd February 1972 creating Jaintia Hills as a separate district with headquarter at Jowai. Again in the year 1976, the Garo Hills District and the Khasi Hills were divided into east and west creating four separate districts namely East Garo Hills, West Garo Hills, East Khasi Hills and West Khasi Hills Districts. In 1972, two new districts, namely Ri-Bhoi and South Garo Hills were created dividing the then East Khasi Hills District and West Garo Hills District. The following Table 1 & 2 shows the present Administration division of Meghalay. The following Table 1 and 2 shows the present Administration division of Meghalay.

8. See, "Customary law and justice in the tribal areas of Meghalaya" Indian Law Institute, New Delhi.

Table 1:- Administrative set up of Meghalaya.

Former Districts	Present Districts	Headquarters	Date of creation	Area sq km.	Density
United Khasi & Jaintia Hills	Jaintia Hills	Jowai	21-2-1972	3819	77
	East Khasi Hills	Shillong	28-10-1976	2748	234
	West Khasi Hills	Nongstoin	28-10-1976	5247	56
	Ri-Bhoi	Nongpoh	4-1-1992	2448	81
Garo Hills	West Garo Hill	Tura	23-10-1976	3677	139
	East Garo Hills	Williamnaga	23-10-1976	2603	95
	South Garo Hills	Baghmara	18-1-1992	1887	54
MEGHALAYA		Shillong	21-1-1972	22429	103

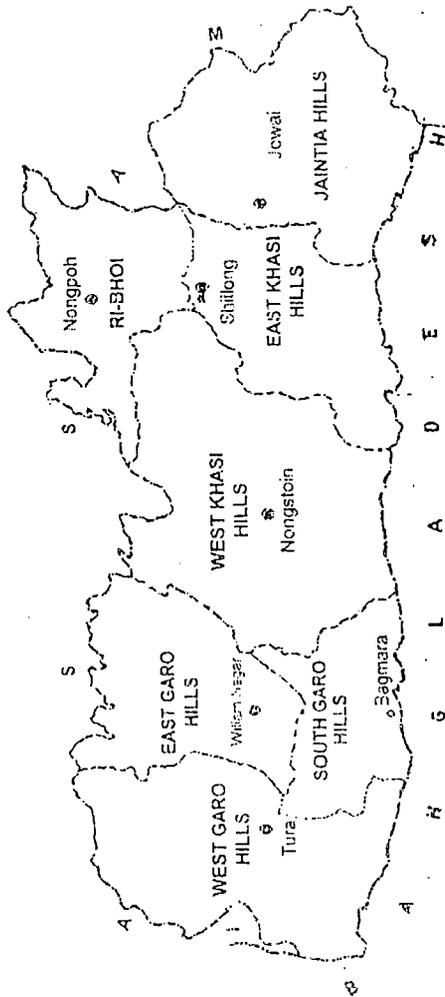
Table 2. Administrative Divisions of Meghalaya.

Districts	Sub-Divisions	Date of creation	Population 2001c	Male	Female	Sex Ratio
Jaintia Hills	Jowai	21-1-1972	295692	149376	146316	902
	Khliehriat	27-5-1982				
	Amlarem	12-11-1976				
East Khasi Hills	Shillong	21-1-1972	660994	333187	327807	984
	Sohra	22-5-1982				
Ri-Bhoi	Nongpoh	5-1-1977	192795	99315	93480	941
West Khasi Hills	Nongstoin	19-10-1976	294115	149159	144956	972
	Mairang Mawkyrwt	26-6-1982				
East Garo Hills	WilimNagr Resubelprra	30-4-1982	247555	126312	121243	960
West Garo Hills	Tura	21-1-1972	515813	259440	256373	988
	Dadengiri	17-8-1982				
	Ampati	15-10-1982				
South Garo Hills	Baghmara	7-12-1976	99105	51051	48054	941
Meghalaya	15	21-1-1972	2306069	1166840	138229	975

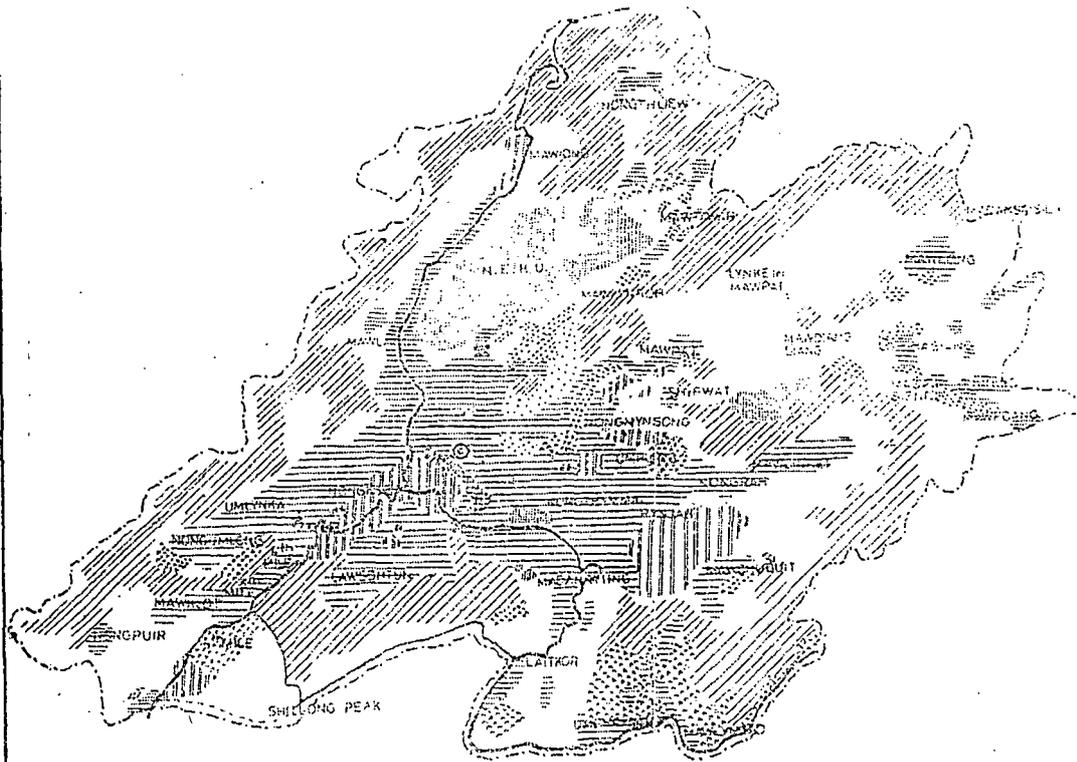
Sources:-(i) Govt. of Meghalaya, (2003), Directorate of Economics and Statistic, Meghalaya Socio-Economic Review.

(ii) Govt. of India, (2002) Basic Statistics of North Eastern Region, North Eastern Council, Shillong.

Map of Meghalaya showing the District and location of Head Quarters.



Map of East Khasi Hills District, Meghalaya showing location of Shillong city, the Capital of Meghalaya.



Enviro-geographical settings

Meghalaya, the 21st State of India, literally means the “abode of clouds”⁹ small in area as well as population, is a hilly state situated in the North-Eastern corner of the country sharing boundaries with at least three countries - Bangladesh, Myanmar and China. Meghalaya shares a 497 kilometres International boundary with Bangladesh on the south and the west. Within the country, Meghalaya shares a boundary with Assam on its north and east. Geographers described the state as a plateau exhibiting land form and terrains. Out of the total area of 22429 Sq km. 9496 sq km i.e. 69.8% is covered with forest from which 981 sq km is reserved forest, 8503 sq km is unclassed forest and 12 sq km is protected forest. Many parts of the state are characterised by gentle to steep hills, sudden steep slopes, deep gorges and some plain areas. Geographically, the state of Meghalaya is situated between 25° 47' to 26°10' North Latitude and 89°45' to 92°47' East Longitude.⁸ Meghalaya has four physical features. The mainland running from Jaintia Hills on the east to Garo Hills in the West determines the course of rivers. The northern belt runs also from one end of the state to another. The state has a plain area in Garo hills and in the southern belt bordering Bangladesh. The mainland of the state is hilly. This includes the Shillong plateau. Groves are formed in large area and turn, add beauty to the natural scenery of the state. The northern belt is fertile. Large varieties of agricultural products are grown in this area. In addition, the entire belt is clothed with thick forest. These forests are either reserved or private. In the southern belt, the main agricultural products are orange, pineapple and beetle leaf. The little plain portion of Garo Hills District suffers from flood which destroys standing crops.

In addition to the above, there are large numbers of beautiful

9. *Meghalaya Socio-economic Review*, Directorate of Economics and Statistics, Govt of Meghalaya, at-1

natural waterfalls in the state. It may be said, "Meghalaya is the Scotland of North-east." This is due to the reason that the natural beauty of the state is remained unchanged till today in spite of natural calamities like the Earthquake of 1877, which damaged the major area of the state. So also in recent time, when people resorted to earn quick bucks, large areas of evergreen forest have been converted onto barren land. Added to the above, the Jhum Cultivation practiced by the people of Meghalaya shaved a major part in damaging the natural beauty and scenery of the state.

C. Climatic condition.

The climate of Meghalaya is characterised by moderate warm, wet summer and cool dry winter. It can be classified under humid sub-tropical climate found in the eastern part of the continent. The average maximum and minimum temperature remains around 17° C and 7.5°C respectively. The average annual rainfall is about 2100 mm. The relative humidity is always above 50% and during the rainy season it is above 80%. Meghalaya has been immensely blessed with beautiful nature and pleasant environment. Meghalaya with its beautiful geography, wonderful underground caverns, and the dancing water falls mixed with exotic flora and fauna and above all the pleasant climate have attracted to visit Meghalaya.¹⁰

D. Social setup:-

The State of Meghalaya is predominantly inhabited by three indigenous communities namely the Khasi, the Jaintias and the Garos and categorised as schedule Tribes by the government. These tribes have their own district and unique culture. The Khasis are inhabited in the Khasi Hills District, the Jaintias and Khasi Pnars are found in Jaintia Hills Districts and Garos are found in the Garo Hills. There are certain

10. The State of environment of Shillong City, A Report, Meghalaya Pollution Control Board at-1.

other sub Tribes namely Khyntriams, Pnars, War, Amwi, Bhoi etc. There are certain non-Khasi tribes inhabiting the Khasi Jaintia Hills districts namely (i) the Mikirs, who are concentrated densely in the North-East of Jaintia Hills. (ii) Lalungs who are found in large number in the North-Eastern part of Jaintia hills. (iii) The Biati and Vaiphe called Hadems who are concentrated largely in the Saipung area of Jaintia Hills. (iv) The Kukis like Thodou Kukis, Khelmas, Sakoleps etc. are found in small numbers in Jaintia Hills. (v) The Lyngngams of the west and North -west in Khasi Hills who are supposed to have a Garo Origin but have embraced Khasi customs. Garos are also found in a few areas on the north and west Khasi Hills. A few Rabhas reside in the northern Khasi Hills and some Aijongs are found residing in small groups towards the south.¹¹

The Garos live predominantly in Garo Hills of Meghalaya. Garos are divided into four categories namely Sangma, Marak, Momin and Shira which constitute the major original inhabitants of Garo Hills. Other original inhabitants of Garo Hills are Rabhas, Hajongs, Kochs, Rajbonshis, Daluas, Meches and Kacharis. Ethnically and Imgnistically, the Garos belong to the great Bodo family of Assam, who are a section of the Tibeto-Burman of the Tibeto-Chinese family. but according to their own tradition, the Garos originally come from Tibet and settled down in Koch Bihar in west Bengal fro 400 hundred years and later on they entered into the Gaolpara district of Assam. In course of time, some of them entered into hills which are called the Garo Hills.

In additions to the original inhabitants, Meghalaya embarrasses almost all people belonging to different communities like Assamese, Arunachalese, Bangalees, Beharies, Mizos, Nagas, Punjabis, most of they came for business, service and education purposes. The people of the state do not understand in one common Indian language. The Garos

11. *id* at p-3.

speak, read and write Garo language, the Khasis speak read and write Khasi language, while the Jaintias read and write Khasi language but speak their own language. A sort of broken Hindi is adopted in commercial areas like Bara Bazar, Police Bazar and other Townships. In urban areas, a good number of people speak Bengali and Assamese, keeping in view that the original inhabitants of the state could not communicate among themselves and outsiders with their own languages, English became the only media of communication and official language of the state.

E. Early background of Khasis

The precise origin of Khasis has not been established. However; oldest generations of Khasis believe that their ancestors came to these hills from Central Asia of Mongolia. Others told that Khasis are the descendants of a Chang group of China. There are other views as to the Neolithic origin and emigration of the Khasis. Khasis have many racial characteristics that are common with other descendants of the Neolithic people like Gurkhas and Bhutiyas. The language of the Mundas and Khasis belong to the same family of speech called Austric from which those of the people of Indo-China and Indonesia have been derived. According to this view these people who were originally settled in India passed gradually to the east and south-east and traversed at first the whole length of the Indo-Chinese peninsula, and then over all the eastern extremity.

Khasis constituted a sub tribe of a big horde of tribes who are believed as mentioned to have migrated from Central Mongolia through Kashmir and settled in the plains of Brahmaputra and Surma Valleys of Assam in between 4000 and 5000 B.C. Little is however known about their exact origin, no written history is available about then the origin of Khasis was the subject of many researches conducted by many Scholars in the past. According to their findings the first settlement of the Khasis was in the Jaintia Hills and in the part of Karbi Anglong and North

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Cachar Hills of Assam. The place was then known as Ummulong, a village of the Jaintia Hills. In course of time, the state was bifurcated into Hima Synteng (Jiantia Hills) and hima Shyllong (Khasi Hills). Originally, the people of Jaintia Hills were known as "Pnars" those of Khasi Hills were known as "Khyrniam", those in the Southern Slopes were called "War" and those inhabiting in the Noyhern Slopes were Bhoi. The name Jaintia derived from Jaintia Pur (now in Bangladesh) and Raja Synteng had ruled over it. The people in the neighbouring Brahmaputra and Surma Valleys used to refer them as "Jaintias". Hence the Khasis and Jiantias originally belong to one tribe. The word Khasi evolved from "grass" since these Hills were covered with grass and residents of plains used to call them people from "ghas Land" of the Hills. Later on it came to be known as Khasia. After wards the British in their record described them as "Chosyas". Only in the early part of 19th century when the British writers wrote Khasi literature in Roman Script, they mention the word "Khasi".

According to another legend Prevalent among the Khasis, they are descendents of "Hynniew Trep" (Seven Hut) which was part of the sixteen huts in heaven. These Seven huts were severed while coming down to the earth and settle down in the Khasi and Jiantia Hills. First they settled in the Jiantia Hills and after a long period, they divided themselves into separate kingdoms, the Jaintia and the Shyllong States. Originally the community owned the land in Khasi and Jiantia Hills and it was known as "Raj Land" i.e. lands, which people can occupy and use but no right to sell them. It was only after independence that these lands were converted into private lands of either individuals or clans. There were some lands which had been occupied for generation by some clans and were known as "Clan's land: Khasis believe that they originated from the same common ancestors "U Thawlang" and "ka Lawbel". Later on due to exogamy, various clans were introduced. Each clan observes various distinctive religious rites. A common rite was to reserve a special place in

which the unclaimed bones were kept under stones after cremation.

The matriarchal theory is still in full force. Inheritance comes only through mother's line. Khasis are generally liberal in out look, but in terms of the society, they are very conservative, even mindful of their customs and right accusing thereon. Khasi people are strong, healthy and honest. Thanks to the bracing climate as well as their habits of hard work. The Britishers in their record described the climate of these hills as "English Climate". They called Shillong as "Scotland of North-East". The Khasi hills are also known for heavy rainfall. Cherrapunjee records the highest rainfall kin the world. During autumn, these hills remain covered with green grass and the evergreen forest dotted with many waterfalls, present in beautiful landscapes. These scenic delights continue to attract Tourists in large numbers. The following table shows the number of Tourists visiting Meghalaya during 1991-1997.

Apart from the role Law enforcing agencies, customary law is internally embedded in the Socio-Culture of the Khasi people of Meghalaya. Social, cultural, political, moral and religious aspects guide customary law also. An analysis of the prevailing customary practices of the Khasi people is summerised here under.¹²

F. Family structure

The primary smallest social unit of the Khasi people is the family of a Clan organisatin. A Clan springs out from an ancestress and each daughter of the ancestress forms branches or KPOH. These kpoh in turn forms small family units. The Clan members are sets of matrimonial decedents and the females have a more predominant position in terms of lineage. The Khasi family consists of father, mother and children residing in a common household. If the youngest daughter happens to be the mother of the family, the family members include her unmarried brothers, sisters, childless sisters, orphan and posthumous children of

12. *Id.* at-3.

her sisters and her surviving parents. The father happens to be the executive head of the family. He looks after the welfare of the household and all his earnings spends in maintaining the family. Traditionally, the children take the name and title of their mother and the youngest daughter inherit the whole family property with the limitation that she cannot sell it out. But now-a-days sons are also given landed property if parents could afford.¹³

G. Institution of Marriage

Among the Khasis, marriage is a socially and religiously approved union, establishing a relationship of husband and wife for the purpose of procreation of children. In terms of Clan, marriage is strictly exogenous among the Khasis. Any sexual relation within the Clan members is considered as a sacrilegious act not less than incest. Incest taboo is strictly adhered to among the Khasis. Any violation in this regard is considered as an offence, punishable under the customary law. The punishment is that the couple is shaved off their head in to three parts, excommunicated from the clan invoked to supernatural punishment of the almighty and also forfeiture of inheritance. Among the Khasis, marriage exhibits a regular pattern based on the prohibited degrees and regulations governed by customary laws rather than formal laws. A Khasi man can not marry:-

- i. His father's mother
- ii. His father's sister
- iii. His father's sister's daughter
- iv. His father's brother's daughter
- v. His daughter
- vi. His mother
- vii. His mother's daughter
- viii. His foster sister or niece

13. *Id.* at- 5.

- ix. His sister's daughter
- x. His mother's sister
- xi. His mother's sister's daughter
- xii. His mother's brother's daughter
- xiii. Daughter's mother-in-law and sister-in-law
- xiv. Wife's mother
- xv. Father's brother's wife
- xvi. Mother's brother's wife
- xvii. Sister's and brother's mother-in-law
- xviii. Paternal and maternal uncle's mother-in-law
- xix. Dead wife's elder sister younger sister can be married only after one year of wife's death
- xx. Any female member of his Clan and Sub-Clan
- xxi. Any Clan with whom his Clan had any case of breach of marriage engagement or divorce through the custom of throwing of five cowries.

Marriage is neither strictly exogamous nor strictly endogamous but inclined to tribe linguistic, religious and village endogamy. Monogamy is commonly practiced and generally accepted norm. However, a kind of informal alliance with any other individual other than the spouse may some time take place. Children of such alliance not discriminated as they belong to their mother whether illegitimate or legitimate. However, socially a man's children from the first marriage are generally recognised. Marriage is accompanied by religious rites and rituals both between Christian and non-Christians Khasis. Presumption of marriage by cohabitation prior to solemnization of marriage is recognised provided it falls outside prohibited degrees. Registration of marriage in Civil Court is not necessary. Remarriage of divorcees and widows or widower is permitted but only after one year of death of the deceased spouse.¹³

H. Divorce

An unpleasant act among the Khasis is divorce and before divorce reconciliation and mediation is attempted if divorce is unavoidable, it

takes in the presence of maternal uncles, parents and friends as witness, which is accompanied by certain procedures. Divorce may take place on one or more grounds as follows:-

- I. Adultery
- ii. Barrenness and sterility
- iii. Incompatibility of temper
- iv. Desertion and abandonment without any reasonable cause
- v. Incurable disease and unsoundness of mind
- vi. Ill-treatment and cruelty

Divorce may be unilateral or mutual in nature. In case of unilateral divorce, compensation is to be paid by the party who divorced to the other party. The amount of compensation varies from place to place and individual to individual. The most common practice is mutual divorce, which involves the procedure of throwing five cowries followed by public declaration that any one is free to marry the divorcee. After the divorce no marriage can take place between the two clans in the coming generations. A woman cannot be divorced while she is pregnant.

However, the traditional procedure of divorce is disappearing in the present changing society. If restitution of conjugal life becomes impossible, a spontaneous separation takes place without any formal divorce and a valid divorce takes place. Nowadays, the people also approach the court for divorce. In the event of divorce, the mother gets custody of all children and the family property due to Matrimonial system. Even in the present era also the customary law governs the custody.

I. Inheritance

Traditionally, the father does own or inherit landed property. The mother is the legal owner of the ancestral as well as self-acquired property. On the other hand, if the mother's mother is heir-less, she becomes the legal owner of mother's ancestral as well as self-acquired property. In case of heiress daughter, she inherits the ancestral house

and property over which she is only the custodian and to do anything regarding ancestral property, decision is not unilaterally taken by her but with consultation of the maternal uncles. Thus a Khasi man has an added responsibility to look after his mother's family as a maternal uncle.¹⁴

J. Adoption

Among the Khasis, adoption is termed as **RAPIING** which is not the same as understood in the modern terminology. Khasi, being a matrimonial society inheritance and right to property pass down to female line only. In the absence of an heiress due to barrenness or lack of female issue, adoption is done in the interest of the family property and clan to continue. The family adopts a female child from within the clan usually from the nearest female line. She attains the status of the youngest daughter and takes up responsibilities of the adoptive family. The custody of the ancestral house and property is also taken by the adopted daughter. For a valid adoption, no written agreement is necessary, only verbal agreement is sufficient. Besides *rapiing*, general adoption is also made.¹⁵

K. Maintenance

Claim for maintenance among the Khasis is not a customary practice. The mother has an obligation to maintain the children and vice-versa. The husband is also responsible to maintain his wife and children. His earning goes to his wife and children. Whatever assets he posses during marriage he leaves with them taking nothing for himself. The responsibility of maintenance falls heavily on the youngest daughter. Other than her children, she had a moral responsibility to maintain the other dependants of the family irrespective of the fact that she received property or not. Thus the rule of maintenance among Khasis has more value as a moral obligation and less as right. A person who is liable to

14. See, Generally, Hamlet Bareh, "*Meghalaya*" 1974.

15. Indian Law Institute, "*Customary Law and Justice in Meghalaya*" at- 84.

provide maintenance takes it upon himself to do so with all his capabilities and the question of claim does not arise. However, with change of time the children have started claiming maintenance from their father who is working in Govt. departments and this new practice is unknown to traditional Khasis. Besides this the children also began to claim maintenance from their father who had deserted them and such cases are dealt in the District Council Court.¹⁶

L. Minority and guardianship

The traditional age of majority for a Khasi boy is 20 and girl is 17 years and they are able to earn their livelihood independently. In case of a minor the mother has the sole authority of guardianship but in her absence or death, the guardianship goes to the eldest sister who has attained majority herself and if she in turn is a minor, the youngest maternal aunt takes up guardianship. The guardianship shares basically the same power and responsibilities, as the natural parents are responsible for their wards. Guardian can also be removed by the landsmen, though rare, if the guardian fails to protect and look after the wellbeing of the ward.¹⁷

M. Land tenure system

The Khasis believe that God is the creator of diverse races of human beings planted in their abodes on earth. So far as the legend is concern; God created sixteen families and kept them in the heaven with him. At first God was pleased to give these sixteen families the freedom to up and down to the earth and return to heaven at their own will. Later on, seven of these families (*Hynniew Trep*) choose to remain on the earth since they found that there were facilities to cultivate and earn their livelihood. Then they began to indulge in sin and crimes, which is against the will of God, and heaven was removed from them.¹⁸

16. *Id.* note 5.

17. *Ibid.*

18. *Id.* note -1.

These seven families settled on the range of "*U Lum Sohpetbneng*". As the tribes increased, they spread out to different parts of the region. They constitute fresh group to select new settlement of the then empty land. This process went on from time to time till they brought the entire area of the native hill under their own settlement. Thus we find today the existence of a separate territory with their distinct confines known by different names, following the domestic form of Government, with certain variations according to local conditions and circumstances. When any group of Clan had fixed upon a particular expanse of land, not claimed by any other group, a portion of it was set apart for the founding clans who divided it among themselves and each clan had absolute proprietary right over it.

All the lands in Meghalaya can broadly be classified in to two customary land tenure categories *i.e.*, *Ri-Raid land* and *Ri-Kynti land*. *Ri-Raid land* is the land, which is given to an individual for its use, and the user enjoys no right of ownership. *Ri-Raid* lands belong to the whole population of a specified area, generally called *Raid*. The whole population does not cultivate jointly, but each individual has got the right to cultivate or otherwise use and occupy only and does not extend to transfer or sub-letting. But if the occupant makes permanent house or cultivation or digs fish ponds, then he may acquire permanent, heritable and transferable rights. But if the land is kept fallow for a period of three or more years, then the land reverts back to the community and any other person may occupy it. The management and control of *ri-Raid* is completely within the jurisdiction of the community through the elected members of the Village Durbar. The most important aspect of *Ri-raid* is that a part of it is allotted purely for use and nothing to be paid for enjoying the right to occupy and use.

Ri-Kynti land is the land with rights of ownership and succession and can be divided in to either ancestral or self-acquired land. Self-acquired *Ri-Kynti* is considered as property solely of a person who has

owned it out of his own earning. Such a person has the absolute right over such land and can dispose it according to his own will. Such property can also be divided among the children. When it passes to the children, it becomes Ancestral Ri-Kynti for them, which cannot be sold to others in any generation as per the Khasi custom. It can best be divided among the daughters by following the matrimonial system of inheritance. The management and control of Ri- Kynti is in the hands of the owner themselves and village durbar does not interfere, except in the settlement of disputes.

Thus, in the Khasi society, land for economic use can be acquired by way of allotment from the traditional authorities or by way of purchase from others. The land allotted by the traditional authorities is considered as Ri - Raid which becomes ancestral Ri-Kynti when the children of the allottee gets it by inheritance.¹⁹

N. Land holding system and ownership

On the basis of ownership, land can be divided in to four broad categories:-

1. Private Land
2. Land under group ownership
3. Land under community ownership and
4. Land under the Govt. ownership

Private land:- The land over which the single owner or individual family owners enjoy all rights and in no case subject to the control of any other authority. Various types of land under this category are Ri-Nongtymen, Ri-Maw, Ri- Khurid, Ri-Bitor, Ri-Dakhol, Ri-Shyiang, Ri-Phniang, Ri- Spah, Ri-Langdung, Ri-Samla, and Ri-Nongmei.

Group Land:- Group land is the land over which the owner's right to transfer is subject to the control of a group which may consist of a branch of a clan or a group of clans and each group has its own

19. *Id.* note- 5.

assembly known as 'Durbar Kur'. All the members of the concern group enjoy right to use, occupancy, and inherit at will but no one is entitled to sell the land individually without the consent of the Durbar Kur. Ri-Kinty, belonging to a clan, which has not been divided, is known as Ri-Kur. Management and control of these land rest upon the Durbar Kur. The eldest uncle of the clan acts as the head. In the absence of suitable uncle, the eldest brother is elected as the head of the Durbar. The various categories of land come under group land are Ri-Kur, Ri-Seng, Ri-Khain, Ri-Duar, Ri-Lyngdo, Ri-Lapduh, Ri-Syiem, Ri-Sniak, Ri-Kut, Ri-Law Sumar, Ri-Bam syiem etc.

Community land:- The lands which are subjected to the control of the community Assembly (*Durbar Shnong*) are called community land. A Community may consist of one or more clans covering one village or many villages. Each and every member of the community can enjoy right to use and occupancy and inherit but only after having the approval of the community Assembly and no land revenue is to be paid. The Durbar Shnong decides the period after which the property reverts back to the community. The Lands come under this category are Ri-Shnat, Ri-Kuna, Ri-Mynsian, Ri-Lynter, Ri-Law Sumar, Ri-Aiti Monsngewbha, Ri-Phlang Ri-Bamduh, Ri-Diengsaid-Ddiengjin, Ri-Law Adong, Ri-law kyntang, etc.

Govt. Land:- Lands which have been taken on lease or acquired or purchased by the Govt. are Govt. land. In the absence of cadastral survey in the Khasi Hills District, the Govt. has yet not yet prepared any record of land ownership. Hence it is very difficult to say the actual area cover under different types of land

O. Jhum cultivation

Jhum cultivation is prevalent on the high lands of Meghalaya. The length of jhum cultivation is generally four to five years but it is gradually becoming shorter due to non-availability of land. The duration of consecutive cultivation is one to two years. The people abandon the

land after two to five years of cultivation and then shift to another site for repeating the same process. The jhumians usually return to their own previous plot though they cannot claim it by any customary right. According to the custom, people cannot abandon the land. But people still practice slash and burn on the same plot of land without any rotation of land as it was in the olden days. The people now remain on the same place in contrast to the earlier days when the whole village used to shift to a new site. Now jhum cultivation is found only in a few areas of Meghalaya though some villages might have been still practicing but it is not like before. With the increase of population and scarcity of land, people with no option are now practicing settled cultivation. There are still some farmers who are still practicing especially in those areas where the land is very rugged and characterized with steep slopes and having low density.

P. Permanent cultivation

Among the Khasis permanent cultivation is also prevalent and it is mainly found on the low land known as *Pynthor* and on the hill slopes. The cultivators use wet rice and paddy cultivation in valley lands between hills and in terraced lands which crops such as rice, maize, and vegetables are grown. In the southern slopes of the War area, especially Orchard is also grown. The lands under permanent cultivation are heritable according to the customary laws of the Khasis. In the Homestead lands also permanent cultivation is found where Plums and peaches are grown. Where there is permanent cultivation on lands, permanent rights over them are recognised by the people. Valley agriculture is practiced through the hilly terrains both in low and high elevations. It is sedentary from wet rice cultivation and is a complementary system of Jhum. It is done wherever terrain permission flat lands between hill slopes.²⁰

20. *Id. note- 5.*

Q. Administration of justice:- the constitution makers had taken great care to ensure the realization of the aspirations of the tribal people. The Advisory Committee on Fundamental Rights, Minorities, and tribals of the Constituent Assembly appointed two sub-committees to examine the administration of justice of tribals. The joint report of the committees recommended for separate administration of justice for tribal people. The constituent Assembly adopted the recommendations and sought to protect the autonomy of the tribal areas by:-

1. Creating District Councils for Autonomous Tribal Districts.
2. Giving Administrative and Legislative powers in specified matters to District Councils.
3. Providing for non-application of the laws of the state of Assam to these areas unless adopted by the District Council.
4. Empowering the Governor not to apply any Act of Parliament or an Act of the Legislature of the State of an autonomous District.

Accordingly, provisions were made in the constitution to give effect to the aforesaid aims and objectives in order to safeguard the social, cultural, and economic identity of the tribal people of the North-East. Specific provisions have been made under various Articles²¹ and the sixth schedule of the Constitution. Subsequently, detailed provisions as to the judicial administration in the Khasi and Jaintia areas were laid down by the United Khasi-Jaintia Hills Autonomous District (Administration of justice) Rules 1953, which envisaged three kinds of courts namely:

- I. Village Court,
- II. Subordinate District Council Court and Additional Subordinate District Council Court,
- III. District Council Court,

The Village Court consists of the village headman along with not less than two and not more than six other members as may be decided and elected by the majority of the village adults in an open Durbar. The

Village Court has civil as well as criminal jurisdiction. In civil matters, the immovable property in dispute must situate within the jurisdiction of the village Court and in all other cases, the parties must reside or hold land within such jurisdiction.²¹

Criminal cases of petty nature such as theft, pilfering, simple assault, drunkenness, public nuisance, wrongful restraint, etc. can be decided by the village court provided; the parties must reside within the jurisdiction of the village. But a village court cannot pass a sentence of imprisonment; only it can impose fine up to fifty rupees. Subordinate District Council Court is presided over by a magistrate to be appointed and led by the executive committee with the approval of the Governor. Additional Subordinate District Council Court consist of *Syiems, Lyngdohs, Wadadars or Sirdars* listed separately and presided over by the *Syiem, Lyngdoh, Wadadar, or Sirdar* as the case may be. The cases which are not triable by the village court and suits between the parties residing within the jurisdiction of two different village courts are decided by the Subordinate District Council Court and Additional Subordinate District Council Court. These courts may pass any sentence authorized by any law for the time being in force subject to provisions of the constitution.²²

District Council Court consists of one or more judicial officer to be designated as judge appointed by the executive committee with the approval of the Governor.²³ An appeal lies to the district Council Court from the decision of subordinate district Council Court. It is a court of appeal, and can pass, on appeal any order authorized by law for the time being in force. It has revisional powers also. It can call for and examine the record of any proceeding of the other subordinate courts.²⁴

21. Articles 15(4), 29, 30, 46, 244(A), 330, 332, 334, 335, 338, 339, 340, 342, 366, 371(B), of the Constitution of India.

22. *United Khasi-Jaintia Hills Autonomus District (Administration of justice) Rules 1953*

23. *ibid.*

24. *ibid.*

3. REVIEW OF LITERATURE

A complete review of the earlier studies related to the present work has been done to assess the problematic situation and gaps in the findings. This adds the relative importance of the present study. Research works related to the right to environment in general and right to environment of the Khasi tribe of Meghalaya in particular is very scanty. The following is the brief review of some of the previous works.

Singh. Nagendra, (1987) studied the issues of right to environment and sustainable development as a principle of International Law. He concluded that the right to environment has to be exercised recognizing the duties of the State towards each other n also in relation to international community as a whole and this aspect leads us to the concept of sustainable development. The most concrete suggestion he made is that we should all strive to reinforce public opinion, which is now emerging as a possible effective sanction behind international law. But this necessarily doe not mean a complete disregard of the rights of an individual citizen. Individual rights, which may be claimed by the whole mankind like right to life, right to peace, right to an adequate environment, this not only remains as political right but becomes a juridical right.

Singh Chatrapati, (1990) studied the issue of water right in India and he viewed that right to water is not an absolute right against which no prescription can be obtained. Rights becomes co-related with duty and the duty of the State, in the use of water especially where people's natural right is violated, need to be very clearly specified in the statutes itself. He suggested that it should clearly be defined who the benefiting public is and how the original users are to be included in the word 'public' and how their rights are to be respected, if they are not going to a part of public. The public purpose should also be legally justified. The planners can not arbitrarily plan projects whose worth can not be evaluated by the public.

Jariwala, C. M. (2000) studied the judgments and orders delivered by the Supreme Court of India in the administration of environmental justice in the year 1999 and found that in the period 1999, the judiciary has played its role very well. The Supreme Court delivered 32 judgments out of which 24 were in favour of the environment in the way of Public Interest Litigations. The environmental justice in 1999 brings the emergence of lawyers, judges and social interest groups, speedy environmental justice, increasing recourse to Public Interest Litigations, and successful handling of new challenges posed by emerging problems. Case law shows judicial concern for the protection and enforcement of the Indian environment. Thus, the judiciary during the present period withstood its constitutional commitment to protect and improve the environment.

Noomani, Z. M. (2000) studied on the issue of constitutionalism and environmentalism in the monistic perspective, where constitutional stewardship with relation to ecological movement is explored. He opined that environmental justice is the need of the day. Member states, traditional and indigenous communities, NGOs and opinion makers are already engaged in implementing socio-ecological restraint to commitment to environmentalism and translation of these values in to constitutional ethos, enviro-legal ideologies, and right-duty discourse are very essential. He opined that on the sole strength of Article 144 Of the constitution of India, the Supreme Court urged the authorities to act in talking environmental degradation and atmospheric pollution.

Medhi, K (2000) studied the issue of Human rights in North-East India as a contemporary perspective and concluded that the new beginning could be made by the people across the globe, despite cultural diversities to contain Human Right violations. A new paradigm is to be developed to educate one and all right from childhood to understand the concept of human right, the modalities of which could be decided in such highly prestigious international forums of human rights.

Sabarwal, Justice Y. K. studied the contribution of the Supreme Court in the Field of Environment. The Supreme Court occupies a unique position in the field of environment. He studied judicial initiatives, role of PIL, application of international environmental law principles, the right to livelihood. He concluded that the arrangement of environmental management is composed of legislature, executive and judiciary. The higher judiciary plays a stalwart role owing to its unique position and power and due to the circumstances of inefficiency within the executive and legislative framework. The principles of Indian environmental law are resident in the judicial interpretation of laws and the constitution and encompass several internationally recognized principles, thereby providing some semblance of consistency between domestic and international environmental standards. The prevailing situation of primacy of higher judiciary and the Supreme Court of India in particular, while providing legal theorists with cause for some concern has been vindicated by its success in achieving hitherto ignored environmental goals.

Singh, Surendra (1995) studied the environmentally sound and sustainable development. He opined that the development necessarily entails the use of environmental resources, which are not unlimited. As long as due attention, care and caution with regards to various dimensions of baneful effect of development are exercised, particularly with a view to maintaining the age-old harmony between man and nature, by not disturbing any of its important links in the inextricably interrelated chain of all living and non-living beings, development remain conducive for the mankind but the moment any kind of attempt is made, to over-use or abuse and exploit environment either for adding to the luxuries or for achieving and /or maintaining hegemony and supremacy or for quenching the thrust for knowledge through advancement in science and technology through new kinds of experimentation, a situation of grave danger is created which requires

some conscious, planned, deliberate, and organized efforts to be made to avert the crisis. He suggested some measures for controlling the effect of development, such as EIA, separate industrial and residential area, encouragement to establish small scale industry in the villages, utilisation of by-product, adequate measures for checking pollution, use of non-conventional source of energy, massive plantation drive, regulation of density of population, and checking growth of population.

Noomani, Z. M. (1996) studied the legal dimensions of water pollution control and public participation. He opined that the parliament enacted laws but water pollution is in rise. The Pollution Control Boards are indifferent, callous, and lethargic in carry out its functions. Community participation through PIL and NGOs holds great promise in eradication of this evil. He concluded that strict law and more rigorous enforcing machinery is the need of the hour. The role of the Board is not up to the mark. It is also realized that deterrent punishment has also not achieved much success. The remedy lies in the evolution of participatory model of legal regime. It calls for a fresh look in to law to make it more effective.

Mehdi, Ali (2000) studied the judicial vindication of the right to environment and opined that the scope of fundamental right got a liberal and horizontal expansion to cover all those areas which are not otherwise provided in the constitution but somehow connected with the persons and personality. He concluded that the right to life and personal liberty embodied in Article 21 of the constitution has been transferred into a positive right by an active judicial interpretation. Until 42nd amendment 1976, the right to environment did not find a place in the scheme envisaged in the constitution. Article 21 has been transformed in to positive rights by an active judicial interpretation, which started from Maneka Gandhi's case. He submitted that in the final analysis, the apex court has rightly and convincely recognized the horizons of right to life include right to environment.

Farooqui, M. A. (2000) the issue of healthy environment as a human right and concluded that for rapid and sincere solution of environmental pollution, a National Environmental Commission and Environmental Ombudsman is required to be established.

Rajyalakshmi, Dr. V. studied the issue of right to housing. He said that the need for shelter and the right to have it are two sides of the same coin. He suggested that the planners should do better in combining social and environmental factors in conceiving development models.

Pattanaik, Pradeep Ranjan studied on Human Rights: A Protein perspective and expressed the view that the idea of human right originated from the genesis of individual tussle between the paramountcy of the state and the primacy of the individual. It has developed basically as a western concept and got international recognition when the US declaration of independence 1776 declared that every man has a right to dignity. He concluded that in the Indian scenario, mere super imposition and wholesome adoption of foreign models on human rights in their entirety is but to create disorder and disruption in the society.

Jain, Rabi Kiran studied the issue of emerging human right situation in India in the context of socio-political and economic changes. He concluded that National Human Right Commission recognizes that corruption in politics, communal and caste politics are issues directly related to the questions of violation of human rights and the concept of human right cannot be confined to civil liberties.

Thakur, Balak Ram (2004) studied the legislative measures for environmental protection in India with special reference to the state of Himachal Pradesh. He expressed his opinion that the existing legal framework for environmental protection is sufficient to meet the challenges posed in terms of ecological imbalances, provided, it is vigorously enforced. The environmental laws in India have failed to

produce required result mainly because of the lack of commitment on the part of implementing authorities. He felt the need of effective supervisory machinery for the implementation of environmental law. The enforcement of environment protection laws will be possible only when the people themselves become conscious of the problem.

Mukhopadhaya, S. C, (2004) studied the Environmental Appraisal of North-East India with Special Reference to its Water Resource Management. The growing needs of the millions of North-East to yield water at economic cost in adequate quality and of suitable quality evolved the need of water resource management. He suggested a basin wise or catchments wise approach inclusive of the ideas on the linking of river basin, which are believed to yield the best result.

Bandhopadhaya, M. K. (2004) studied the Man-Environment Relation -ship in the North-East and its impact on development, with special reference to Manipur. He opined that the tribal people remain isolated and the plain people developed contacts with the outside world and developed better standard of living. He concluded that the main hindrance to the development of the region is the insurgents groups, which can only be solved through negotiation table, which will bring peace and happiness in the region.

Behera, Vijayananda (2004) studied on the issue of Forest Dwellers and Ecological Stability and expressed the opinion that over the years, tribal communities have emerged which are no longer amenable to the traditional tribal discipline, their tribal values have eroded leading to ecological instability. They are neglected by the forest department, exploited by the settlers and corrupted by the plainsman. He concluded that judicial attitude in India has been for protecting the traditional rights of the forest dwellers but not at the cost of environment and development. Undoubtedly, every effort should be made to ensure that the forest dwellers are able to earn their livelihood and promote the better living standard.

Chandrasegaran, Dr. K, (2001) studied on Environmental Degradation in India : A System Failure or Human Failure and expressed the view that the laws passed in India are more or less similar but the Environment Protection Act was enacted with a wider purpose of protecting and improving human environment. He opined that the judiciary played an important role in the evolution of environmental jurisprudence through the instrument of Public Interest Litigation. He concluded that the state has failed to discharge its responsibilities. The integrity of the executive should be ensured. It is desirable to constitute accountability bench in the Supreme Court and High Court for exclusive adjudication of cases involving inaction for the purpose of fixing responsibility.

Noomani Z. M. studied the various aspects of human right to environment in India and concluded that Public Interest Litigation has a galvanizing effect in promotion of the enviro-human right and eco-justice in India.

Alam, A studied the issue of emerging dimension of human rights and discussed the various issues relating to human rights in India including the right to environment as a human right.

Rajyalakshmi Dr. V (2000) studied the issue of human right to environmental protection and concluded that States should take measures more to the direction of mobilizing the people rather than suppression.

Krishna, Gopal, (1995) studied the issue of environment and development. He concluded that in the national efforts to foster economic development, the environmental considerations have generally ignored.

4. OBJECTIVES OF THE STUDY

The objectives of the study are as follows:-

2. to study the Scope and ambit of the right to environment in India
3. To examine the role of the judiciary in promotion, protection, and

development of the right to environment in India.

4. To study the nature, achievement, performance and lacunae of the existing environmental legislations in India in promoting and protecting the right to environment.

5. to study the main hindrances or difficulties in implementation of environmental legislations in India

6. to suggest future strategies for better promotion and protection of the right to environment in India

Research Methodology

Over the last few decades, the scholars have conducted a number of studies relating to the definition, scope, ambit, nature and content of the right to environment. The Supreme Court and the High Courts on the topic have also delivered a considerable number of judicial pronouncements. In this study, the historical analytical methodology of research is applied and a systematic analysis is made regarding the historical development of the right to environment. The research work is mainly doctrinaire which spreads over three broad areas – (a) to make an analysis of the opinion of the academicians available in journals and books, to the concept and content of the right to environment in India (b) to study the relevant international instruments and national laws rules and regulations and (c) to critically examine the judicial decisions to evolve a conspectus thereto. For the above purpose, the law journals in India and available foreign journals has been surveyed. The cases of the Supreme Court and High Courts have been collected and surveyed from the All India Reporter. The present study mainly concentrates on the Indian position with reference to the Khasi people in the State of Meghalaya.

Research Questions:-

The nature, scope and ambit of the right to environment is inherently obscure as well as complex which brought various controversies in to forefront.

Firstly, is the right to environment merely a human right? If so, then what about the right to environment of the other co-residents of the ecosystem such as animal, flora and fauna? What are the traditional rights of the tribal people? if the right to environment comes in conflict with the right to livelihood, or other constitutional rights, then which will be given preference?

Secondly, right implies duty. On whom lies the corresponding duty? What is the procedure to determine and implement the right to environment of non-human entity? No right is absolute. Like other Fundamental rights, has the right to environment any limitation? Whether reasonable restrictions can be imposed on the right to environment? Whether limitations embodied in express words in Article 19(2) of the constitution are also applicable to the right to environment?

Thirdly, is it an independent right or the means of realizing already established rights such as right to health, right to livelihood, right to housing, right to liberty etc. whether any distinct right to environment has emerged? If so, what is the concept and definition of the environment? What is decent environment? What is healthful environment? What is ecological balance?

Fourthly, whether adequate laws have been brought about to protect this right? Whether the present environmental statutes are sufficient to protect this right? What are the lacunae of the present environmental legislations? Whether these legislations are being properly implemented? Who are mainly responsible for non-implementation of these laws? Whether the regulatory authorities are performing their statutory duties? What is better possible alternative for proper implementation? What are the constraints being faced in discharging such statutory duty?

Fifthly, whether it is a social right or individual right? Who is the subject of such right and upon whom the corresponding duty is imposed? Whether the State or sovereign authority has any right to destroy or enjoy

the natural resources?

Finally, what is the role of the judiciary in emerging, realizing, understanding, and promoting the right to environment?

The main thrust of the study is to seek an answer to all these questions in the light of present policy, law and justice in national and international level.

5. LAY OUT OF THE STUDY

The study has covered important aspects, scope and ambit of the right to environment under the present international, national and regional framework. The main thrust area of the study is to locate environmental ethos of right to environment. The study is coached in seven chapters. After having analysed the need of right to environment in the context of international, national and regional level, the first chapter introduces and sets forth the parameter of the study in both theoretical and problematic framework. It also highlights the objectives framed, methodology adopted for collection of data and technique used for analysis. A brief overview of available literature on the topic has also been highlighted to understand the nature and gravity of the topic under research. The present study mainly concentrates to the Indian position with special reference to the Khasi people in the State of Meghalaya. A historical background of the study area has also been given. Conceived with the framework of the study, chapter two, namely historically retrospect is devoted on detail historical analysis of the genesis and subsequent developments of the right to environment in the international and national level. It covers various national and international conventions reports, committee recommendations, instruments, theories and opinions of Jurists, judges and environmentalists. Taking the queue from the earlier chapters, chapter three discusses the conceptual and definitional aspect of the right to environment. Various national enactments, international covenants, and judicial pronouncements

conceived the definition, nature and content of the right to environment. 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. The meaning of right to environment differs for rich and poor, tribal people and plain people, villagers and city dwellers, developed and under developed countries. The scope of the right to environment is a analysed in chapter four. The main issues, which are to be covered under the right to environment such air, water noise forest etc. The chapter also highlights the comparative evaluation to various rights covered under the present human right contents. Whether this right is available to the natural persons only or to animals and other organisms, a reference has been made in this chapter. A right without remedy is useless. Right also requires remedy which is the protection of the right. For effective enforcement of a right it becomes necessary to provide for an effective remedy. This chapter also highlights the kinds of remedies, which are available under the parameter of various laws. Therefore, in case of violation of the right to environment what kinds of remedies are available, a brief reference thereof has been made in this chapter. Every right has to operate within certain limitation. An attempt has also been made to delineate and prescribe the limits within which the right to environment should operate. On the basis of the scope of the right to environment, chapter five analyses the role of judiciary in the development of present environment jurisprudence in India. Side by side this chapter also highlights areas of right to environment, which have already received judicial recognition. The contribution of the higher judiciary in the development of the environmental jurisprudence is very much important to understand the stages of development and the present position of the right to environment in India. The interest shown by the

judiciary in the protection of the environment is also equally necessary to dig out the importance of the right to environment. Therefore, the important decisions, which laid down the backbone of the right to environment, have been discussed in this chapter. The deficiencies and difficulties of judiciary in the administration of environmental justice have also been discussed so that some changes may be suggested in the administration of environmental justice. Chapter six analyses the working of the environmental legislations in India. India, being a developing country, adopted various measures and enacted various laws for, conservation, up gradation and protection of the environment. The success of all these laws depends upon proper implementation. The successfulness or otherwise of the environmental laws are discussed on a theoretical and practical basis in this chapter. Under the present regulatory regime, the authorities responsible for the implementation of environmental laws are also facing some difficulties and constrains, a reference has also been made in this respect. Lastly, Chapter seven gives a brief summery of main findings and some workable suggestions for further improvement to the right to environment. The study is expected to be a piece of document before the appropriate authorities for future policy framing in the field of environment.

CHAPTER - 2

HISTORICAL RETROSPECT

The Background

The genesis

First stage

Universal Declaration of Human Rights 1948

Second stage

Right to environment as an independent right

Certain treaties of Global application

National Constitutions

International Environmental Law Principles

CHAPTER 2

HISTORICAL RETROSPECT

“Nothing is more pure than the state of nature and nothing more unpolluted than man in the state of nature.”

Rousseau in his Discourse on Arts and Sciences. 1750

Human society has been making continuous efforts to use natural resources and environment for achieving more and more comfort to life in order to make it more pleasant. Lust to luxuries led to abuse and exploitation of natural resources to the extent of threat to the very human existence resulting into mass awareness about the need of environmentally sound and sustainable development. The Earth Summit and the subsequent concern of the nations is a pointer to this effect. Today's goal of all socio-legal paradigms is environmentalism, ecocentrism and sustainable development. The resultant effect of over exploitation of resources beyond the capacity is changed in the physical constitution of the environment, disturbance in different links in the life chain, depletion of natural resources, and degradation of life support system due to pollution of air, water, noise, soil etc.

The problem of environmental pollution dates back to the evolution of *Homo sapiens* on this planet. The development of science and technology and the ever increasing world population, brought about tremendous changes in the earth's environment.¹ The idea of right to environment was found in the ancient Indian texts and the protection was available under 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

1. C. M. Jariwala, changing dimensions of Indian Environmental Law, in P Leelakrishna et al (ed law and Environment 1992 at-2.

of a particular part of a tree. Some important trees were even elevated to a divine position. Thus, India has an ancient tradition of protecting the environment. Several writings exist which prove that in ancient India every individual had to practice the dharma to protect and worship nature.² Sacred Groves were kept unmolested and undisturbed since time immemorial. Causing harm to these groves was an offence to forest and deity. *Rishis* warned against deforestation and cutting of trees as it would result in poor rainfall. *Yagnas* were performed in Vedic societies to purify the surroundings. However, a systematic management of forest was envisaged by Kautilya whereby the quantum of punishment for felling trees was proportionate to the utility of the tree. This concept of management forest was conditioned by the need for promotion of forest based industries, craft, making household articles and security purpose.³ Manu had advised people not to disrupt the quality of water and not to contaminate the same by urine, stool, and coughing, impious object, blood and poison.⁴ Pandit Jawaharlal Nehru believed that Himalayas have always part of our history, tradition thinking and worship.⁵ Life having dignity and well-being of people is the objective set for the national government and international community to achieve. The ambit of life of dignity is wide enough to include life and liberty higher standard of living, education, social security, quality of environment etc. Right to environment as we know today, is of recent origin and developed as a western concept. The need for protection of environment is the outcome of modern scientific and technological development and population growth. When we start discussion on the right to environment it becomes necessary to trace the origin and historical development in order to find

2. *ibid at -3.C.*

3. P. Leelakrishna, "*Environmental Law in India*", Butterworth edition p-9 &10.

4. Dr. Priti Saxena, "*Crime against the mother earth leading to poisonous earth*" XXXI (3&4) Indian Bar Review 2000 .

5. 42 *JILI* 2000 p-160-170

out the gravity and magnitude of the problem of environment. In this context it is also equally desirable to attempt right to environment through international instruments. The above developments have been analysed in the following pages before discussing the Indian position in the constitution and other relevant laws.

The Background

From historical perspective, protection and preservation of environment was deep rooted in the religion and culture of the communities. People worshiped nature-mountains, rivers, lakes, birds and animals in the past because they believed that nature emanated the spirit of God. Among Indian Hindus cow worship is still very common. Under old Hindu Jurisprudence, earth was considered, as "Mother and we are her children."⁶ Every scripture in India preaches that human being is a part of nature and therefore, he should not or damage the nature. According to Islamic Jurisprudence, man inherited all the resources of life and nature and has certain religious duties to God in using them.⁷ Under Judeo- Christian Tradition, God has given the earth to his people and their offspring as an everlasting possession to be cared for and passed on to generation.⁸

The genesis

The idea of human right originated from the genesis 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 "everyman has a right to dignity" was embodied he US

6. *Athaarva Veda (Bhumi Shukta)*

7. *See Islamic principles for the conservation of the Natural Environment*, 13-14 (IUCN and Saudi Arabia 1983)

8. Y K Sabarwal "*Human Right and the Environment*" through internet.

declaration of independence in 1776.⁹ The origin of human right in the modern jurisprudence, can be traced in the Hobbsian social contract theory of political and legal controversy. The concept of social contract is that men lived in a state of nature. They had neither any Government nor any law. Men entered into an agreement for the protection of their lives and property and thus society came into existence. Then they entered into a second agreement by which the people, who had united earlier, undertook to obey an authority and surrendered their whole or part of the freedoms and rights and the authority granted everyone the protection of life property and to a certain extent liberty. It was in this way that the Government or Sovereign came into being.¹⁰ The individual transferred the whole of his natural rights to the ruler who became an absolute ruler and promised to obey unconditionally.¹¹ But John Locke was an individualist who maintains that men did not surrender all of his rights through social contract but some freedom was retained with them. John Locke championed this cause of tussle between individual and absolute ruler, which ultimately by passage of time resulted in to the conflict of human right between the state and individual in modern democratic society. The individual has a natural inborn right to life liberty and estate. Men had all the rights which nature could give them.¹²

The 1946 WHO Constitution states that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition'. Article 25 of Universal Declaration of

9 . Pattanaik, Pradeep Ranjan "*Human Right—A protein perspective*" 28(1) Indian Bar review 2001.

10 . Mahajan, V.D. "*Jurisprudence and Legal Theory*" Fifth ed. p-698

11 . *Ibid* at 700.

12 . *Ibid* at 704.

Human Rights; Article 12 of 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR); Article 16(2) of the African Charter on Human and People's Rights; Article XI of the American Declaration; Article 10 of the Protocol of San Salvador; Articles 22-24 of Draft Declaration on the Rights of Indigenous Peoples; Article 15 of Convention on Human Rights and Fundamental freedoms of the Commonwealth of Independent states; Article 17 (b) of Cairo Declaration on Human Rights in Islam; Article 24 (2) of United Nations Convention on the Rights of the Child; Articles 10, 12 and 14 of the Convention on the Elimination of all forms of discrimination against women; Article 5 of the Convention on the elimination of all form of racial discrimination and Articles 5, 8 and 9 of the 1994 draft Declaration of Principles on the Human Rights and Environment are few of the main International instruments to recognize Right to health. In international law debate regarding the right to health as obligation *erga omnes* on the state parties is still dominant,¹³ The entire debate revolves around the Article 2 of ICESCR dealing with progressive realization of Socio-economic and cultural rights. The debate gains a multifaceted shape when the right to health goes into the sphere of Civil and political Rights field.¹⁴

First stage

The principle of unfettered National sovereignty over natural resources and absolute freedom of the sea was the basis of international environmental law. 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

13. See, ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July, 1996 ICJ Reps, Dissenting opinion of Judge Weramantry.

14 . See, *Henry and Douglas v Jamaica*, (1997) 4 IHRR 387, para 9.5; *D v UK* (1997) 24 EHRR 423; *Z v Finland*,(1997) 25 EHRR 371; *Mc Ginely and Egan v Uk* (1998) 27 EHRR 1.

conventions took place in mid nineteenth and early twentieth century.¹⁵

For conservation of Migratory birds Switzerland proposed an international Regulatory Commission in 1872, which resulted into formation of the International Ornithological Congress and creation of international Ornithological Committee in 1884. Ultimately in 1902, a convention to protect birds useful for agriculture took place in Paris.¹⁶ The convention focused on absolute protection of certain birds, prohibition on their killing, taking of their nest egg etc.

The first prevention of pollution treaty was between the United States and Canada in the year 1909 namely Water Boundaries Treaty. In 1922, the International Committee for Bird protection was founded with the aim to encourage Transnational Co-Ordination. In 1933, another convention was adopted namely the Preservation of Fauna and Flora in Their Natural State to preserve natural flora and fauna by means of national parks and reserves. This convention did not create any institutional arrangement for monitoring compliances, ensuring implementation, and administering its provisions. The convention focused mainly on conservation of wild life in African Colonies of European States.

Universal Declaration of Human Right 1948.

Universal Declaration of Human Right 1948 provides that everyone has the right to life, liberty and security of person. Further, it provides that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including fooding, clothing, housing and medical care and necessary social services, and the right to

15 . *Convention between French and Great Britain relating to fisheries, 11 November 1967, North Sea Fisheries (over fishing) convention 1882, Convention on the Regulation of whaling, Geneva, 24 September 1931) 19 March 1902*

16 . *In the case of Concesiones otorgadas por el Ministerio de Energía y minas a Empresas Petroleras (1999)*

security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. It also states that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Second stage

The second stage of development of international environmental law began with the creation of the United Nations in 1945. This period was characterized by the addressing of international organizations on the issue of environment and a limited recognition of relationship between economic development and environment. It is to be noted that the United Nations Charter did not include any provision relating to environmental protection. It was only in 1948 the International Union for The Protection of Nature was set up. New environmental concerns were emerged in 1950s and 60s. To prevent pollution of the Sea by discharge of oil from ships, International Convention for the Preservation of Pollution of the Sea by oil was adopted. During this period Agreements governing Principle 22 of The Rio declaration on environment and development 1992, states that indigenous people and their communities and other local communities have a vital role on environmental management and development because of their knowledge and tradition. States should recognise and duly support their identity culture and interest and enable their effective participation in the achievement of sustainable development. The same principle was stressed in the Bio-diversity Convention 1992 also.

In Pre-British India, forests were managed by native villagers or forest dwellers. Their control on forests ensured a free of cost supply of local fruits, vegetables, oils, nuts, meat, fish, animal products, fuel wood,

fodder grass, medicinal herbs. In other words, they got everything they needed to sustain a comfortable living standard by managing the forests themselves. When British began to colonies India, they reserved large tracts of land for their personal use and for the overriding requirements of the British Empire. While doing so, they monopolized forests and made sure that the natives had no role in their management. Force was used to strip the locals of their traditional rights to use forest resources. It began with the reservation of Malabar Teak for the Royal Navy in 1806. Malabar Teak was assessed as the most durable material for making ships. Later on, forests were cleared for constructing roads, laying of railway sleepers, building bridges and so on. India was a major source of timber supply during the Second World War. Finally, forests were cleared to enhance revenue-earning land. In fact, the basic purpose behind creating the Department of Forest as well as the Forest Research Institute was not to manage forests but to expand revenue from exploiting forest resources.

These objectives could not be met unless the British government asserted its power over forests to the exclusion of traditional users. In other words, the State had to monopolies forest resources and curtail traditional rights. This was achieved through the various Indian Forest Acts. The first of these was passed in 1865 enabling the British to acquire, demarcate and reserve forest area specifically for use in the railways. This Act contained Section 8 that empowered the government to arrest without warrant anyone who encroached upon forest land demarcated for the purpose mentioned above. This Act was replaced by a new Act in 1878, which enabled the British to exercise absolute control over tracts demarcated as valuable. The British Government now argued that the rights enjoyed by villagers over forests were not rights. Rather they were privileges. Privileges may only be enjoyed at the mercy of the ruler. Since the British were now De Facto rulers of India, traditional

privileges over forests could only be enjoyed at their mercy.¹⁷

The 1878 forest Act was modified from time to time until a comprehensive Indian forest Act was passed in 1927. This Act categorized forests into different classes. Each class implied a different level of State control over forests. The government could simply issue a notification acquiring a particular piece of land and designate it as a reserved or protected forest. This meant that all traditional rights over such land were automatically extinguished. Reserved forests could be converted into village forests. This implied that the lion had finished its feast and the remaining tit bits of meat were being thrown to the scavenger animals. Therefore, the villagers could now take what was left. Finally, the Government could prohibit animal grazing, mining and charcoal burning, stone quarrying practised by locals as means of livelihood by the villagers for ages.

Indian **Forest** Act 1865 is the first Indian forest Act which amounted to the formalisation of the erosion of both forest and the rights of local people to forest produce. The Forest Act 1878 contained the general law relating to forest in British India. The Forest Act 1927 consolidated the pre-existing two enactments, which reflect the exploitative intention of colonial and feudal society rather than to preserve the forest for environmental and ecological interest. The preamble to the Act explicitly laid down that it was passed to "consolidate the existing law relating to forest, the transit of forest produce and the duty leviable on timber."

Over the reserved forest no right could be acquired except by succession or under a grant or pre-existing right. Sitting fire, hunting, trespassing, quarrying, fishing etc. was prohibited. The

17. *Ibid.*

state govt. could assign any of the right in a reserved forest to village community.

The main objective of the African Convention of Nature and Natural Resources 1968 was to encourage conservation, utilization and development of soil, water, flora and fauna for the present and future welfare of mankind.

Right to environment as an independent right

Although there were attempts to develop international environmental law in the nineteenth century, it was not until the Stockholm Conference in 1972 that the right to a healthy environment was explicitly recognized in an international environmental law document. The conference adopted what is known as the Stockholm Declaration, consisting of three non-binding instruments: a resolution on institutional and financial arrangements; a declaration containing 26 principles; and an action plan containing 109 recommendations.

During pre-Stockholm period, no noteworthy development concerning right to development has been made rather devoted to development of infrastructure. There was no precise environmental policy in India. The Stockholm Conference is considered an important starting point in developing environmental law at the global as well as national level. Principle 1 of the Stockholm Declaration linked environmental protection to human rights norms, stating, 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.

Due to worldwide movement and international endeavor, many countries included environmentalism in their constitutions. The

Stockholm Conference influenced legal and institutional development for the next two decades. One of its influences was the creation of the United Nations Environment Programme (UNEP). It also led to the development of the 1982 United Nations Conventions on the Law of the Sea (UNCLOS), a comprehensive framework for the establishment of global rules on the protection of the marine environment and marine living resources. The Stockholm Conference was also followed by important regional developments, including the adoption of new rules and regulations by the European Community, and the creation of an Environment Committee at the Organization for Economic Cooperation and Development (OECD).

In 1983, the UN General Assembly created the World Commission on Environment and Development (WCED), chaired by Norwegian Prime Minister Gro Harlem Brundtland. The WCED was established as an independent body linked to, but outside the control of, both governments and the UN system. In December 1987, the WCED published the Brundtland Report, which, among other things, created a new terminology-sustainable development-and placed economic development activities within the context of environmental limitations. The Brundtland Report also called for a second UN conference to address the question of environment and development.

Twenty years after Stockholm, in June 1992, the UN Conference on Environment and Development (UNCED) was held in Rio de Janeiro, Brazil. The purpose of the conference was to elaborate strategies and measures to halt and reverse the effects of environmental degradation and to strengthen national and international efforts to promote sustainable and environmentally sound development in all countries. The Rio Conference had unprecedented participation from thousands of non-governmental organizations (NGO) from around the world. The

declaration provides that human beings are at the center of concern for sustainable development and they are entitled to a healthy and productive life in harmony with nature. This seems a clear indication that development of men in relation to environment is placed on higher position.

UNCED adopted three nonbinding instruments, one of which was the Rio Declaration, which identifies 27 principles. Principle 1 of the Rio Declaration states that human beings are "at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature." While it fell short of recognizing a healthy environment as a basic human right, Principle 1 points in that direction. The Rio Conference also adopted what is known as "Agenda 21"-a far-reaching program for sustainable development that constitutes the centerpiece of international cooperation within the United Nations system.

In 1977, the United Nations Water Conference passed unanimous resolution that all people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.

Treaties of potentially global application:

In relation to environmental obligations, certain treaties of potentially global application which include The 1972 World Heritage Convention, whose purpose is to create a list of natural and cultural sites whose irreplaceable value should be preserved for future generations and to ensure the sites' protection through international co-operation. As of January 1996, there were 469 properties on the World Heritage List.

The 1985 Vienna Convention, whose purpose is to set up a framework within which countries can co-operate to tackle the problem of ozone

depletion. Signatory nations agreed to take "appropriate measures . . . to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer."

The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (UNEP), which aims to reduce and eventually eliminate the emissions of man-made ozone depleting substances. The Protocol has been amended four times since 1987. The amendments established mechanisms for transfer of technology and financing, and added chemicals to the list of those ozone-depleting substances that should be phased out.

The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (UNEP), which obligates parties to reduce to a minimum the transboundary movements of hazardous wastes; to ensure that such wastes are managed and disposed of in an environmentally sound manner, as close as possible to their source of generation; and to reduce to a minimum the generation of hazardous wastes at the source.

The 1992 Framework Convention on Climate Change (UNEP), which requires parties to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." It aims to protect the climate system and mitigate against the adverse effects of climate change, and recognizes that the parties "have a right to, and should, promote sustainable development." It also seeks to avoid placing a disproportionate burden on developing countries in the implementation of the convention, and encourages policies and procedures that take into account different socio-economic contexts.

The 1992 Convention on Biological Diversity (UNEP), whose objectives are to conserve biological diversity as well as encourage sustainable, fair and equitable use and benefits of genetic resources. It requires parties to create national strategies, plans and programs for conserving biodiversity and to integrate biodiversity conservation into national economic planning. The convention also requires that parties take specific measures, including creating a protected area system, establishing means of managing modified organisms, and preventing or controlling alien species. It recognizes the importance of indigenous and traditional peoples' lifestyles and knowledge with respect to biodiversity conservation.

National constitutions

Many national constitutions and laws recognize the right to a healthy environment derived from the obligation of states to adopt the principles reflected in the Stockholm and Rio declarations. Some domestic courts have also referred to principles enshrined in these Declarations. Obviously, the legal status of a healthy environment as a human right varies among different systems. Many countries, such as South Africa, have developed constitutional provisions that guarantee the right to a healthy environment. South Africa's Constitution stipulates as follows:

Everyone has the right (a) to an environment that is not harmful to their health or well being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

South Korea's Constitution contains provisions recognizing that "all citizens have the right to a healthy and pleasant environment." Other countries that have devoted constitutional provisions to the right to a healthy environment include Ecuador, Hungary, Peru, Portugal and the Philippines.

Other countries, such as Mexico and Indonesia, recognize the right to a healthy environment in national legislation. The first objective of the Mexico General Act for the Protection of the Environment and Ecological Equilibrium, which was amended in 1996, is: "To guarantee the right of every person to live in an adequate environment, for the sake of his or her development, health and well being." Article 15/XII reiterates that right and mandates the competent authorities to take measures to guarantee its exercise. However, those provisions mean little because they cannot be enforced in the courts, which regard them as insufficient to provide legal standing to anyone who cannot give evidence of personal and direct environmental harm.

The Indonesia Environmental Management Act (EMA) also recognizes the right to a healthy environment. Article 5(1) stipulates, "Every person has the same right to an environment which is good and healthy." This provision is accompanied by provisions that guarantee "the right to environmental information" (public access to information) and "the right to participate in the environmental decision making process." To help affected people and NGOs fight for the right to a healthy environment, the EMA also guarantees various environmental procedural rights, such as the right of NGOs to bring lawsuits as class/representative actions. As a result of pressure from pro-democracy and pro-reform activists in Indonesia, the Special Session of the People's National Assembly that was held in October 1998 (after Soeharto's

resignation) promulgated the National Human Rights Charter, which also includes "every person's right to a good and healthy environment."

Guatemala too has seen the environmental ombudsman note in a 1999 case¹⁷ that "lack of interest and irresponsibility on the part of authorities in charge of National Environmental Policy amounts to a violation of human rights, considering that it impairs the enjoyment of a healthy environment, the dignity of the person, the preservation of the cultural and natural heritage and socio-economic development.

The 1993 Vienna Declaration and Programme of Action states that right to development is "a universal and inalienable right and an integral part of fundamental human rights." The right to development has also been given prominence in the mandate of the High Commissioner for Human Rights, and the General Assembly required the High Commissioner to establish "a new branch whose primary responsibilities would include the promotion and protection of the right to development." The right is regularly mentioned in declarations of international conferences and summits and in the annual resolutions of the General Assembly and the Commission on Human Rights.

An American case namely *Munn vs. Illionis*¹⁸ Justice Field explained the literal meaning of the word "life" in the following words: "by the term life as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which the life is enjoyed. The deprivation not only of life but of whatever God has given to everyone with life, for its growth is prohibited by the provision in question."

In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the

18 . 1877 US 113

Court observed that side by side 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.

In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment

In the same year, the Supreme Court of Costa Rica affirmed the right to a healthy environment in a case concerning the use of a cliff as a waste dump. In the case of *Carlos Roberto García Chacón*, the Supreme Court stated that life is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination.

The Constitution of Bangladesh does not provide expressly for the right to a healthy environment neither in the directive principles nor in the fundamental right. Article 31 only states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or property', unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. In 1994, in *Dr. M. Farooque v. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh and 12 Others*¹⁹ the Supreme Court agreed that the constitutional 'right to life' extends to include right to a safe and healthy

19 . PLD 1994 SC 693.

environment. A few years later, the Appellate Division and the High Court Division of the Supreme Court dealt with this question in a positive manner, in the case of *Dr. M. Farooque v. Bangladesh*²⁰ reiterating Bangladesh's commitment in the 'context of engaging concern for the conservation of environment, irrespective of the locality where it is threatened.'

Article 9 of the Constitution of Pakistan states that no person shall be deprived of life or liberty except in accordance with the law. The Supreme Court in *Shehla Zia v. WAPDA*²¹ held that Article 9 includes 'all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally'. The Court noted that under the Pakistan Constitution, Article 14 provides that the dignity of man, privacy of home shall be inviolable, subject to law. The fundamental right to preserve and protect the dignity of man and right to 'life' are guaranteed under Article 9. Article 19 and 9 read together, question arises whether a person can be said to have dignity of man if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.

Indian position

The framers of the constitution were silent on the issue of environmental protection. In the original constitution no specific provision was made on the protection of the environment except Article 47 and 49. Article 47 states that the state shall regard the raising of the level of nutrition and the standard of living of its people and the environment of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption except for medical

20. 1997 49 Dhaka Law Report (AD) P-1

21 . *ibid.*

purposes for intoxicating drinks and of drugs which are injurious to health.

For raising the level of nutrition and improving public health it is obligatory that the State should provide pollution free environment. Article 49 envisages the protection of historical monuments. It states that it shall be the obligation of the State to protect every monument or place or object of artistic or historical interest, declared by or under law made by Parliament to be national importance from spoliation, disfigurement, destruction, removal, disposal or export as the case may be.

This Article makes it obligatory on the part of State to control the environmental pollution affecting the durability of these historical monuments. The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures. In reality, the foundation of the jurisprudence of environment was laid down by the 42nd amendment and now the State and citizens are under a fundamental obligation to protect the environment. Thus, up to 25 years after independence, India did not have any specific legislation on any of the field of environment. In the fourth five-year plan an environmental approach was adopted and the Water (Prevention and Control of Pollution) Act 1974 was passed and again in 1977 the Water (Prevention and Control of Pollution) Cess Act was passed. Then in 1981 the Air (Prevention and Control of Pollution) Act was passed. The Acts provided for establishment of Pollution Control Boards at the Central and State Level by the Governments. The Boards were empowered to exercise various powers under the Acts including advice to the respective Governments on appropriate sites for new industries. But they do not have any power to give directions to the Governments rather they are bound by the directions of the

Governments.

In India initially the protection of environment was contained in the Indian Penal Code under the heading 'public Nuisance'. Sections 268–294 deal with public nuisance. There after, special enactments were passed to deal with public nuisance i.e. the Police Act 1861 dealing with noise, the Northern India Canal and drainage Act 1873 dealing with Water Pollution and then a series of Acts such as Fisheries Act, 1897, The Explosive Substances Act 1908, Poisons Act 1919, Indian Forest Act 1927 and Motor Vehicles Act 1939 to deal with various issues of pollution. The Indian Constitution Forty Second Amendment Act 1976 expressly incorporated right to environment as part of State policy through the insertion of Article 48A.

The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives contained in Articles 39(e) (f), 42 and 47 in part IV of the Constitution of India. The has to direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Article 39(e)) and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. (Article 39(f)). The State is required to make provision for just and humane conditions of work and for maternity benefit (Article 42). It is the primary duty of the State to endeavor the raising of the level of nutrition and standard of living of its people and improvement of public health and to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs, which are injurious to health. (Article 47). Protection and improvement of environment is also made one of the cardinal duties of

the State. (Article 48 A). The State legislature is under entry 6 of the State List contained in the Seventh Schedule to the Constitution, empowered to make laws with respect to public health and sanitation, hospitals and dispensaries. Both the Centre and the States have power to legislate in the matters of social security and social insurance, medical professions, and, prevention of the extension from one State to another of infections or contagious diseases or pests affecting man, animals or plants, by entries 23, 26 and 29 respectively contained in the concurrent list of the Seventh Schedule. Thereafter, the Indian parliament passed many specialized legislations dealing with the problem of environment. Among the important legislations, The Air (Prevention and control of pollution) Act, 1974, The wild Life (Protection) Act 1972, The Forest (Conservation) Act 1980, The Water (Prevention and Control of Pollution) Act 1984, The Environment (Protection) Act 1986, The National Environmental Tribunal Act 1995, The Public Liability Insurance Act 1991, etc. are noteworthy. The Central Government also various Rules and notifications in pursuance to the Environment Act 1986. Besides these the State Governments also enacted many legislations regulating the environmental issues.

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body 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 what it must in any event do; namely, 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 have come 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 alias*, 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: '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.¹ 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.

*Indian handicraft Emporium vs. Union of India*²² the Apex Court held that a trade dangerous to ecology to be either regulated or totally prohibited. The fundamental Right to trade are to be balanced with the demand of social interest. This balance is reflected in Article 48A and 51 A (g) of the constitution. According to the Court prohibition of import of African ivory had a laudable object. Under the pretext of dealing in ivory, killing Indian elephant is to be stopped. The Court observed:

"Animals play a vital role in maintaining ecological balance. The amendment (1991 Wild Life Protection Act 1972) have been brought

22. *Indian Council of Enviro-Legal Action vs. UOI*, 996 3 SCC 212.

for the purpose of saving the species from extinction as also for arresting depletion in their numbers caused by callous exploitation.” Some established norms of International Environmental Law which are already accepted by the world community including India are as follows:-

1. Nations have the *sovereign right* to exploit their natural resources in pursuant to their own environmental policy and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limit of national jurisdiction.
2. *Notification and consultation* by the State which want to undertake an operation likely to harm neighboring country's environment. For example construction of power plant which may impair the quality of air or water of the States situated in the down stream.
3. Over and above the duty to notify and consult, a relative new norm has emerged whereby the States are expected to *monitor and assess* specific environmental condition domestically and disclose these conditions in a report to an international agency to collect and publicize such information.
4. Another emerging norm is the guarantee in the domestic constitutions, laws or executive pronouncements the *citizens right to a clean and healthful environment*. In the United State, this right has been guaranteed by few states but not by the Federal Government.
5. The *polluter pay principle* means the polluter should internalize the cost of their pollution, control it at its source, and pay for its effect, including the remedial and clean up cost rather than forcing other states or future generation to pay for it.
6. *Precautionary principle* is a new norm i.e. the duty to foresee and assess environmental risk, and to give warning to victims of such risk to behave in such a way that prevent or mitigate such risk.

7. *Environmental Impact Assessment* is another accepted norm, which maintains a balance between economic benefit and environmental cost. Before a project is undertaken its economic benefit and environmental cost must be compared, if economic benefit exceeds environmental cost the project can be taken, other wise not.
8. *To invite the input of NGOs* is another recent norm, which ensures that the people who are likely to be affected by environmental accords will have a major role in monitoring and implementing the accord.
9. *Sustainable Development* is a widely accepted international principle which means using natural resources in a manner which does not exceed their natural capacity for regeneration and using them in a manner which ensures the preservation of the species and ecosystem for the benefit of future generation.
10. *Intergenerational Equality* is one of the newest inter national norm. It is similar to sustainable development. If present generation continues to consume and deplete resources at unreasonable rate, future generation will suffer environmental and economic consequences. Therefore we must undertake to pass on to future generation.
11. *Common heritage of mankind* is yet another which must be share by all nations. United Nations Conference on the Law of Sea 1982 articulated this norm. Deep seabed is part of this principle.
12. *Common but differentiated responsibility* with regard to global environmental concern such as global climate change or ozone layer depletion, all nations have a shared responsibility but richer nations are better able to take the financial and technological measures necessary to shoulder the responsibility.

In the history, evolution, and development of the right to environment through judicial interpretation *Maneka Gandhi's*²³ case is a turning point in which it got a liberal expansion to cover all those areas which were not otherwise provided in the constitution but some how connected with the person, within the scope of fundamental right. Then *Francis Coralie case*²⁴ elaborated the concept of right to life to include the faculties of thinking and feeling. The *Ratlam Municipality case*²⁵ started deliberations on the human right in the polluted environment where the health of the people were put on risk because of the failure to perform the duty of the Municipal authorities on account of financial deficit. In the *Dehradun quarrying*²⁶ case, which was just a letter seeking appropriate relief for violation of ecological balance, The Supreme Court entertained the letter as a writ petition and exercised jurisdiction under Article 32 of the constitution which pre-supposes the violation of a fundamental right. Though, no direct observation has been given by the court but the trend of the court leaves no doubt that the right to ecological balance is a Fundamental Right.

It may be said that the *Kanpur Tennaries case*²⁷ is the first case where the Supreme Court categorically stated that the life, health and ecology has greater importance to the people. Further in *Chhetriya Pradushan Mukti Sangarsh Samiti case*,²⁸ the citizen's right to file a petition on account of deterioration of quality of life due to environmental

23 . *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597.

24 . *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

25. *Municipal Council of Ratlam vs. Wardhichand* AIR 1980 SC 1622.

26. *Chetriya Pradushan Mukti Morcha Sangharsha Samity Vs State of Uttar Pradesh*, AIR, 1990, SCC 2060.

27. *M.C. Mehta vs. UOI* AIR 1988 SC 1037 *Subhash Kumar vs. State of Bihar* AIR 1991 SC 420

28. *Chetriya Pradushan Mukti Morcha Sangharsha Samity Vs State of Uttar Pradesh*, AIR, 1990, SCC 2060.

degradation. Then in the *Subhash Kumar*²⁹ case the Supreme Court explicitly observed that right to live is a fundamental right under Article 21 of and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Virendra Gaur Vs State of Haryana*,³⁰ the Supreme Court emphasized and enunciated the links between pollution free air, water and right to life under Article 21 of the constitution. The *Indian Council for Enviro-legal Action vs. Union of India*³¹ the court observed that failure of the Central Govt., State Govt. and Pollution Control Board to carry out their statutory duty was seriously undermining the right to life of the people under Article 21 of the constitution.

The High Courts in India also decided many cases explaining the right guaranteed under Article 21. In *T. Damodara Rao*³² AP High Court drew an inference that Article 21 can be extended to protect the citizen's life against the polluted environment. In *Kinkri Devi*,³³ the Himachal Pradesh High Court held that if a balance between the needs of development and protection of ecology is not maintained, it would result in the violation of citizen's fundamental right under the constitution. The Kerala High Court has not given preference to right to livelihood at the risk of environmental pollution in *Madhavi vs. Thilakan*.³⁴ In *Damodara Rao* case,³⁵ the AP High Court took into consideration an open plot of land, which was kept for recreational purpose. The court held that it is reasonable to hold that the enjoyment of life and its attainment and

29. AIR 1996 SC 1446

30 . *Virendra Gaur vs. State of Haryana* 1995 2 SCC 577.

31. *Indian Council of Enviro-Legal Action vs. UOI*, 1996 3 SCC 212.

32 . *T Damodara Rao vs. the special officer, Municipal Corporation of Hyderabad* AIR 1987 AP 171.

33 . *Kinkri Devi -Vs- State of Himachal Pradesh*, AIR 1988 HP 4

34 . *Madhavi vs. Tilakan* 1988 (2) KER LT 730 V *Lakshmipathy vs. State*, AIR 1992 Kant 57.

35 . *Shyam A Divan "Constitution and Environment" (1990) Cochin University Law Review* 87.

fulfillment guaranteed by Article 21 of the constitution embraces the protection and preservation nature's gift without which life cannot be enjoyed. Depending on this decision, the Karnataka High Court in *V Lakshmi pati* case,³⁶ held that once a development plan had earmarked the area for residential purpose the land is bound to be put to such use only. The Court pointed out that entitlement to clean environment is one of the recognized basic human right and human right jurisprudence can not be permitted to be thwarted by status quoism on the basis of unfounded apprehensions. In *Attakoya Thangal's*³⁷ case also, the Kerala High Court established the right to clean water as included under Article 21 of the constitution. Justice Sankaran Nair observed that the right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritisation of human needs and a new value system has been recognized in this area. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements, which sustain life itself. In relation to use of ground water, the right to quality of life and environment was also emphasized by the Rajasthan High Court in *L.K. Koolwal's* case.³⁸ Looking at the impact of Article 51 (A) (g) of the constitution the Court expressed the view that the maintenance of health, sanitation and environment falls within Article 21 of rendering the citizens the fundamental right to ask for affirmative action.

Thus, the High Courts were more active and direct in declaring the right to clean and human environment as a fundamental right included under Article 21 of the constitution.³⁹ Though the decisions of the High

36. AIR 1990 SC 206.

37 . *Attakoya Thangal vs. Union of India* 1990 KLT 580.

38. *L.K.Koolwal vs. State of Rajasthan* AIR 1988 Raj 2.

39 . *Article 21 reads as follows " No person can be deprived of his life and personal liberty except according to procedure established by law"*

Courts were under the inspiration of the Supreme Court but The Supreme Court was more hesitant, in the beginning, to declare a clear right to environment. Only in 1990, first time the Supreme Court almost declared the right to environment as included under Article 21 in *Chetriya Pradushan Mukti Sangarsh Samiti vs. State of UP*⁴⁰ and *Subhash Kumar vs. State of Bihar*.⁴¹ In the first case, Chief justice Sabhyasachi Mukherji, in clear terms observed that every citizen has a fundamental right to have the enjoyment of life and living as contemplated in Article 21 of the constitution of India. In the second case, Justice K. N. Singh observed that the right to live includes the right to enjoyment of pollution free water and air for full enjoyment of life.

40 . AIR 1991 SC 420.

41. AIR 1991 SC 420.

CHAPTER- 3

CONCEPTUAL AND CONSTITUTIONAL FOUNDATION

1. OTHER CONSTITUTIONS AND DOCUMENTS

2. INDIAN FRAMEWORK

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CHAPTER - 3

CONCEPTUAL AND CONSTITUTIONAL FOUNDATION

The conceptual and definitional aspect of the right to environment. Various national enactments, international covenants, and judicial pronouncements conceived the definition, nature and content of the right to environment. 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. The meaning of right to environment differs for rich and poor, tribal people and plain people, villagers and city dwellers, developed and under developed countries. Thus, right to environment is necessarily a relative concept. The true meaning of the right to environment depends upon the social background, economic status, and political status of the person concern. Almost all the South-East Asian Countries 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. Thus in the following pages the true meaning and concept of the right to environment has been discussed.

1. OTHER CONSTITUTIONS AND DOCUMENTS

The Constitutional right 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." For example Bulgaria, Hungary, Slovenia, Yugoslavia, Russia, and Belarus. Some Western European countries, like Portugal, also have a similar constitutional guarantee. Some constitutions have even more specific provisions directly on the environment and health. For example, the constitution of Belarus contains a right to compensation for harm caused by the violation of the right to healthy environment (Article 46), and a right to health care which is assured by various measures, including provisions on environmental rehabilitation and protection under Article 45.¹ Similarly, the Russian constitution includes a right of access to health information in addition to the right to health protection under Article 41.² In Ukraine, in addition to an obligation on the state to ensure ecological safety and support of ecological balance under Article 16 and 43, every citizen has a right to a surrounding environment which is safe for life and health of the people and to compensation for any damage caused by the lack thereof under Article 50.³ Many constitutions protect health as a fundamental right, either for individuals or for the community. For example The Portuguese constitution under Article 52, no.3 gives the right to citizens to an action in order to secure the prevention of infractions against public health, environment or quality of

1. *Access to Information, Public Participation in Decision-making and Access to Justice in Environment and Health Matters.* Copenhagen, WHO Regional Office for Europe, 1999. (Substantiation document prepared for Third Ministerial Conference on Environment and Health.) Country Report on Belarus by Elena Krasney, p. 110

2. *Access to Information, Public Participation in Decision-making...."* Country Report on Russia by Olga Razbash, p. 277.

3. *Access to Information, Public Participation in Decision-making...."* Country Report on Ukraine by Zoriana Kozak, p. 306.

life.⁴ Moreover, 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. New constitution of Poland' makes a direct link between health and environment by imposing obligation on public authorities with the following words: "Public authorities shall . . . prevent the negative health consequences of the degradation of the environment."⁵

In some other countries, provisions are there which could also be used to make link between life and health. The Irish common law contains the doctrine of "right to bodily integrity, which may be interpreted in the light of general environmental right.⁶ In the constitution Germany, there is a basic right vested in anybody to life and freedom from physical harm, which might give a protection from encroachment by state action, though it does not entitle individuals to a healthy environment.⁷

The African Charter on Human and People's Rights 1981 proclaims in Art. 24 (1) a right to 'a general satisfactory environment favourable to their development. In fact, the Final Report of the Special Rapporteur on Prevention of Discrimination and Protection of Minorities listed over 15 rights relative to environmental quality. Some of these include 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.

4. *Access to Information, Public Participation in Decision-making...."*
Country Report on Portugal by Jose Cunhal Sendim, p. 258.

5. *Constitution of Republic of Poland of April 2, 1997 Art. 68, section 4.*
Access to Information, Public Participation in Decision-making...."
Country Report on Italy by Sara Fioravanti, p. 200

6. *Access to Information, Public Participation in Decision-making...."*
Country Report on Germany by Monika T. Neumann, p. 167.

7. Y. K. Sabarwal "Human right and the environment" through internet

In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.

In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court observed:

“side by side 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.”

The Inter-American Court of Human Rights has also recognized the environment and human rights relation. In The case of *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, which involved the protection of Nicaraguan forests in lands traditionally owned by the Awas Tingni. Government-sponsored logging on this native land was found to be a violation of the human rights of these tribal.

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 concerned. 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. The meaning of right to environment differs for rich and poor, tribal people and plain people, villagers and city dwellers, developed and under developed countries. Almost all the South-East Asian Countries 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.

In the concept of 'Sustainable Development', which emerged in environmental protection, as early as in, 1972 in the Stockholm declaration, which stated 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 generation"

Environmental 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.⁸

The definition of environment and health as given by the World Health Organization Regional Office for Europe is taken from the

8. *Access to Information, Public Participation in Decision-making...* Country Report on Russia by Olga Razbash, p. 277.

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, the following biological, physical and chemical factors and activities directly affect health and well-being in a working and community environment:

1. Air pollution (by combustion by products, microorganisms, allergens, formaldehyde, asbestos fibers shredding, tobacco smoke, radon and its decay products, and mercury);
2. Accidents (e.g. traffic, at work, at home and during leisure, and chemical);
3. Noise;
4. Toxic chemical substances (pesticides);
5. High temperatures and excessive humidity in the workplace;
6. Repetitive or forceful motions, awkward postures, mechanical stresses and vibration;
7. Ionizing and non-ionizing radiation;
8. Water pollution and sewage;
9. Food contamination by nitrates and nitrites, sodium chloride and phosphate, metals and metalloids and organic contaminants;
10. Food additives such as antibiotics and growth hormones;
11. Solid waste;
12. Rodents and insects;
13. Electromagnetic radiation (ultraviolet radiation, visible light, infrared radiation, microwaves, electric and magnetic fields, ionizing radiation).

Environmentalists can deal with these problems by, first, defining the source and nature of the threat to environment and health; second, assessing its reasons and its effects on the population; and third, applying control measures if they are needed. They must also anticipate the future problems and take diversity of the environment into consideration. They can succeed only when they work together with legislators, public health officials and the whole of society.

Some constitutions include even more specific provisions, which can be linked directly to environment and health matters. For example, the constitution of Belarus contains a right to compensation for harm caused by the violation of the right to healthy environment (Article 46), and a right to health care which is assured by various measures, including provisions on environmental rehabilitation and protection (Article 45).² Similarly, the Russian constitution includes a right of access to health information in addition to the right to health protection (Article 41).⁹

In Ukraine, in addition to placing an obligation on the state to ensure ecological safety and the support of ecological balance (Article 16, Article 43), each person and citizen has a right to a surrounding environment, which is safe for life and health, and to compensation for any damages caused by the lack thereof (Article 50).¹⁰ Many of the constitutions protect and guarantee health as a fundamental right, either for individuals and/or for the community. This is true in Italy, Portugal and Hungary, for example. The Portuguese constitution¹¹ even gives the right to citizens to use *actio popularis* in order to promote and secure the prevention and termination of infractions *inter alia* against public health, quality of environment or quality of life.¹² In addition, the constitutions

9. *Access to Information, Public Participation in Decision-making...*
Country Report on Ukraine by Zoriana Kozak, p. 306.

10. *Article 52, no. 3*

11. *Access to Information, Public Participation in Decision-making...*
Country Report on Portugal by Jose Cunhal Sendim, p. 258.

12. *Constitution of Republic of Poland of April 2, 1997 (Dziennik Ustaw No. 78, item 483), Art. 68.*

often contain general provisions on health protection, preservation of health, equal access to health care services and good, hygienic and safe working conditions, which are indirectly linked to environment and health issues. Poland's new constitution makes a direct link between health and environment by placing an obligation on the public authorities with the following statement: "Public authorities shall . . . prevent the negative health consequences of the degradation of the environment."¹³ Although there are not many reported cases in which these basic rights have been used in the courts, the link between environment and health is increasingly recognised in the countries surveyed. Most of the cases known to date were only indirectly linked with health damages caused by environmental activities and were aimed at preventing some kind of degradation in the environment or nature which might have negative short- or long-term impacts on health. For example, one case is related to the prevention of excessive cutting and devastation of small forests in Hungary by the new owners. This was not duly covered by the adopted Law on the Privatisation of Small Forests in 1995. The Constitutional Court declared the law unconstitutional and proposed amendments. In another case, citizens and NGOs were given legal standing - on the basis of their constitutional rights to healthy environment and in recognition of their interest in preventing actions potentially damaging the environment which might also damage health - to participate in a decision on a development plan of a small business and manufacturing zone in the hinterland of Lake Bled. Many such constitutional provisions could be used in the future for asserting similar basic rights for matters specific to environment and health.

In Italy, for example, the recent jurisprudence of courts, including the Constitutional Court, acknowledges the existence of a personal right to health as a subjective right, which is fully "justiciable" and has linked

section 4.

13. See more in *Access to Justice* section, p. 37-43.

it with environment in a few cases. According to the Constitutional Court, "the right to health has to be included among the subjective rights directly protected by the Constitution" (Constitutional Court judgment No. 88/1979, Italian report). Building on this general legal basis, the High Court of Cassation affirmed the existence of a specific right to a healthy environment in judgment No. 5172/79.¹⁴ The High Court declared that health protection "assumes a social and security content, and therefore the right to health, rather (and more) than a mere right to life and physical safety, becomes a right to a healthy environment." In addition, the High Court also had an influence on the development of the term "unbearable emission (to one's property)" (ex art. 844), which has been used in actions against damaging activities. Although, this article links actions with property, it has been newly interpreted as a basis for giving more attention to a healthy environment.¹⁵

In a few other countries, provisions exist that could also be used to make such a link. The Irish common law contains a notion of "right to bodily integrity," which might be interpreted in a "general environmental light."¹⁶ In the German constitution, there is a basic right vested "in anybody to life and freedom from physical harm," which might give a protection from encroachment by state authority action, though this does not entitle individuals to a healthy environment.¹⁷ The UK does not have a written constitution.

The UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted in Aarhus in June 25, 1998 is the first international legal instrument which bases the access to information, public

14. *Access to Information, Public Participation in Decision-making...."*

Country Report on Ireland by David Meehan, p. 183

15. *Access to Information, Public Participation in Decision-making...."*

Country Report on Germany by Monika T. Neumann, p. 167.

16. *Access to Information, Public Participation in Decision-making...."*

Country Report on Germany by Monika T. Neumann, p. 167.

17. *Rural Litigation & Entitlement Kendra, Dehradoon -Vs- State of U.P.*
AIR, 1991 SC 2216

participation and access to justice rights provided by the convention on "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being." The Aarhus Convention thus makes an obvious and strong link between individual rights and environmental well-being, which is also relevant from the environment and health point of view. It also includes a general obligation for the parties "to guarantee access to information, public participation in decision-making and access to justice in environmental matters" in order to contribute to the protection of this right.¹⁸ In doing so, it sets a new precedent in international environmental legislation.

2. INDIAN FRAMEWORK

CONSTITUTIONAL AND LEGAL PROVISIONS

The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives contained in Articles 39(e) (f), 42 and 47 in part IV of the Constitution of India. The has to direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Article 39(e)) and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. (Article 39(f)). The State is required to make provision for just and humane conditions of work and for maternity benefit (Article 42). It is the primary duty of the State to endeavor the raising of the level of nutrition and standard of living of its people and improvement of public health and to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs, which are injurious to health. (Article 47). Protection and

18. *Francis Coralie vs. Union Territory of Delhi*

improvement of environment is also made one of the cardinal duties of the State. Article 48 A). The State legislature is under entry 6 of the State List contained in the Seventh Schedule to the Constitution, empowered to make laws with respect to public health and sanitation, hospitals and dispensaries. Both the Centre and the States have power to legislate in the matters of social security and social insurance, medical professions, and, prevention of the extension from one State to another of infections or contagious diseases or pests affecting man, animals or plants, by entries 23, 26 and 29 respectively contained in the concurrent list of the Seventh Schedule.

The definition of 'environment' in India does not include only the concept of sustainable development but also air and water pollution, preservation of forests and wildlife, noise pollution and even the protection of our ancient monuments, which are undergoing severe stress due to urbanization and consequent environmental pollution. Community resources such as tanks, ponds, etc. have now been articulated by the Supreme Court for inclusion in the concept of environment, considering that they all affect the quality and enjoyment of our life.

The framers of the constitution were silent on the issue of environmental protection. In the original constitution no specific provision was made on the protection of the environment except Article 47 and 49. Article 47 states that the state shall regard the raising of the level of nutrition and the standard of living of its people and the environment of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption except for medical purposes for intoxicating drinks and of drugs which are injurious to health.

For raising the level of nutrition and improving public health it is obligatory that the State should provide pollution free environment. Article 49 envisages the protection of historical monuments. It provides

that it shall be the obligation of the State to protect every monument or place or object of artistic or historical interest, declared by or under law made by Parliament to be national importance from spoliation, disfigurement, destruction, removal, disposal or export as the case may be.

This Article makes it obligatory on the part of State to control the environmental pollution affecting the durability of these historical monuments. The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures. In reality, the foundation of the jurisprudence of environment was laid down by the 42nd amendment and now the State and citizens are under a fundamental obligation to protect the environment.

Reference to the environment has been made in the Directive Principles of State Policy as well as the Fundamental Rights. But nowhere in the constitution the definition and concept of the term 'environment' has been given. The constitutional provisions are backed by a number of laws – Acts, Rules, and Notifications. The Environment Protection Act, 1986 came into force soon after the Bhopal Gas Tragedy and is considered umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling and Management of Hazardous Waste Rules in 1989.

This is well illustrated by the cases that have come 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. Article 21 of the Indian Constitution states that no person shall be deprived of his life or personal liberty except according to procedures established by law.

*Rural Litigation and Entitlement Kendra, Dehradun, v. State of U.P.*¹⁹ was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin v. Union Territory of Delhi*²⁰ where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life. The importance of this case lies in the willingness on the part of the Court to be assertive in adopting an expanded understanding of human rights. It is only through such an understanding that claims involving the environment can be accommodated within the broad rubric of human rights. The link between environmental quality and the right to life was further addressed by a constitution bench of the Supreme Court in the *Charan Lal Sahu*.²¹ Similarly, in *Subash Kumar*,²² the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.' Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water

19. *Charan Lal Sahu v. Union of India* AIR 1990 SC 1480.

20. *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420

21. *M.C. Mehta v. Union of India*, (1996) 4 SCC 351.

22. *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1991 SC 2216.

pollution. It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community.²³ The courts have taken a serious view of unscientific and uncontrolled quarrying and mining,²⁴ issued orders for the maintenance of ecology around coastal areas,²⁵ shifting of hazardous and heavy industries²⁶ and in restraining tanneries from discharging effluents.²⁷

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

The right to life approach to environment not only imply the absence of polluted environment, but also the quality of the environment by enumerating justifiable entitlements such as clean river and lakes, coastal resource zone, afforestation, preservation of wetland, healthy growth of wild life, and ornithology.²⁸ Matters involving the degradation of the environment have often come to the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum

23. *M.C. Mehta v. Union of India*, (1996) 4 SCC 351.

24. *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1991 SC 2216.

25. *Indian Council for Enviro-Legal Action v. Union of India (Coastal Protection Case)*, (1996) 5 SCC 281

26. *M.C. Mehta v. Union of India*, (1996) 4 SCC 750.

27. *M.C. Mehta v. Union of India (Ganga Water Pollution Case)*, AIR 1988 SC 1037

28. *Nomani Z. M. "Enviro- Constitutional Ethos in Right-Duty Discourse: Towards the Creation of an Equitable and Sustainable Socio-legal Order" IJEL- 1 2000.*

due to the lenient view adopted by the Court towards concepts such as *locus standi* and the 'proof of injury' approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an 'aggrieved person' test, which means a right or recognised interest that is direct and personal to the complainant.

Thus in common parlance, environment means physical surroundings.²⁹ The definition given in the environment (Protection) Act 1986 an inclusive one and it places no limits as to its dimensions. The Rajasthan High Court in *Vijay Singh Punia vs. RSBPCWP*³⁰ illustrated that:

"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. To illustrate the point One may give the example of a lonely earthworm. It works for human beings. It enriches the soil and makes it fertile for them to reap the benefit."

Thus within the ambit of environment hygienic atmosphere and ecological balance should be brought. It is the duty of citizens and the State to maintain hygienic environment. The Supreme Court in *K.M. Chinnappa Vs Union of India*³¹ laid down that enjoyment of life and its attainment including their right to life with human dignity encompasses 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. Ant contra act or action would cause environmental pollution.

An integral part of right to life is a hygienic environment. Without a

29. P. Leelakrishna, 'ASIL. 221, 2003.

30. AIR 2003 Raj 26.

31. AIR 2003-SC 724.

humane and healthy environment it would not be possible to live a healthy life. The Supreme Court in *State of MP vs. Kedia Leather and Liquor Ltd.*³² reiterated that specific laws of pollution do not impliedly repeal the laws of nuisance under section 133 of the Criminal Procedure Code.

II. ENVIRONMENTAL LEGISLATIONS IN INDIA

1. General

1986 - The Environment (Protection) Act authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and/or operation of any industrial facility on environmental grounds. It contained a stringent mechanism to control environmental pollution. But absence of effective political will to enforce the provisions of the Act is the cause of not achieving the objectives of the Act.

1986 - The Environment (Protection) Rules lay down procedures for setting standards of emission or discharge of environmental pollutants.

1989 - The objective of Hazardous Waste (Management and Handling) Rules is to control the generation, collection, treatment, import, storage, and handling of hazardous waste.

1989 - The Manufacture, Storage, and Import of Hazardous Rules define the terms used in this context, and sets up an authority to inspect, once a year, the industrial activity connected with hazardous chemicals and isolated storage facilities.

1989 - The Manufacture, Use, Import, Export, and Storage of hazardous Micro-organisms/ Genetically Engineered Organisms or

32. 2003 7 SCC 389.

Cells Rules were introduced with a view to protect the environment, nature, and health, in connection with the application of gene technology and microorganisms.

1991 - The Public Liability Insurance Act and Rules and Amendment, 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.

1995 - The National Environmental Tribunal Act has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.

1997 - The National Environment Appellate Authority Act has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

1998 - The Biomedical waste (Management and Handling) Rules is a legal binding on the health care institutions to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.

1999 - The Environment (Sitting for Industrial Projects) Rules, 1999 lay down detailed provisions relating to areas to be avoided for sitting of industries, precautionary measures to be taken for site selecting as also the aspects of environmental protection which should have been incorporated during the implementation of the industrial development projects.

2000 - The Municipal Solid Wastes (Management and Handling) Rules, 2000 apply to every municipal authority responsible for the

collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.

2000 - The Ozone Depleting Substances (Regulation and Control) Rules have been laid down for the regulation of production and consumption of ozone depleting substances.

2001 - The Batteries (Management and Handling) Rules, 2001 rules shall apply to every manufacturer, importer, re-conditioner, assembler, dealer, auctioneer, consumer, and bulk consumer involved in the manufacture, processing, sale, purchase, and use of batteries or components so as to regulate and ensure the environmentally safe disposal of used batteries.

2002 - The Noise Pollution (Regulation and Control) (Amendment) Rules lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion

2002 - The Biological Diversity Act is an act to provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it

2. Forest and wildlife

1927 - The Indian Forest Act and Amendment, 1984, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce'.

1972 - The Wildlife Protection Act, Rules 1973 and Amendment 1991 provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them. The Act was passed at the request of 11 states and intended to provide a comprehensive national legal framework for wildlife protection. There are two conservation strategies under the Act – first, specified endangered species are protected regardless of location. Secondly, all species are protected in specified areas.

1980 - The Forest (Conservation) Act and Rules, 1981, provides for the protection of and the conservation of the forests.

3. Water

1882 - The Easement Act allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that all surface water belongs to the state and is a state property.

1897 - The Indian Fisheries Act establishes two sets of penal offences whereby the government can sue any person who uses dynamite or other explosive substance in any way (whether coastal or inland) with intent to catch or destroy any fish or poisonous fish in order to kill.

1956 - The River Boards Act enables the states to enroll the central government in setting up an Advisory River Board to resolve issues in inter-state cooperation.

1970 - The Merchant Shipping Act aims to deal with waste arising from ships along the coastal areas within a specified radius.

1974 - The Water (Prevention and Control of Pollution) Act establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent.

Polluting industries must seek permission to discharge waste into effluent bodies.

The CPCB (Central Pollution Control Board) was constituted under this act.

1977 - The Water (Prevention and Control of Pollution) Cess Act provides for the levy and collection of cess or fees on water consuming industries and local authorities.

1978 - The Water (Prevention and Control of Pollution) Cess Rules contains the standard definitions and indicate the kind of and location of meters that every consumer of water is required to affix.

1991 - The Coastal Regulation Zone Notification puts regulations on various activities, including construction, are regulated. It gives some protection to the backwaters and estuaries.

4. Air

1948 - The Factories Act and Amendment in 1987 was the first to express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes.

1981 - The Air (Prevention and Control of Pollution) Act provides for the control and abatement of air pollution. It entrusts the power of enforcing this act to the CPCB.

1982 - The Air (Prevention and Control of Pollution) Rules defines the procedures of the meetings of the Boards and the powers entrusted to them.

1982 - The Atomic Energy Act deals with the radioactive waste.

1987 - The Air (Prevention and Control of Pollution) Amendment Act empowers the central and state pollution control boards to meet with grave emergencies of air pollution.

1988 - The Motor Vehicles Act states that all hazardous waste is to be properly packaged, labeled, and transported³³

The United Nations has defined human rights to mean generally as “those rights, which are inherent in our nature and without which we can not live as human beings. Section 2(d) of the protection of Human Rights Act, 1993 has defined the human rights to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the international covenants and enforceable by the courts in India. In 1948, the United Nations through its Declaration of Human Rights affirmed the basic principle that a mentally ill person should at all times be treated with humanity and respect for the inherent dignity of the person. Every person with a mental illness should have the right to exercise all civil, political, social and cultural rights. The Declaration of the Rights of the disabled, which includes person with mental illness, was adopted by the United Nations in 1975.

Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 also provides “that the state parties to the present Covenant recognize the rights of everyone to the enjoyment of highest attainable standards of physical and mental health. As far as women mentally ill patients are concerned, Article 12 of the Convention on the Elimination of all forms of discrimination against women provides that state parties shall take all appropriate measures to eliminate discrimination against women in the field of health. In the area of

33 . <http://www.envfor.ac.in>

'providing access to free medical services to mentally ill patients Article 19 of 1969 Declaration on Social progress and Development could be relied upon, which calls for the provision of free health services of the whole population and of adequate preventive and curative facilities and welfare medical services accessible to all.

In a wider sense environment embraces all forms of life in this planet. Environmental protection is confined to control of pollution by hazardous products, gases and effluents that are by-product of industrialization. Environmental law involves conservation and sustainable use of natural resources by the present and future generation. Environmental law also governs the inter-relationship between natural resources and all human and other living creatures including natural environment, namely physical conditions of land, air and water and human environment namely health, social environment and other man made environment. In a case³⁴ the Rajasthan High Court illustrated that 'the concept of inter-relationship which exist between human being, nature and other form of life is the essence of well being of human race. To illustrate the point, one may give the example of a lonely earthworm. It works for human beings. It enriches the soil and makes it fertile for them to reap the benefit.' Therefore, environmental law involves management of environment and the strategies for tackling the problems affecting the environment.

Right to a decent and healthful environment is guaranteed under domestic constitution by executive pronouncements and laws like Thailand, Indonesia, Singapore, and Philippines. In the United States some of the States already recognized the right to a healthful environment but not by the Federal Constitution.

34 . AIR 2003 Raj 286.

Some established norms of International Environmental Law which are already accepted by the world community including India are as follows:-

1. Nations have the *sovereign right* to exploit their natural resources in pursuant to their own environmental policy and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limit of national jurisdiction.
2. *Notification and consultation* by the State which want to undertake an operation likely to harm neighboring country's environment. For example construction of power plant which may impair the quality of air or water of the States situated in the down stream.
3. Over and above the duty to notify and consult, a relative new norm has emerged whereby the States are expected to *monitor and assess* specific environmental condition domestically and disclose these conditions in a report to an international agency to collect and publicize such information.
4. Another emerging norm is the guarantee in the domestic constitutions, laws or executive pronouncements the *citizens right to a clean and healthful environment*. In the United State, this right has been guaranteed by few states but not by the Federal Government.
5. The *polluter pay principle* means the polluter should internalize the cost of their pollution, control it at its source, and pay for its effect, including the remedial and clean up cost rather than forcing other states or future generation to pay for it.
6. *Precautionary principle* is a new norm i.e. the duty to foresee and assess environmental risk, and to give warning to victims of such risk to behave in such a way that prevent or mitigate such risk.
7. *Environmental Impact Assessment* is another accepted norm, which maintains a balance between economic benefit and environmental

cost. Before a project is undertaken its economic benefit and environmental cost must be compared, if economic benefit exceeds environmental cost the project can be taken, other wise not.

8. *To invite the input of NGOs* is another recent norm, which ensures that the people who are likely to be affected by environmental accords will have a major role in monitoring and implementing the accord.
9. *Sustainable Development* is a widely accepted international principle which means using natural resources in a manner which does not exceed their natural capacity for regeneration and using them in a manner which ensures the preservation of the species and ecosystem for the benefit of future generation.
10. *Intergenerational Equality* is one of the newest international norm. It is similar to sustainable development. If present generation continues to consume and deplete resources at unreasonable rate, future generation will suffer environmental and economic consequences. Therefore we must undertake to pass on to future generation.
11. *Common heritage of mankind* is yet another which must be share by all nations. United Nations Conference on the Law of Sea 1982 articulated this norm. Deep seabed is part of this principle.
12. *Common but differentiated responsibility* with regard to global environmental concern such as global climate change or ozone layer depletion, all nations have a shared responsibility but richer nations are better able to take the financial and technological measures necessary to shoulder the responsibility.

CHAPTER - 4

SCOPE OF THE RIGHT

- I. Traditional Rights of Tribal people
- II. Right against soil pollution
- III. Right against tobacco smoking
- IV. Right to Cultural Heritage
- V. Right arising out of Environmental damages
- VI. Right to Traditional methods of Environmental Protection
- VII. Right against hazardous substances
- VIII. Right to ecological balance
- IX. Right to pollution free water
- X. Right to trade, occupation and environmental protection
- XI. Right to pollution free air
- XII. Right against noise pollution
- XIII. Right to protection and conservation of forest
- XIV. Right of animals against hunting
- XV. Right to environment and health information
- XVI. Right to environment of prisoners
- XVII. Right to environment of mentally ill persons
- XVIII. Right to environment of disabled persons
- XIX. Right to health of workers
- XX. Right To Environment of other species

Limitations

Remedies

1. Constitutional Remedies

- I. Writ Jurisdiction
- II. Public Interest Litigation
- III. Compensatory Remedies

2. Criminal Remedies

- IV. Under The Code of Criminal Procedure Code 1973.
- V. Under the Environment Protection Act.

CHAPTER- 4

SCOPE OF THE RIGHT

“In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guarantee in any civilised society implies the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known to any civilised society.”

The Supreme Court of India

Right is an interest recognized and protected by a rule of law. A particular interest must be recognized and protected by law in order to treat it as a right. Right to environment as a human right extends over all human being irrespective of cast, color and gender including prisoners, workers, disabled and mentally ill persons. About the right to environment of other creatures like animals flora and fauna aquatic life, a brief discussion has been made in this chapter. What are various components of rights that covered under the right to environment has also been discussed. Authorities which can violate the right to environment and the ways and means by which right to environment can be violated are also discussed.

Right also requires remedy which is for the enforcement of the right. For effective enforcement of a right it becomes necessary to provide for an effective remedy. Therefore, in case of violation of the right to environment what kinds of remedies are available, a brief reference thereof has been made in this chapter. Every right has to operate within certain limitation. An attempt has also been made to delineate and prescribe the limits within which the right to environment should

operate.

The African Charter on Human and People's Rights 1981 proclaims in Article 24(1) that a right to 'a general satisfactory environment favourable to their development.' In fact, the Final Report of the Special Reporter on Prevention of Discrimination and Protection of Minorities¹ listed more than 15 rights relative to environmental quality. Some of these include 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.

In The Constitution of Bangladesh, there is no explicit provision for the right to healthy environment neither in the directive principles nor in the fundamental right. Article 31 only states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or property', unless these are taken in accordance with law. To enjoy the protection of the law, and to be treated in accordance with law, every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. In 1994, a public interest litigation² the Supreme Court agreed with the argument presented by the petitioner that the constitutional 'right to life' does extend to include right to a safe and healthy environment.

1. U.N. Doc. E/CN4/Sub.2/1994/9 (1994).

2. *Dr. M. Farooque v. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh and 12 Others (Unreported)*. The case involved a petition against various ministries and other authorities for not fulfilling their statutory duties to mitigate air and noise pollution caused by motor vehicles in the city of Dhaka

Article 9 of the Constitution of **Pakistan** states that “no person shall be deprived of life or liberty saves in accordance with the law.” In *Shehla Zia vs. WAPDA*³ the petitioner questioned whether, under article 9 of the Constitution, citizens were entitled to protection of law from being exposed to hazards of electro-magnetic field or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. The Supreme Court decided that Article 9 included all such amenities and facilities, which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. It includes, *inter alias*, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood.

Right to unpolluted environment and protection and preservation of nature’s gift has been conceded under Article 21 of the constitution of India. This right includes a variety of many other rights such as protection of flora and fauna, unpolluted air, protection from noise, air and water pollution, and maintenance of ecological balance. At least 20 cases are decided in India which either directly or indirectly recognised that right to environment was included under Article 21 of the constitution.⁴

I. Traditional Rights of Tribal People:-

The rights of traditional tribal communities have been at the centre of many struggles with the State. But it’s another story when within the

3. *PLD 1994 SC 693.*

4. *See, T. Damodara Rao, vs. S.O. Municipal Corporation, Hyderabad AIR 1987 AP 171, Narmada bachao Andolan Vs. Union of India 2000 10 SCC 664, AP Pollution Control Board vs. M.V. Naydu AIR 1999 Sc 812, M.C. Mehta Vs. Union of India (1997) 3 SCC 388 & 715, (1997) 2 SCC 411, AIR 1997 Sc 811, (1996) 8 SCC 462, (1996) 4 SCC 750, RLEK Dehradun vs. State of UP AIR 1990 SC 2060/2062, Subhash Kumar vs. State of Bihar AIR 1991 SC 420, Virendra Gaur vs. State of Haryana, (1995) 4SCC 750. Indian Council for enviro-legal action Vs. Union of India (1996) 3 SCC 212, 1996 5 SCC 281, Vellore Citizens Welfare Forum vs. Union of India (1996) 5 SCC 647, F. B Taraporawala vs. Bayer India Ltd. 1996 6 SCC 58, Jagannath vs. Union of India AIR 1997 SC 811, Animal and Environmental Legal Defence Fund vs. Union of India AIR 1997 SC 1071, TN Godavarman vs Union of India AIR 1997 SC 1228, MC Mehta vs. Kamal Nath 1997 1 SCC 388.*

State machinery itself there are disagreements on the issue how communities ought to control forest resources. The Government of India, Ministry of Tribal Affairs (MoTA) mooted a draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005 that was cleared by the Law Ministry in April 2005. The bill has been stalled by opposition from the Ministry of Environment and Forests (MoEF) on the ground that it will be detrimental to safeguarding the forests and wildlife that thrives in them.

The aim of the Bill is to undo the legacy of discounting the time-honoured use and preservation of forest resources by tribals that has pervaded since colonial times. By recognising the rights of the forest-dwelling tribals, the bill seeks to protect them from being branded as “encroachers” and safeguard them against forced evictions. The Bill acknowledges 12 specific heritable but not alienable non-transferable “forest rights” of tribals in forest villages for “bonafide livelihood needs”. The conditions for vesting such rights include a limit of up to 2.5 hectares of land per family which must have been in occupation prior to 25 October, 1980, the date on which the Forest (Conservation) Act came into force. The list of these rights include:

1. Right to live in the forest under the individual or common occupation for habitation or for self-cultivation for livelihood
2. Right to access, use or dispose of minor forest produce
3. Rights of entitlement such as grazing and traditional seasonal resource access
4. Rights for conversion of leases or grants issued by any local authority or any state government on forest lands to titles

5. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving.

Questions are being asked as to why only “scheduled” tribes are to be granted forest rights? The simple answer is that MoTA was established as an independent ministry in 1999 to deal specifically with scheduled tribes. The criteria for designating a tribe as “scheduled” include having ‘primitive’ traits, dwelling in geographical isolation, having a distinct culture, being shy of contact with the outside world and being economically ‘backward’. There are more than 600 officially listed scheduled tribes in the country, comprising less than 10% of the country’s total population and with little over 2% believed to be dwelling in forests. There is a view that once the Bill is passed, this itself would provide the basis for the extension of the rights to other forest dwellers.

There are also deep divisions between conservationists and tribal activists. The pro-tribals lobby argues that it is large developmental projects – such as large dams, power plants and mining activities – that need to be checked, rather than the forceful eviction of traditional forest-dependent communities to save the forests. Several groups contend that it is not tribals who are bringing in commercial activities into forests, but external commercial pressures that are degrading the forest resources and thereby eroding the traditional lifestyles of tribal communities. Meanwhile the more radical green groups warn against the land mafia misusing the provisions of the proposed law into conning unsuspecting tribals vested with land rights to part with their land in prime forest areas. They also fear that the proposed legal provision allowing for the “sale of forest-based products for their household needs”, would translate into large-scale commercialisation of forest resources.

Apart from the practical problems in implementing the Bill and working out its relationship with other conservation laws, there are certain problems within the text that would need to be addressed. There are several measures built into the Bill for conservation, but there remains a lack of clarity on what prevails in the event of such “rights” causing loss of wildlife, forest or biodiversity. For instance, if the collection of a medicinal plant becomes threatened, would the law restrict it? There is a penalty for unsustainable use, but who and how determines what is “unsustainable”? And would such collections be permitted in national parks or sanctuaries?

The neglected issue of traditional knowledge warrants more attention. Amongst the “forest rights” that the Tribal Bill seeks to grant is the right to access to biodiversity and community rights to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity. The approach to these rights appears to be in harmony with the Government of India’s official pro-IPR policy, and is supported rather than contested by the various Ministries involved. The pro-IPR approach is clear in the draft National Tribal Policy 2 which is currently being revised. It states that the preservation and promotion of traditional wisdom is recommended through documentation of such traditional knowledge and its “transfer” to non-tribal areas. The policy encouraged documenting and patenting tribal traditional Medicine. In the context of health, the National Policy mandates:

1. Strengthening the allopathic system of medicine in tribal areas.
2. Validating identified tribal remedies (folk claims) used in different tribal areas
3. Encouraging, documenting and patenting tribals’ traditional medicines

Biodiversity-based traditional knowledge can not exist without the resources on which it is based. Such systems of knowledge would not grow from a document but by a symbiosis of people and plants. What needs to be protected is the collective intellectual heritage of communities. This is different from advocating for a community to be made a legal entity for grant of a patent or other IPR, which implies the commodification of their knowledge. Conservation by the people can be made possible only if communities are given a stake in conserving. But in the context of traditional knowledge, IPR is not a helpful incentive to conserve knowledge.

There is doubt about the Bill being cleared in its present form. The Prime Minister's Office has asked the MoTA to reword its original Bill to reflect conservation concerns, while asking the MoEF not to push its rival "alternative draft". Hopefully in the end the tribals in the forest who are largely oblivious to these ongoing discussions will be more righted than wronged.

The government in making such a law would be fulfilling its electoral promise only if it facilitates the control of people rather than effecting controls. Self-governance is a critical issue for indigenous peoples whose systems of self-rule pre-date the modern state. The state must recognise this, and rights must not be dependent on the mere efficacy of a law drawn up today, often without the very people it proposes to right.

The issue of illegal felling of timber in forests in India, particularly in the North-East Region came up for consideration before the Supreme Court in *T. N. Godavarman Thirumulpad vs Union of India*⁵ The Supreme Court has given interim directions from time to time on various issues,

5. (1997) 2 SCC 267, / (1997) 3 SCC 312.

including for regulating the timber trade and pricing of timber, licensing of wood-based industries, forest protection, management of forests, action against erring officials, clarifying that minor forest produce is out of its purview etc. Gradually, but fortunately only for a while, illegal mining activity in forests was also included within the scope of the public interest litigation. Over a period of time more than 1000 interim applications have been filed in the case apart from a large number of contempt petitions and a massive number of interim directions have been issued. In December 1998, the Supreme Court lamented that many States have either not implemented its directions or breached them and in October 2002 it was observed that the tide of judicial considerations in environmental litigation in India symbolizes the anxiety of courts in finding out appropriate remedies for environmental maladies. If a balance sheet of this case is drawn up, the real benefit that has come out of this litigation over the last several years has been the setting up of a Central Empowered Committee, which has checked, to the extent possible, unlicensed sawmills and helped in regulating the trade of illegal timber. Apart from this, the Committee has also considerably assisted the Supreme Court in passing several orders on environment related issues from time to time.

In *State of Himachal Pradesh Vs Umed Ram*⁶ upholding the right of the people in hill areas for a suitable approach the court held that right to life under Article 21 embraces not only physical existence of life but also the quality of life and for residents of hilly areas access to road is access to life.

In *Samatha vs. State of Andhra Pradesh*⁷ justice Ramaswamy observed,

“The tribal have fundamental right to social and economic

6. (1986) SCC 68./ AIR 1986 SC 847

7. AIR1988 SC 1626

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 trials.”

II. Right against soil pollution: - The acute problem of soil pollution due to dumping of waste and effluents of factories, use of pesticides and insecticides, gases, acid rains, etc. has resulted in the destruction of vegetation and change in the composition of soil that makes it unfit for cultivation. Vegetable, egg, meet, fish, grapes, oil and cereals contain DDT and BHC above permissible limit.

*Bichri case*⁸ decided on soil pollution. The Chemical industries in Bichri village were discharging chemical wastes which rendered the soil unfit for cultivation. Iron-based and gypsum-based sludge if not properly treated, pose grave threat to Mother Earth. The court held that the industries are absolutely liable to compensate the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence they are bound to take all necessary measures to remove the sludge and other pollutant lying in the affected area and also to defray the cost of remedial measures required to restore the soil and underground water sources. Section 3 and 4 of the Environment Act 1986 confers the Central Government the power to give directions to the above effect. Levy of cost for remedial measures implicit in the two sections.

III. Right against tobacco smoking:- It has been reported that one million tobacco related death take place in India every year due to cancer, heart disease, chronic obstructive pulmonary disease, still birth, lung disease, asthma, ear and eye infection etc. In *K. Ramakrishna vs.*

⁸ *Indian Council of Enviro-legal Action vs. Union of India AIR 1996 SC 1446.*

*State of Kerala*⁹ the court held that the tobacco smokers violate the fundamental right to life guaranteed under Article 21 of the constitution as the exposure to tobacco smoke was slow prior, causing death and passive smoking where the judges deemed it a punishable offence under section 278 of the Indian Penal Code.¹⁰ The earliest specific law on smoke is the Bengal Smoke Nuisance Act 1905, the Bombay Smoke Nuisance Act 1912,

IV. Right to cultural heritage:- the legal principles for environmental protection and sustainable development adopted by the world community stipulates that each state has a duty to ensure that the environment and natural resources are conserved and used for the benefit of present and future generation. The purpose of the World Heritage Convention 1972 is to establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value. In India, Article 49 and entry 67 of list I of seventh schedule of the constitution, conferred a corresponding legislative power to parliament. Under entry 12 of the list II also the state legislature got the power to legislate on ancient historical monuments. Under list III, entry 40 the states and the center can exercise legislative power on Archeological sites. Apart from this every citizen has a fundamental duty under Article 51 (A) (f), to cooperate with state and ensure that the rich and diverse heritage within the country is preserved. The central laws are Ancient Monuments and Archeological Sites and Remains Act 1958, and the Antiquities and Art Treasures Act 1972, which seeks to preservation

9. AIR 1999 Ker 385.

10. *Padma Dr.*, "women empowerment towards safer environment and justice" *Indian*

monuments and sites of national importance and prevention of export and smuggling of art treasures respectively.

*Taj Trapezium case*¹¹ is a typical case where the Supreme Court recognized and that since the Taj is a World Heritage Site, the Supreme Court would itself monitor some issues such as air pollution, proper management of the Mathura refinery, construction of a hospital, a bypass to divert all traffic away from Agra etc. Subsequently, a governmental Agra Mission Management Board was constituted in 1997 followed by the Taj Trapezium Zone Pollution (Prevention & Control) Authority set up in 1999, to monitor progress of the implementation of various schemes for protection of the Taj. *In Rajiv Mankotia vs. Secretary to the President of India*¹² prevented the government of India from converting a part of Viceregal Lodge in Shimla constructed in 1888 in to a tourist hotel being a historical monument of national importance.

The issue of protection of monuments and religious shrines from environmental pollution came up for consideration before the Supreme Court in *Wasim Ahmed Sayeed vs. Union of India and Others*¹³ To prevent damage to monuments, particularly the Dargah of Moinuddin Chisti in Ajmer and the heritage city of Fatehpur Sikri, the Supreme Court directed the removal of shops within a certain distance from the monuments so that no damage is caused to them. The Kerala High Court examined the importance of pre-historical monuments in *Niyamvedi vs. Government of India*¹⁴ and held that pre-historical monuments needed to be preserved.

V. Right arising out of environmental damages, i.e. Right to

11. M.C.Mehta vs Union of India & others 1997 2 SCC 353.

12. (1997) 10 SCC 441.

13. 2002 9 SCC 472.

14. Kerala High Court WA No. 1427/1994-B 6th Nov. 1995.

monetary compensation:- Right to compensation due to environmental catastrophe i.e. For violation of any right under Article 21 of the constitution, right to claim compensation has been recognized in many cases.¹⁵ Right to a healthy environment is included under Article 21 of the constitution and hence for violation of this right monetary compensation can be claimed as matter of right.¹⁶

VI. Right to traditional methods of environmental protection:- This right includes 1. Right to live in the forest under the individual or common occupation for habitation or for self-cultivation for livelihood. 2. Right to access, use or dispose of minor forest produce. Right of entitlement such as grazing and traditional seasonal resource access

Rights for conversion of leases or grants issued by any local authority or any state government on forest lands to titles. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving.

VII. Right against hazardous substances:- In *M. C. Mehta vs. Union of India*¹⁷ popularly known as *Shri Ram Gas Leak Case* the Supreme Court Observed: "an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to community to ensure that harm results to any one on account of hazardous or inherently dangerous nature of activity which it has

15. V. N. Shukla, "Constitution of India" tenth edition p-180.

16. M. C. Mehta vs. Union of India 1987 1 SCC 395

17. *M. C. Mehta vs. Union of India* 1987 1 SCC 395

undertaken

VIII. Right to ecological balance –Ecology is the science of intricate web of relationship between living organisms and their living and non-living surroundings. These inter-dependence of living and non-living parts make up ecosystems. The stability of a particular ecosystem depends on its diversity. Nature has immense potentials to maintain its perfect ecological balance. With the growth of unplanned industrial development, population growth with overdependence on nature coupled with lust for comfortable life, the equilibrium of ecology is imbalanced. In *Sachidananda Pandey vs. the State of West Bengal*¹⁸ the Supreme Court reminded the citizen and the Government of their social obligation to preserve and maintain ecological balance.

*Rural Litigation and Entitlement Kendra v. State of U.P.*¹⁹ was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated in *Francis Coralie Mullin v. Union Territory of Delhi*²⁰ where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life.

IX. Right to pollution free water – Of all liquids known to man, none can take the importance of water in the great variety of life process. Many of the liquids appear similar to water but they do not have the combination of water that makes water unique. The relationship of water and man can be best explained in the constitution of human body. The

18. AIR 1987 SC 1109.

19. *Rural Litigation & Entitlement Kendra, Dehradun -Vs- State of U.P.* AIR, 1991 SC 2216.

20 ...*Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

major part of our body is water. Dehydration leads to death. A seventy Kg. man contains fifty Kg. of water. It is estimated that man can survive for 20 days without food but starts struggling for life in the absence of water only after one day.²¹ On this earth we are fortunate enough because it contains more oceans, lakes, streams, and subterranean water than land masses.²²

Fresh water is very essential for our life. Only a small portion of the earth's water supply i.e. only 0.3 percent is fresh water and consumable and the remaining is polluted. Under section 2 (c) of the Water Act, water pollution means such contamination of water or such alternative of the physical, chemical or biological properties of water or such discharge of any sewage or industrial effluents or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to create a nuisance or render such water harmful or injurious to public health or safety or to domestic or commercial, industrial, agriculture or other legitimate use or to the life and health to animals or plants or aquatic organism. The effect of water pollution on human health various water-borne diseases like cholera, typhoid, amoebiasis, viral hepatitis, diarrhea/dysentery, cardiomyopathy, gastric ulcer, paralysis etc.²³ Time is perhaps not too far when good quality of water, particularly in thickly populated and industrialized areas may not be available, if not, inadequate for normal living. In 1977, the United Nations Water Conference passed the following unanimous Resolution:-

“All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.”

21. Dr. S. A. K. Azad, “Water pollution and its Legal Control in India” AIR (Journal) 2001 at-310

22. See, Sharifuddin and Z.M.Nomani, “Water Pollution and Law” Saloni Publication New Delhi 2004 p-1.

23. *Id.*

The Supreme Court relied upon this Resolution while observing that water is a basic need for the survival of human beings and is a part of the right to life and human rights as enshrined in Article 21 of the Constitution. A news item had appeared in a national daily pointing out that the river Yamuna, which flows through Delhi is highly polluted. *Narmada Bachao Andolan v. Union of India & ors*,²⁴

The cause of pollution is two-fold: due to discharge of domestic waste and industrial effluents. The quality of water before the river enters Delhi is not unsatisfactory, but by the time the river leaves Delhi after traversing a distance of 22 km., the water quality undergoes steep and rapid deterioration. The Supreme Court passed an order to the effect that pollution of the river should be stopped with effect from 1st November 1999. However, a report given by the Central Pollution Control Board (CPCB), which the Supreme Court considered in January 2000, showed that the situation continued to be alarming. The Attorney General was then requested to take effective steps to achieve the 'desired result' and in the meanwhile, industries located in Delhi were restrained from discharging their effluents into the river. The Supreme Court later looked into the matter again and found that the parameters laid down by the Government in respect of water quality were not being adhered to. The Delhi Administration was directed to file an affidavit indicating what steps it proposes to take to reduce the pollution level so as to ensure that by March 2003 no untreated sewage enters river Yamuna. As recently as August 2004, the matter again came up for consideration before the Supreme Court and it was noted that although the Court had directed its attention to cleaning up the river almost a decade ago, there has been no improvement, but the water quality had in fact deteriorated

24. (2000) 10 SCC 664

during the last about five years on a comparison of reports filed by the CPCB. The Supreme Court then set up a High Powered Committee chaired by the Secretary, Ministry of Urban Development and including several governmental authorities to monitor the situation. However, newspaper reports²⁵ have since indicated that despite an expenditure of Rs.87 corers on what is called the Yamuna Action Plans I and II, the river continues to remain as dirty as it was about a decade ago and most people believe it to be nothing more than a sewer. One of the chief reasons for this state of affairs is that there has been no effective monitoring, unlike in *Vehicular Pollution cases*.²⁶ The result is that orders passed by the Court are not implemented and deadlines set in the various orders are not met. The second reason is that the focus of the case seems to have got partially diverted. This is clear from at least three orders passed by the Supreme Court which go to show that apart from the question of cleaning up the river Yamuna and treating the matter as a purely environmental issue, the Supreme Court has drawn within its ambit the question of unauthorized construction in Delhi and the revision of the Unified Building Bye-laws for Delhi. It is because of such a lack of focus that undivided attention has not been paid to the grave environmental issue pending in the Court

*Subhash Kumar vs. State of Bihar*²⁷ is a landmark judgment in the history of evolution of the right to environment. In the instant case justice K.N Singh observed:

“Right to live is a fundamental right under Article 21 of the

25 . *Hindustan Times, The Tribune, The Times of india and The Hindu* all dated 13th April 2005

26 (*Vehicular Pollution Case*)

27 *Subhash Kumar -Vs- State of Bihar*, AIR 1991 SC 420.

constitution and it includes pollution free water.”

In *AP Pollution Control Board vs. M.V Naydu*,²⁸ the Supreme Court Observed:

“The right to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water”

In *Surendra D Sinha vs. Union of India*²⁹ The Apex Court emphasized that there can be no denying of the fact that right to life guaranteed under Article 21 of the Constitution surely include a right to clean water In *Narmada bachao Andolan vs Union of India*³⁰ justice B.N.Kripal observed:

“Water is the basic need of the human being and part of right to life and human right as enshrined in Article 21 of the Constitution of India”

In *D.K Joshi vs. State of U.P*³¹ and *Dr. Ajay Singh Rawat vs. Union of India*³² it was alleged that the water supplied for drinking was extremely polluted and unhealthy for human consumption. The writ petition was filed under Article 32 of the constitution which only for enforcement of Fundamental Right. It is implied that right to water which is a component of environment is considered as Fundamental Right. Various High Courts also passed judgments on clean water.³³

X. Right to Freedom of Trade and Occupation and environmental protection: - Freedom of trade and occupation may come into conflict with the right to protection of environment. In *Basudeva Yadab vs. state*

28 *Andrapradesh State Board for Prevention and Control of Water Pollution- Vs- Andrapradesh Rayon Ltd.*, AIR 1989, SC. 611.

29 *Surendra D Sinha vs. Union of India* (2003) 3 SCALE 533.

30 *Narmada Bachao Andolan vs. UO I*, 2000 10 SCC 664

31 *D. K. Joshi vs. State of UP* (1997) SCALE 181.

32 *Ajoy Singh Rawat -Vs- Union of India*, (1995) 3 SCC 266.

33 *Hamid Khan vs. State of U.P* AIR 1997 M.P. 191, *F.K. Hussain vs. Union of India* AIR 1990 KER 321, *S.K Garg vs. State of U.P*, AIR 1999 All 87, *Attakoya thangal vs. Union of India*, 1990 KLT 580.)

of Bihar³⁴ question arose that saw mill industry may cause illegal and indiscriminate felling of trees which is a threat to the environment. The Patna High Court held that the fundamental right to trade and business must be read with Articles 14, 21, 48(A) and 19(A)(g) of the constitution to maintain a balance.

The Patna High Court dealt with a tyre retreading company, discharging carbon dioxide and polluting the environment in *Rajesh Singh Buddhpriya vs Patna Regional Development Authority*³⁵ The Court stressed the fundamental duty under Article 51 (A) of the constitution to say that the industry was wound up the better it would be.³⁶ To highlight the duty of the State, the Supreme Court in³⁷ emphasized that Article 39 (e), 47 and 48(A) of the constitution cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment.

Regarding regulatory power of the state, the question arose in *M.P. Rambabu vs. Divisional Forest Officer*³⁸ that the state, in absence of a statute other than Coastal Regulation Zone, could not regulate aquacultures in the region. The Court held that under Article 162 of the constitution the state has jurisdiction to deal with all matters where it has legislative competence.

XI. Right to pollution free air: - Air is the most important component of biosphere without which no living organism can survive. Pollutants in biosphere cause serious problem for living organism. Air pollution is an international problem. In 1957 invited the attention of world community

34 Basudev Yadav vs. State of Bihar AIR 2002 Pat 64.

35 AIR 2002 Pat 135

36 P Leelakrishna, "annual Survey of Indian Law" 2002 p310.

37 M.C. Mehta vs. Union of India AIR 2002 SC 1696

38 AIR 2002 AP 256

and a Clean Air Conference was held in London. Subsequently a major step was taken under the Stockholm Declaration 1972, under the directives of which India Enacted the Air (Prevention and Control of Pollution) Act 1981. Under section 2 (b) of the Air Act, the term air pollution means the presence in the atmosphere of any air pollutant. In the light of section 2 (a) of the Act air pollutant refers to any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tends to be injurious to human beings or other living creature or plant or property or environment. The effect of air pollution on human being is the diseases like bronchitis, asthma, and heart attach lung cancer, and various types of occupational diseases, mental abnormalities. Acid rain is the most noteworthy effect of air pollution on the atmosphere. When sulphur dioxide combined with nitrogen and water vapor, it results into acid rain resulting into destruction of vegetation and damage strong structures and buildings. Historical monuments world over are the likely victims of acid rains.

*Vehicular pollution case*³⁹ is really a great success that Government of India revealed that the vehicular pollution contributes 70% of the air pollution as compared to 20% in 1970. Information obtained by the Supreme Court during the pendency of the case shown that air pollution related diseases in India include acute respiratory disease causing 12% of deaths, chronic obstructive pulmonary disease, lung cancer, asthma, tuberculosis, prenatal deaths, and cardiovascular disease and blindness. There has been a considerable increase in respiratory diseases especially amongst children. There are nine other cities in India where the air quality is critical. These include Agra, Lucknow, Kanpur, Faridabad, Patna and Jodhpur. Taking all these factors into consideration, the Supreme Court relied on the Precautionary Principle and issued directions from time to time for controlling pollution to some

39 *M. C. Mehta vs. UOI* 1991 (2) SCC 137. (Vehicular Pollution Case

extent. Some of these directions include:

1. Lowering of sulphur content in diesel, first to 0.50% and then to 0.05%.
2. Ensuring supply of only lead-free petrol.
3. Requiring the fitting of catalytic converters in vehicles.
4. Directing the supply of pre-mix 2T oil for lubrication of engines of two-wheelers and three-wheelers.
5. Directing the phasing out of grossly polluting old vehicles.
6. Directing the lowering of benzene content in petrol.
7. Ensuring that new vehicles, petrol and diesel, meet Euro II standards.

As a result of various orders of this kind passed by the Supreme Court, an authority called the Environment Pollution (Prevention & Control) Authority has now been set up to monitor pollution levels in Delhi and other cities and takes remedial steps. Strict enforcement of orders passed by the Supreme Court has ensured that Compressed Natural Gas (CNG) is introduced in all forms of public transport in Delhi including buses, taxis and auto-rickshaws. All these vehicles have been converted to a single fuel mode on CNG, the time frame having expired on 31

March 2001. Authorities dealing with the production of CNG have also been directed to ensure that its supply is available and steady. The result of all this has been that the quality of air in Delhi has considerably and visibly improved over the years, as any frequent visitor to Delhi would certify. In so far as air pollution control is concerned, the *Vehicular Pollution cases*⁴⁰ have shown how to effectively monitor a clean up of the environment and thereby achieve success in the venture.

40 *M. C. Mehta vs. UOI* 1991 (2) SCC 137. (Vehicular Pollution Case

The effect of air pollution in the biosphere is green house effect, acid rain, and reduced rainfall etc. Excess concentration of carbon dioxide increases the heat of atmosphere. Carbon dioxide is opaque for the thermal radiation and therefore, absorbs the heat of the earth. Hence the temperature of the earth is increasing. Carbon dioxide is transparent for solar radiation i.e. it helps ultraviolet and infrared radiations to reach the earth. Every source of energy contains sulphur and nitrogen, when burnt in presence of atmospheric oxygen, gets converted into their respective oxides. Sulphur dioxide and nitrogen dioxide are highly soluble in water. During rain these oxides react with water vapor and produce acids, sulphuric acid, nitric acid, and nitrous acid and then return to the earth surface with rain water which is very dangerous to living organisms as they can destroy life.

XII. Right against noise pollution: - Noise is the result of modern scientific development. Noise is unwanted or undesired sound, a mechanical energy from a vibrating surface transmitted by a cyclic series of compressions and rare fraction of molecules of the material through which it passes. Noise is excessive, offensive, persistent or startling sound.⁴¹ Legally, noise pollution is the wrongful contamination of the atmosphere due to unreasonable use of sound that if materially and adversely injures the right of an individual to be let alone or interferes in his freedom to lead his life in a manner of his choice. But law does not favour absolute right, therefore, even the right to be let alone is subject to the right of others to exercise their right like the right of freedom of speech and expression.⁴²

Article 9 of the Chicago convention 1944 forms the international legal basis for the regulation of aircraft noise. In England several legislations especially, the Noise Abatement Act, 1960, have been introduced to

41 Encyclopedia Britannica, Vol-6 p- 558, (1968)

42 Dr. Veena Madhav Tonapi, "Noise Pollution: Are the Laws Audible" AIR (Journal) 2005 p-152.

control noise. In the United States, the Noise Pollution and Abatement Act 1970 controls noise.

In India noise is being doubled in every ten years. The noisiest cities are Delhi, Calcutta and Madras where noise level is 95 decibel where as the permissible limit of noise is 80 decibel. People working in the factories and construction sites and pilots are the most effected persons by noise. The hearing capacity is affected by noise resulting into deafness. Social behavior is also affected by noise. A significant association between noise and pregnancy complications and psychosomatic disorders has also been reported.⁴³

The earliest law dealing with noise pollution is Madhya Pradesh Control of Music and Noise Act 1951 which prohibited loud music, use of loud speaker, or sound amplifier, by any person and makes such use punishable with imprisonment for one month or fine not exceeding Rs 100. Other state made laws on noise pollution are Bihar Control of the Use and Play of Loudspeaker Act of 1955, Orissa Fireworks and Loudspeaker Regulation 1958, Uttar Pradesh Nagar Mahapalika (Prohibition of Noise and Regulation of Loudspeaker Rules 1987, Noise Pollution (Regulation and Control Rules) 2000 under the environment (Protection) Act 1986. it is to be noted that the Bengal Motor Vehicle Rules 1940 though it is not specifically on noise but under section 114 of the Rules, it was provided that every motor vehicle shall be fitted with a horn or other device to give sufficient warning of the approach of the vehicle. It should not be fitted with a multitoned horn giving a succession of different notes or with other device giving unduly harsh shrill loud or alarming noise. Moreover, under section 100 of the Motor

43 Cohen S and Weinstein N, "Non-auditory effect of noise on Behaviour and Health", Journal of Social Issues, 371

1981 p-36.

Vehicles Act 1988, the Central Government is empowered to frame rules for the up keeping of motor vehicles noise standard.

Noise pollution has an immense nuisance value. Therefore, the common concept of nuisance is extended to noise pollution. Provisions pertaining to nuisance can be traced in the Civil Procedure Code 1908, Indian Penal Code 1860, and Criminal Procedure Code 1973. In *Ivor Hyden vs. State of Andhra Pradesh* ⁴⁴ the court observed that the playing of a radio at reasonably moderate velocity is tolerable but not at a high velocity which would be objected to by a man very busy with mental work and would amount to nuisance. It is also to be noted that the Court in *Krishna Panicker vs. Appukuttan Nair*⁴⁵ held that the special law on environment did not repeal the law on public nuisance.

XIII. Right to protection and conservation of forest:- Right to live in the forest under the individual or common occupation for habitation or for self-cultivation for livelihood. Indigenous people or aboriginal people in India have a relationship with their natural environment. The tribal people of India are analogous to those of Africa and Americas, particularly in the sense of their connection with their land, their religion is based on their relationship with their natural environment, and their economy involves a close dependence on the forest and a high degree of self sufficiency. ⁴⁶

XIV. Right of animals against hunting: - In our culture, tradition and religion animals occupy a very important place. Every god and goddess is somehow associated with animals. Conservation of plants and animals was a tradition in India. The Elephant Conservation Act 1879 and Wild Birds Protection Act 1887 were two earliest enactments in India to protect Animals. Under the Indian Constitution, wild life was a state subject, but it was shifted to concurrent list by the 42nd Amendment Act

44 *Ivor Hyden vs. State of AP* 1984 Cr.LJ 16 (NOC)

45 *Krishna Paniker vs. Appukuttan Nair* 1993 (1) KLJ 725.

46 *Sardar Sarovar: report of the independent review : Narmada Bachao Andolan ,Bombay p-63.*

1976 with the object of protecting wild animals, birds and their habitats to ensure ecological and environmental security to the country. The Wild Life Protection Act 1972 was passed which was amended in 1991 and 2002 to make it more effective and beneficial.

Under the Act animals specified in schedule-I cannot be hunted by any person. Animals specified in Schedule II, III, and IV can be hunted by a license. But hunting is prohibited by using vehicles, aircraft, chemicals, explosives, poison, poisoned weapons, nets, pitfalls without trapping license. No person shall hunt any animal by setting fire, or during nighttime, during closed time, or with the help of dog.

These provisions clearly establish two things- (1) inhuman killing of animals is prohibited which is violative of their right and (2) capture of wild animals and keeping away them from their natural environment as pets is also prohibited.

XV. Right to environmental health information:- While the Constitution guarantees the fundamental freedom of speech and expression,⁴⁷ no such guarantee exist for right to information. Right to access relevant and authentic information is very crucial over environmental issues. It enables one to know and understand about the kind of impact of any activity would have on his environment besides forewarning about mishap, helping in taking pre-cautionary measures, and felicitating participation in the process of environmental planning and decision making. In the absence of a clear articulation of such a right it was left to the Court to clearly carve out this right as an integral aspect of the freedom of speech and expression. A catena of case law exist that demonstrate judicial recognition of the right of the citizens to know as flowing from the fundamental freedom of speech and expression and the fundamental right to life and personal liberty. Following on the recognition of general right to information, the courts soon began getting

⁴⁷ Article 19 (a)

in to the specifics of the right. In a case that involved rejection of the legality of certain of the actions of the Pune Cantonment Board,⁴⁸ the Bombay High Court held that the right to know was implicit in the right to free speech and expression. As such, disclosure of information as to the functioning of the Government should be the norm and secrecy an exception justified only where the strictest requirement of public interest so demand, if opined.⁴⁹

No explicit definition of "environment and health information" or "information related to environment and health matters" exists. In some countries, mainly in the West, where a definition of "environmental information" has been developed, it does not always cover or only partly covers environment and health aspects. For example, the EU Directive 90/313/EEC does not explicitly cover health aspects, nor do the regulations that implement it in some countries. There are differing views on whether the EU directives definition of "information relating to environment" includes some of the environment and health aspects. In Germany, for example, the definition provided by the Federal Environmental Information Act (UIG, 1994), based on the EU directive, is considered to cover general information on environment. It covers environment and health matters in respect to water, soil, air, fauna, flora and their habitats; activities producing environmental impact including noise; and activities and programmes aimed at environmental protection.¹⁸ At the same time, in the UK, Italy and Ireland, it has been considered unclear whether the EU directive adequately covers health aspects. The UK government felt the need to specify that the EU directive also addresses information related to human health: "The Regulations do not make explicit reference to information related to human health. Nevertheless, the environment clearly impacts on human health -

48 (Bombay Environment Action Group Vs. Pune Cantonment Board SLP No. 11291 /1986)

49 M. K. Ramesh, "Environmental Justice: Courts and Beyond" *IJEL* 3 2002, p-29

directly or through the food chain - and to this extent information affecting the state of human health should be covered. This would be achieved indirectly insofar as humans respond to physical, chemical and biological agents delivered via the environmental media of water, air, land, etc.⁵⁰ The definition of "information related to the environment" has not been extensively tested in courts, especially regarding how thoroughly it covers environment and health information.

The Italian Decree on Environmental Information (n. 39/97) includes a list of activities on which information can be requested under the category of "environmental information." These activities include the following: waste management in water or soil; air emission; consumption of water; traffic; production or consumption of energy; toxicological, epidemiological data; radioactive emissions; contaminated sites; building and road structures; and noise and vibrations.⁵¹

In Ireland, the Directive is implemented through the European Communities Act (1972) and Access to Information to the Environment Regulations (1998), which makes "information on the environment held by public authorities" available to any person. The legal position on the implementation of the EC directive through these regulations does not clearly define "environmental information." As the 1998 regulations do not provide statutory grounds for defining the subject matter, it may be necessary to interpret the 1998 regulations in the light of Directive 90/313. However, it is intended in principle that these regulations can be used to gain access to information on the environment whether or not

50 Access to Information, Public Participation in Decision-making..., " Country Report on Italy, p.202.

51 Access to Information, Public Participation in Decision-making..., " Country Report on Italy, p.202.

environmental pollution has implications for human health.⁵² Despite all the uncertainties, the reporters preparing country surveys for this overview are not aware of any particular difficulties in obtaining information related to environment and health matters on the ground that such information is not covered by the definition.

In most of the NIS and CEE countries examined in this report there is no definition of "environmental information," and most legislation does not contain references to environment and health related matters. However, the new access to environmental information laws in the Czech Republic and Slovakia, adopted in the summer of 1998, already include a definition of "environmental information" which has some environment and health aspects. In the other CEE and NIS countries, the definition of "environmental health" can be deduced either from the definition of environment and/or from different laws.

In many of the reported countries environmental protection laws or health laws define some of the components or factors having an impact on health and environment. For example, the Estonian Law on EIA defines environmental impact as the direct influence of a planned activity on the state of human health and the environment.⁵³ Similar links are established in the draft Environmental Protection Act of Poland and the Environmental Protection Laws of Montenegro, Hungary, Slovenia, Romania, Latvia, etc.

The NIS environmental laws usually tend to cover information on the elements and state of the environment, measures to protect them, and, unlike Western countries, include aspects of human health. On the other

52 Access to Information, Public Participation in Decision-making..., Country Report on Estonia by Maret Merisaar, p. 160

53 Access to Information, Public Participation in Decision-making..., Country Report on Estonia by Maret Merisaar, p. 160

hand, they do not cover important aspects such as information on policies, programmes, plans, legislation, or economic analyses used for environmental decision-making. They also fail to cover elements such as landscape, energy, noise, biological diversity, and GMOs.⁵⁴ Some of the CEE countries have a more flexible approach, and, in addition to the above, they cover information on policies, programmes, plans, legislation, economic analyses used for environmental decision-making, (especially Poland, Hungary and the Czech Republic). However, they also fail to cover some of the other elements. Recently, they were developing definitions similar to the EU directive.

Only a few NIS and CEE countries use the term "environmental health" in their health legislation, but they often establish a link between health and environment. The Act on the National Public Health and Medical Officer Service (XI, 1991) of Hungary is the only law which uses the term "environmental health" when defining one of the tasks of the service as "to examine the environment and health issues." Furthermore, this act also gives a detailed description of what areas this should cover.

Hungary's Act CLIV of 1997 on Health, subtitled "Environmental and Community Health," contains several articles dealing with different components of environment and health activities, health impairment caused by environmental factors, prevention of health impairment, investigation measures, etc. In Article. 45 it states: "The purpose of [activities pertaining to] environmental and community health is to examine effects injurious to health in the environment and reveal the opportunities of prevention." In the chapter "Prevention based on individual risk factors" it states: "In order to prevent health impairment

54 Doors to Democracy+, Vol. 4 A Pan-European Assessment; Chapter 1, Access to Environmental Information, by

Jeremy Wates, p. 18.

stemming from environmental risk created by any activity in communities, the goal of public health activities is to search for the causing factors, stop them, regularly control them and eliminate the consequences.⁵⁵

The Law on Public Health of Estonia (1995) defines the living environment as the total of factors of natural, artificial and social environment, which influence or may influence people's health.

Among the Newly Independent States (NIS) countries, several health laws contain references to the information on the state of environment and the population health, on the epidemiological situation, on acting sanitary rules and regulations, on measures taken to provide sanitary-epidemiological safety and the results of these measures, on the quality of produced goods including meals, and quality of drinking water. For example, the Russian Federation Law on Sanitary-Epidemiological Safety of the Population (Art. 5, part 3), states, "citizens have the right to request information from business and governmental bodies."²⁵ Similarly, the Ukrainian Law on the Fundamentals of Legislation of Ukraine on Health Care contains several references to health and environment: the protection of people from negative ecological influences, the security for sanitary well-being, the creation of favorable conditions for healthy working, living and rest conditions, etc. (1992, Art. 25-32). Also, the Law on Health Care and the Law on Sanitary-

⁵⁵ *Access to Information, Public Participation in Decision-making...*, "Country Report on Hungary by Olga Kekesi, p. 182.

Epidemiological Well-Being of the Population of Belarus contain elements related to environment and health.⁵⁶

The definition of "environmental health" or "environment and health matters" is essential for the definition of "environment and health information." The "health and environment" notion encompasses the health consequences of interactions between human populations and a whole range of factors in their physical - man and non-man made - and social environment.⁵⁷The scope of this definition may be understood differently from country to country and within countries themselves, as differing perspectives emerge from public authorities, the private sector and the public. This might often lead to confusion and numerous difficulties when individuals and NGOs need to have access to certain types or categories of information related to environment and health matters. The difficulty in defining "health and environment" might also cause problems in court cases. Similarly, there might occur problems of interpretation for public authorities, which have certain obligations or public responsibilities in the field of providing access to or disseminating information on environment and health matters to the public. Therefore, there is a need for a better and clearer focus in the meaning of "environment and health information" in the countries as part of their legal systems.⁵⁸

In this respect, the Aarhus Convention, which is the most comprehensive international legal instrument on access to information and public participation in decision-making and access to justice in environmental matters, might give useful guidance. The convention

56 *Access to Information, Public Participation in Decision-making...* "Country Report on Belarus, p. 114.

57 *WHO Program for the Promotion of Environmental Health (PEH)*

58 *See Box 1: "Focus Areas of Environmental Health" on page 14.*

contains a link between "environment and health" (in Art. 1, Objective) and it even covers several aspects of environment and health matters in its information pillar. The convention includes in the definition of "environmental information" a qualified but explicit reference to human health and safety, and conditions of human life. The definition of "environmental information" includes "any information, in written, visual, aural, electronic or any other material form, on:

a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and interaction among these elements;

b) Factors, such as substances, energy, noise and radiation and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programs, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.⁵⁹

However, since the Aarhus Convention was not developed with a health focus, it is unclear what kind of "information related to environment and health" is exactly covered by this definition, and it would be useful to clarify the scope of such information. It would be also desirable to make clear that this scope includes at least the same

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understanding regarding information on environment and health as used in the definition of "environmental health" by the WHO Regional Office for Europe. This definition of "environmental health" which has been used by the WHO Regional Office for Europe underpinning the European Charter on Environment and Health adopted in Frankfurt in December 1989, includes the following factors: "both the direct and pathological effects of chemicals, radiation, and some biological agents, and the effects (often indirect) on health and well-being of the broad physical, psychological, social and aesthetic environment, which includes housing, urban development, land use and transport."⁶⁰

There are countries, which use a broad approach to all information and make a distinction in definition of "data of public interest" or "personal data." In Hungary, for example, "data of public interest" means any information under processing of authorities performing functions of state or local self-government, except for personal data and information, which is subject to exceptions specified under the Act of Protection of Personal Data and Disclosure of Data of Public Interest (Act. No. LXIII of 1992, Art. 2, paragraph 3). "Personal Data" means any data relating to a specified natural person (hereafter called data subject) and any conclusion drawn from such data with respect to him or her. As long as the subject of the data can be identified by the data, the information in question falls under this category (Art. 2 paragraph 1). Here, everything is considered "data" or "information of public interest" if it is not protected as "personal data" or by other exemptions. "Environmental information" or "environment and health information" is considered to be information of public interest and therefore it belongs to the public

⁶⁰ *Convention on Access to Environmental Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Aarhus, June 25, 1998. Article 2, par. 3, on definitions*

domain. Such information should be publicly accessible unless covered by well-defined exemptions, but "personal data" should be always protected under Hungarian law. In most countries, the definition of "personal data" includes part of the health information regarding the individual's health.⁶¹

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body 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 what it must in any event do; namely, 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 have come 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: '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

⁶¹ *Convention on Access to Environmental Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention); Aarhus, June 25, 1998. Article 2, par. 3, on definitions, Annex E.)*

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.

*Indian handicraft Emporium vs. Union of India*⁶² the Apex Court held that a trade dangerous to ecology to be either regulated or totally prohibited. The fundamental Right to trade are to be balanced with the demand of social interest. This balance is reflected in Article 48A and 51 A (g) of the constitution. According to the Court prohibition of import of African ivory had a laudable object. Under the pretext of dealing in ivory, killing Indian elephant is to be stopped. The Court observed:

Animals play a vital role in maintaining ecological balance. The amendment (1991 Wild Life Protection Act 1972) have been brought for the purpose of saving the species from extinction as also for arresting depletion in their numbers caused by callous exploitation thereof."

XVI. Right to environment of prisoners

Prisoners are sent to prison as punishment. The loss of an individual's right to liberty is enforced by putting in a closed environment. Keeping the individual in the custody of the state should not have a deleterious effect on him. Prisoners have unalienable rights conferred upon them by international treaties and covenants; they have a right to health care, and most certainly have a right not to contract diseases in prison.

62 AIR 2003 SC 3255

Prisoners should not lose all their rights because of imprisonment. Yet, there is a loss of rights within custodial institutions, which continue to occur. Public health policies are meant to ensure the best possible living conditions for all members of society, so that everyone can be healthy. In India, over crowding in prison has aggravated the problem of hygiene. In many jails, conditions are appalling. Prisoners in India are not even tested for specific infectious diseases, although all prisoners undergo a medical examination when they begin serving their sentence.

The Supreme Court of India in its landmark judgment in *Parmanand Katara vs Union of India* (1989) and others ruled that the state has an obligation to preserve life whether he is an innocent person or a criminal liable to punishment under the law. With specific reference to health, the right to conditions, adequate for the health and well being of all was already recognized in the Universal Declaration of Human Rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) furthermore states that prisoners have a right to the highest attainable standard of physical and mental health.

The minimum standard rules for prisoners regulate the provision of health care for them. Apart from the civil and political rights, the so-called second-generation economic and social human rights, as set down in the ICESCR, also apply to prisoners. The right to the highest attainable standard of health should also apply to prison health conditions and health care. This right to health care and a healthy environment is clearly linked, particularly in the case of HIV, to other first generation rights, such as non-discrimination, privacy and confidentiality. Prisoners cannot fend for themselves in their situation of detention, and it is the responsibility of the state to provide for health services and a healthy environment.

Human rights instruments call for prisoners to receive health care at least equivalent to that available for the outside population. On one hand, equivalence rather than equity has been called for because a prison is a closed institution with a custodial role that does not always allow for the same provision of care available outside. Prisoners are more likely to already be in a bad state of health when they enter prison, and the unfavorable conditions therein worsen the health situation. Hence the need for health care and treatments will often be greater in a prison than in an outside community. However, providing even basic health care to prisoners has proved extremely difficult in India, as the health system is chronically insufficient. In prisons, the human environment is often one of violence and high-risk lifestyles, either engaged in voluntarily by those prisoners with positions of power, or forced upon the weaker prisoners. Prisoners have a right to live in conditions where their individual safety is guaranteed. It is paramount for the prison administration to have a thorough knowledge of how HIV is likely to be transmitted in a given prison. If sexual coercion and/or violence are the main issue, better surveillance and timely intervention to protect targeted prisoners must be enforced. HIV-positive inmates should not be denied access to recreation, education or access to the outside world.

Both prison reform and penal reform are crucial elements if the many problems affecting the Indian prisons are to be resolved. Diminishing the overall prison population will allow improvements of the physical and working conditions of the prisons, and help to ensure the security of all individuals in custody. Obviously, financial resources will have to be allotted to the prison systems as well. One effective way to curb the rise in prison populations would be to offer alternatives to imprisonment for non-violent and civil offenders.⁶³

63 Madhu Tyagi, "Health Care for Prisoners"

XVII. Right to health of mentally ill persons.

The 1971 Declaration on the Rights of Mentally Retarded Persons adopted by the General Assembly on 20th December 1971, keeping in view the necessity of providing help to mentally retarded persons in order to enable them to develop their abilities and promoting their integration in the normal life. The Declaration provides a framework within which national and international actions should be initiated for the advancement of rights set forth in the Declaration

The Declaration lays down following principles:

1. The mentally retarded persons have to the maximum degrees of feasibility the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.
4. The mentally retarded person, whenever possible should live with his own family, or with foster parents and participate in different forms of community life. The family with which he lives should be provided with assistance.
5. The mentally retarded person has a right to qualified guardian when this is required to protect his personal well being and interests.
6. Disabled persons are entitled to have their special need taken into consideration at all stage of economic and social planning.

7. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities.
8. Disabled persons shall be protected against all exploitation, and treatment of a discriminatory, abusive or degrading nature.
9. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their person and property. If judicial proceeding is instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

Human Rights and Mental Health Act, 1987 under Chapter VIII contains a very noble and explicit provision of protection of human rights of mentally ill persons. Section 81 provides that-

1. No mentally ill persons shall be subjected during treatment to any indignity whether physical or mental or cruelty.
2. No mentally ill person under treatment shall be used for the purpose or research unless (i) such research is of direct benefit to him for the purpose of diagnosis or treatment, or (ii) such person being a voluntary patient has given his consent in writing or where such person is incompetent by reason of minority or otherwise to give valid consent, on his behalf, has given his consent in writing, for such research.
3. Subject to any rules made in this behalf under Section 94 for the purpose of preventing vexatious or defamatory. Communication or Communications pre-judicial to the treatment of mentally ill persons, no letter or other communications sent by or to a mentally ill persons under treatment shall be intercepted, detained or destroyed. The doctrine of informed consent is partially recognized under the Mental Health Act 1987, when a patient voluntarily admits himself in the hospital or accepts treatment without any admission.

When a mentally ill patient detained as an inpatient and does not have property to bear the cost of treatment, in such cases his expenses shall be borne by the Government of the State. (Sec. 78) If a mentally ill patient owns a property and he is not in a position to manage his property, the Court may entrust the management of such property to the Court of wards, Section 54(1). Under Section 97 of the Act when a mentally ill person is not represented by a legal practitioner in any proceedings under Mental Health Act 1987 before a District Court or a Magistrate and such a patient does not have sufficient means to engage a legal practitioner then the District Court or Magistrate shall assign a legal practitioner to represent him at the expense of the State.

The above provisions clearly indicate that the Act does not spell out much on Human Rights, nor does it cover neglect or cruelty to mental patients sustained in families or alternate systems of care like magicians, healers and quacks. The Mental Health Act 1987 also does not spell out any enforceable right of the mentally ill to a minimum standard of care and treatment. The Good faith clause (Section 92) dispenses with accountability of the government or its servants for any negligence in the care and treatment of inmates of asylums. The provision for legal aid to the mentally ill (Section 91) restricts the facility to proceedings before a District Court or a Magistrate. The Act is silent on the right to legal aid and counseling at all stages including the facility of approaching the High Court or the Supreme Court.

The Mental Health Act also by its definition of mentally ill persons excludes from its regime the mentally retarded. It also does not differentiate between the various degrees of mental illness that requires specialized care and treatment. However, it permits the commitment to hospitals of the criminal mentally ill. It makes no special provision for their care, treatment and discharge. Beside the above, there is no

provision for compensating those wrongfully incarcerated or negligently treated or victimized in any manner by misuse of powers under the Act. Another important shortcoming in this context is that there is no right to rehabilitation of those mentally ill discharged after being found fit.

It is submitted that it is a matter of regret that judiciary in India was given opportunities in number of public interests litigations filed and which were relating to inmates of mentally ill patients, but unfortunately, it did not dare to enumerate the human rights of mentally ill patients. The Supreme Court had occasion to consider the matter concerning the management of mental hospitals in a number of cases⁶⁴

The subject of health falls under the concurrent list in the Indian Constitution empowering both the centre and states to introduce measures including the authority to legislate. The Mental Health Act 1987 is civil rights legislation with a focus on regulating standards in mental health institutions. There are serious questions over the effectiveness of this Act in ensuring protection to person's property and management of persons covered.

A perusal of the above referred cases clearly reveal that until recently many mentally ill persons were consigned to jails and those living in mental health institutions were no better off, as the conditions both in prisons and in mental institutions were far below the stipulated standards. *Sheela Barse v. Union of India*⁶⁵ concerned the detention of non-criminal mentally ill persons in the jails of West Bengal. The appalling conditions in which they were held, was noted by the Supreme

64 *Supreme Court Legal Aid Committee v. State of MP*, where the Supreme Court intervened to improve the working of the Gwalior Mental Asylum in *B.R. Kapoor v. Union of India* and *PUCL v. Union of India*,⁶⁴ both relating to functioning of the hospitals for mental diseases, Shahdara, Delhi. *R.C. Narayan v. State of Bihar* and the order dated 11.11.97 the case concerning the Ranchi Mental Asylum

65 AIR 1988 SC 2211

Court which observed that admission of non-criminal mentally ill persons to jails is illegal and unconstitutional.

Similarly in *Chandan Kumar v. State of West Bengal* the Supreme Court heard of the inhuman conditions in which mentally ill persons were held in mental hospital at mankaundi in the District of Hooghli. The Court denounced this practice and ordered the cessation of the practice of tying up the patients who were unruly or not physically controllable with iron chains and ordered medical treatment for these patients. However on August 6th 2001 the indifference of state and private authorities resulted in the tragic death of 26 patients in Erwadi as they were tied to their beds when fire engulfed the building. Following this tragedy the National Human Rights Commission of India(NHRC) advised all the Chief Ministers to submit a certificate stating no person with mental illness are kept chained in either government and private institutions.

The NHRC is mandated under section 12 of the protection of Human Rights Act 1993 to visit government run mental hospital to study the living conditions of inmates and make recommendation thereon. In 1997 project quality assurance in Mental Health Institutions was initiated to analyze the conditions generally prevailing in 37 government run mental hospitals and departments. The findings of this study confirm that mental hospitals in India are still being managed and administered on a custodial mode of care. Characters sized by prison like structure with high walls, watch towers, fenced wards and locked cells. Mental Hospitals are like detention centers where persons with mental illness are kept caged in order to protect society from the danger their existence poses.

XVIII. Right to environment of disabled persons

The General Assembly on 16th December 1978, decided to observe the Year 1981 as International Year for Disabled persons with the following objective:

1. Helping disabled persons in their physical and psychological adjustment to society.
2. Promoting all national and international efforts to provide disabled persons with proper assistance, training, care and guidance, to make available to them opportunities for suitable work and to ensure their full integration in society.
3. Encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life, for example, for improving their access to public buildings and transportation systems.
4. Educating and informing the public of the rights of disabled persons to participate in and contribute to various aspect of economic, social and political life.
5. Promoting effective measures for the prevention of disability for the rehabilitation of disabled persons

XIV. Right to health of workers

*In Consumer education and research center vs. Union of India*⁶⁶ the supreme Court observed that the right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling

66 AIR 1995 SC 922

economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependants should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39 (c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial there of denudes the workman the finer facets of life violating Art. 21. The right to human dignity, development of personality social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts.38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers 'best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights

to the workmen. 27. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43 48A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. 33. ... All the industries are directed: (1) To maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever is later; (2) The Membrane Filter test, to detect asbestos fibre should be adopted by all the factories or establishments at par with the Metalliferrous Mines Regulations, 1961; and Vienna Convention and Rules issued thereunder; (3) All the factories whether covered by the "Employees State Insurance Act or Workmen's Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (4) The Union and the State Governments are directed to review the standards of permissible exposure limit value of fibre/cc in tune with the international standards reducing the permissible content as prayed in the writ petition referred to at the beginning. The review shall be continued after every 10 years and also as and when the ILO gives directions in this behalf consistent with its recommendations or any Conventions; (5) The Union and all the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products.

The rights of traditional tribal communities have been at the centre of many a struggle with the State. But it's another story when within the State machinery itself there are disagreements on if and how communities ought to control forest resources. The Government of India, Ministry of Tribal Affairs (MoTA) mooted a draft Scheduled Tribes

(Recognition of Forest Rights) Bill 2005 that was cleared by the Law Ministry in April 2005. The bill has been stalled by opposition from the Ministry of Environment and Forests (MoEF) on the grounds that it will be detrimental to safeguarding the forests and wildlife that thrives in them.

The aim of the Bill is to undo the legacy of discounting the time-honoured use and preservation of forest resources by tribals that has pervaded since colonial times. By recognising the rights of the forest-dwelling tribals, the bill seeks to protect them from being branded as “encroachers” and safeguard them against forced evictions. The Bill acknowledges 12 specific heritable but not alienable non-transferable “forest rights” of tribals in forest villages for “bonafide livelihood needs”. The conditions for vesting such rights include a limit of up to 2.5 hectares of land per family which must have been in occupation prior to 25 October, 1980, the date on which the Forest (Conservation) Act came into force.

The list of these rights include:

1. Right to live in the forest under the individual or common occupation for habitation or for self-cultivation for livelihood
2. Right to access, use or dispose of minor forest produce
3. Rights of entitlement such as grazing and traditional seasonal resource access
4. Rights for conversion of leases or grants issued by any local authority or any state government on forest lands to titles

5. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving.

Parliamentarians supporting the bill are being accused by some as pursuing vote-bank politics to appease tribals. Questions are also being asked as to why only “scheduled” tribes are to be granted forest rights? The simple answer is that MoTA was established as an independent ministry in 1999 to deal specifically with scheduled tribes. The criteria for designating a tribe as “scheduled” include having ‘primitive’ traits, dwelling in geographical isolation, having a distinct culture, being shy of contact with the outside world and being economically ‘backward’. There are more than 600 officially listed scheduled tribes in the country, comprising less than 10% of the country’s total population and with little over 2% believed to be dwelling in forests.

The issue has turned into a battle for control between the MoTA and MoEF. There are also deep divisions between conservationists and tribal activists. The pro-tribals lobby argues that it is large developmental projects – such as large dams, power plants and mining activities – that need to be checked, rather than the forceful eviction of traditional forest-dependent communities to save the forests. Several groups contend that it is not tribals who are bringing in commercial activities into forests, but external commercial pressures that are degrading the forest resources and thereby eroding the traditional lifestyles of tribal communities. Meanwhile the more radical green groups warn against the land mafia misusing the provisions of the proposed law into conning unsuspecting tribals vested with land rights to part with their land in prime forest areas. They also fear that the proposed legal provision allowing for the “sale of forest-based products

for their household needs”, would translate into large-scale commercialisation of forest resources.

Apart from the practical problems in implementing the Bill and working out its relationship with other conservation laws, there are certain problems within the text that would need to be addressed. There are several measures built into the Bill for conservation, but there remains a lack of clarity on what prevails in the event of such “rights” causing loss of wildlife, forest or biodiversity. For instance, if the collection of a medicinal plant becomes threatened, would the law restrict it? There is a penalty for unsustainable use, but who and how determines what is “unsustainable”? And would such collections be permitted in national parks or sanctuaries?

The neglected issue of traditional knowledge warrants more attention. Amongst the “forest rights” that the Tribal Bill seeks to grant is the right to access to bio-diversity and community rights to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity. The approach to these rights appears to be in harmony with the Government of India’s official pro-IPR policy, and is supported rather than contested by the various Ministries involved. The pro-IPR approach is clear in the draft National Tribal Policy 2 which is currently being revised. It states that the preservation and promotion of traditional wisdom is recommended through documentation of such traditional knowledge and its “transfer” to non-tribal areas. In the context of health, the National Policy mandates:

1. Strengthening the allopathic system of medicine in tribal areas.
2. Validating identified tribal remedies (folk claims) used in different tribal areas

3. Encouraging, documenting and patenting tribals' traditional medicines

Biodiversity-based traditional knowledge cannot exist without the resources on which it is based. Such systems of knowledge would not grow from a document but by a symbiosis of people and plants. What needs to be protected is the collective intellectual heritage of communities. This is different from advocating for a community to be made a legal entity for grant of a patent or other IPR, which implies the commodification of their knowledge. Conservation by the people can be made possible only if communities are given a stake in conserving. But in the context of traditional knowledge, IPR is not a helpful incentive to conserve knowledge.

There is doubt about the Bill being cleared in its present form. The Prime Minister's Office has asked the MoTA to reword its original Bill to reflect conservation concerns, while asking the MoEF not to push its rival "alternative draft". Hopefully in the end the tribals in the forest who are largely oblivious to these ongoing discussions will be more righted than wronged.

The government in making such a law would be fulfilling its electoral promise only if it facilitates the control of people rather than effecting controls. Self-governance is a critical issue for indigenous peoples whose systems of self-rule pre-date the modern state. The state must recognise this, and rights must not be dependent on the mere efficacy of a law drawn up today, often without the very people it proposes to right.

Right to Environment of other species.

The gradual development of an independent right to environment in India is based on judicial interpretations of Article 21 of the constitution. The other Articles dealing with the environment imposed a constitutional mandate for protecting and improving the environment. It seems that the right to environment is not confined to human beings, environment is a combination of many things and the word 'person' in Article 21 may include every entity having legal personality. In an American case namely, *Sierra Club vs. Morton*⁶⁷ Justice Douglas had stated:

"Inanimate objects may also be considered as invisible parties in environmental litigation."

The Supreme Court of India in *Indian Council for Enviro-legal Action vs. Union of India*⁶⁸ expressed a similar view. Justice B.P. Jeevan Reddy considered the effect of pollution on village Bichri and Quoted:

"yet the consequence of their action – remain the sludge, the long-lasting damage to earth, to underground water, to human being, to cattle, and the village economy"

The judgement speaks about the sufferings of animate as well as inanimate objects caused by accumulation of poisonous and noxious pollutants remained behind years after stoppage of the industry.

Limitations:-

The right to environment is a relative concept. The proper bounds of the right depends on the place and time where and when it is being exercised. In a developing country like India, economic development is more important. Therefore, right to environment does not prohibit

⁶⁷ 405 US 727

⁶⁸ *Indian Council of Enviro-Legal Action Vs UOI*, 996 3 SCC 212.

reasonable and planned interference by developmental activities in the 'interest of the general public'. In *Municipal Corporation vs. Jan Mohd. Usmanbhai*⁶⁹ the Court held that the term 'in the interest of the general public' is of wide import comprehending public order, public health, morals, economic welfare, of the community, and the objects mentioned in part IV of the constitution.

The neglected issue of traditional knowledge warrants more attention. Amongst the "forest rights" that the Tribal Bill seeks to grant is the right to access to biodiversity and community rights to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity. The approach to these rights appears to be in harmony with the Government of India's official pro-IPR policy, and is supported rather than contested by the various Ministries involved. The pro-IPR approach is clear in the draft National Tribal Policy 2005 which is currently being revised. It states that the preservation and promotion of traditional wisdom is recommended through documentation of such traditional knowledge and its "transfer" to non-tribal areas. In the context of health, the National Policy mandates:

1. Strengthening the allopathic system of medicine in tribal areas.
2. Validating identified tribal remedies (folk claims) used in different tribal areas
3. Encouraging, documenting and patenting tribals' traditional medicines
4. Rights for conversion of leases or grants issued by any local authority or any state government on forest lands to titles

69 (1986) 3 SCC 1988

5. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving.

Right to environment should recognize and respect the customary rights of the people. The tool of Public Interest Litigation may be used to raise the status of a customary right into a fundamental right. In *Nabipur Gram Panchayat vs. State of Gujrat*⁷⁰ the diversion of a common grassing land.

There is a growing perception among some intellectuals that forest laws infringe on the right of the rural people, especially the tribal communities as these laws come in the way of catering to their basic needs. It is perceived by some people that such laws and policies neither would be environmentally successful nor socially just. It is argued that forest conservation is possible only if people's rights are recognized and established within a larger programme of tribal development. Another angle to this is that all laws without any exception infringe on the freedom of people in one way or the other and such legislations are enacted keeping the common good of the people and the country. The declaration of Protected Areas and the imposition of regulations under Wild Life Protection Act was almost always done without consulting with these communities and resulted in their rights being terminated or abridged, or access to basic resources being cut off without adequate provision of alternative. Several protected areas are carved out of previously Reserve Forests. During the declaration, many of these Reserved Forests, especially during colonial times, the rights and needs of forest people were dismissed by official diktat, even though actual

⁷⁰ AIR 1995 GUJ 52

dependence on the forest continued. In many cases, villagers were brought from into forest and settled by Forest Department to provide labour in forestry operations. These developed in to full fledged villages who were largely dependent on forest resources and who were never moves back out after operation stopped. In both these cases the resource use were considered illegal or improper.

The most common impact of creating the parks and sanctuaries has been the curtailment or extinguishing of local community land and forest rights or access to natural resources inside protected areas. This has had a direct impact on their survival and livelihood base for even basic inputs like cooking energy, and fodder for livestock has become hard to obtain.⁷¹ Therefore, forest conservation and wild life protection and above all the exercise of the right to environment should also take into consideration the need of the common tribal people. An unbalanced exercise of right to environment may result in to deprivation of other fundamental right like right to livelihood.⁷¹

The observation of the Chief Justice of India, B.N. Kripal is more useful in this regard. In *Namada Bachao Andolan*,⁷² Justice Kripal observed that the displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation site they will have more and better amenities than which they enjoyed in the hamlet. The existence of forest communities depends on a close and ecologically sustainable relationship with the forest they inhabit.

71 see, Dr. Ashish Kothari, "Understanding Bio-diversity, Life, Sustainability and equity" (1997) Orient Longman Ltd. New Delhi.

72 AIR 2000 SC 37510

*Animal and Environmental Legal Defence Fund vs. Union of India*⁷³ is also a typical case in which the Supreme Court emphasized a balanced approach between right to environment and livelihood of forest dwellers. The Court observed:

“while every attempt must be made to preserve the fragile ecology of the Forest areas and protect the tiger Reserve, the right of the tribals formally living in the area to keep body and soul together must receive proper attention. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood.”

This does not indicate that the forest dwellers have unrestrained right to access to all forests. If they are given right over standing trees, the right will definitely be subject to conditions imposed by regulations irrespective of whether they are framed by an old princely state or a new state.⁷⁴ In *Banawasi Sewa Ashram vs. State of Uttar Pradesh*⁷⁵ and *Karanjan Jalasay YASAS Samiti vs. State of Gujrat*⁷⁶ the Supreme Court considered the protection of the right of tribal forest dwellers who were being ousted from their forest land for the sake of a project. Similarly the court recognized the right to livelihood of the pavement dwellers in *Ogla Tellis vs. Bombay Municipality*.⁷⁷

The right to environment should be exercised subject to the right to other generation and the international community as a whole. The main objective behind the principle of sustainable development and

73 *Animal and Environmental Legal Defence Fund vs. Union of India* AIR 1997 SC 1071.

74 *Salehbhai Mulla Muhammadali vs. State of Gujrat* AIR 1993 SC 335

75 AIR 1987 SC 374

76 AIR 1987 SC 532

77 *Ogla Tellis -Vs- Bombay Municipality*. AIR 1986 SC 180

inter-generational equality is to stress this aspect of right to environment.

Remedy for violation of right to environment:-

I. Constitutional Remedies

1. Writ jurisdiction: - The regulatory mechanism provided in the constitution for prevention of environmental degradation is Article 32 and 226, which empower the Supreme Court and High Courts wide latitude to issue orders and directions and writs. A writ of mandamus may be issued to command any action by any authority vested with power and wrongfully refuses to exercise it. Against any duty created by the constitution or a statute or some rule of common law which is mandatory, a writ of mandamus may be issued.⁸¹ For instance against Pollution Control Boards for not taking action against any polluting industry, Municipalities not constructing sewers and drains or not cleaning streets and clearing garbage, a writ of mandamus may be issued. The writ of certiorari and prohibition may issued in case of exercising excess jurisdiction, violation of the rules of natural justice, unconstitutional acts error apparent on the face of the record, facts not supported by evidence. For example granting permission by the Municipality for construction against development rules, may be challenged by the writ of certiorari.

The writ jurisdiction of the Courts is though wide but not unlimited. The Courts imposed restrictions on their own jurisdiction. These restrictions relate to locus standi, resjudicata and limitation. Traditionally, an aggrieved person i.e. directly affected person only can move the court.⁷⁸ But during 1980s, The Supreme Court recognized that

⁷⁸ (1905) 9 CWN 612

where a public wrong or public injury is caused by the State, any member of the public acting in good faith can maintain an action for redress.⁸² Relaxation in the doctrine of *locus standi* rapidly increased the number of Public Interest Litigations providing easy access to higher courts which yield good result particularly in the development of modern environmental jurisprudence in India. Most important judgments in relation to environmental pollution in India are the outcome of Public Interest Litigations. It became the source of speedy and effective solution of public grievances.

2. Public Interest Litigation: Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of the public in general. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the *locus standi* to file a case and continue the litigation and the non-affected persons had no *locus standi* to do so. And as a result, there was hardly any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other.

However, this entire scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of *locus standi* and of party aggrieved. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the apex court of India into a Supreme Court for all Indians. As a result any citizen of India or any consumer groups or social action groups can approach the apex

court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation.

The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. The Hon'ble judges have introduced PIL in Indian Law. The traditional concept of *Locus Standii* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, environmentally conscious individuals, groups or NGOs may have access to the Supreme Court/High Courts by way of PIL. The Hon'ble Supreme Court while taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

According to Hon'ble Mr. Justice Kuldeep Singh, Former Judge, Supreme Court of India - the Constitution of India is a living tree and is not a static document. The Courts have to interpret the Constitution keeping in view the needs of the present generation. Some of the leading public interest litigations are Taj Mahal case, Hazardous industries matter in Delhi, Vellore Citizen's Welfare Forum case and Rural litigation and Entitlement Kendra case relating to lime stone queries in Dehradun.

Various Authorities have been constituted under the Environment (Protection) Act, 1986 in compliance with the directions of the Hon'ble Supreme Court during the pendency of the public interest litigations. These Authorities have been constituted for specific assignments, which are:

1. *The Dahanu Taluka Environment Protection Authority* – In the District of Thane, Maharashtra, to protect the ecologically fragile areas in Dahanu Taluka and to control pollution in the area
2. *The Central Ground Water Authority* - For the purpose of regulation and control of Ground Water Management and Development
3. *Aqua Culture Authority* – To deal with the situation created by the shrimp culture industry in the Coastal States and Union Territories
4. *The Water Quality Assessment Authority* - To direct the agencies (Govt./local bodies/non-Governmental) for taking action in accordance with the powers and functions of the Authority
5. *The Environment Pollution (Prevention and Control) Authority* for NCR of Delhi - for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution
6. *The loss of Ecology (Prevention and Payments of Compensation) Authority* for the State of Tamil Nadu; To assess the loss to the ecology and environment in the effected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families⁹⁸ and
7. *The Taj Trapezium Zone Pollution (Prevention and Control) Authority*- The Authority should within the geographical limits of Agra Division in the Taj Trapezium Zone in the State of Uttar Pradesh, to monitor progress of the implementation of various schemes for protection of the Taj Mahal and programmes for protection and improvement of the environment in the said area

2. **Compensatory Remedy:** - The oldest legal remedy under law of tort is an action for nuisance, negligence and strict liability. The Supreme Court of India has added a new principle i.e. the principle of absolute

liability. Law of tort is a contribution of British rule in India. The Britishers first introduced law of torts within the three presidency towns of Calcutta, Madras and Bombay. Consequently the Indian courts followed the English common law principles in deciding cases. By virtue of Article 372 (1) of the constitution it continued to apply unless it has been modified or changed by legislature in India. In *Vellore Citizens Welfare Forum vs. Union of India* traced the source of law, which protects the environment to the 'inalienable common law right' of every person to a clean environment. The Court held that since the Indian legal system was based on English Common Law, the right to a pollution free environment was a part of the basic jurisprudence of the land.

Compensation under the PLI Act 1991 or NET Act 1995:- In addition to the remedies under the law of torts and the writ jurisdictions, the Public Liability Insurance Act 1991 and the National Environmental Tribunal Act 1995 provided statutory remedy to the victims of industrial accidents. Abolishing the defenses, no fault liability was adopted by both the enactments and speedy claim-disposal machinery was created a claim up to Rs. 25,000 may be filed to the District Collector and a National Tribunal, constituted under the Act have jurisdiction to award a larger amount. The National Environmental Appellate Authority Act 1997 envisaged an appellate forum where affected citizen may challenge the environmental approval granted for sitting an environmental project. The decision of the Environment Impact Assessment Authority created under the Regulation 1994 may be examined by the Appellate Authority.

II. Civil Remedies:

1. Action under the Law of Torts:

Nuisance :- Modern environmental law has its roots in common law relating to nuisance. Nuisance means unreasonable interference,

annoyance, hurt or offend. There are two kinds of nuisance – Public Nuisance or Private Nuisance. A public Nuisance is injury, annoyance or interference with the quality of life of a class of persons who come within its neighborhood. A private nuisance is a substantial and unreasonable interference with the use and enjoyment of land. Reasonable interference is not nuisance.

Strict Liability and absolute liability:-The rule in *Rylands vs. Fletcher* is that when a person accumulates on his land something likely to cause harm if escapes, and really escapes and causes damages arising out of natural consequence, the person is liable. But the rule of strict liability is subject to a number of exceptions which reduce the scope of the rule. These exceptions are act of God, act of third party, contributory negligence, consent, natural use of land, and statutory authority.

The expansion of chemical industries in India and increasing number of enterprises storing hazardous substances necessitated the Supreme Court to think about absolute liability principle under which the rule of strict liability without any exception is applied so that the scope of avoiding the liability is reduced to bring more and more rigor in the rule. The doctrine allows the growth of industries with the assurance that such industries will bear the burden of damage they cause when a hazardous substance escapes. *Shri Ram Gas Leak Case* 1987 is the genesis of the rule of absolute liability.

Trespass:- Trespass means illegal interference. It is of two kinds – trespass to person and trespass to land. Trespass to land is concerned with environmental violations. The examples of trespass as an environmental violation are emission of smokes from industries causing damage to nearby buildings and vegetables, residential houses, wrong

smelling etc. *J. C. Galstaun vs. Dunia Lal Seal*⁷⁹ is the oldest case in which the Calcutta High Court considered trespass to land as an environmental violation and awarded Rs. 1000 as damages which was a very big amount at that time.

The fact of the case was that the plaintiff had a garden house and the defendant had a shellac factory situated at about 200 yards from the garden house of the plaintiff. The defendant discharged refused-liquids of his factory into a Municipal drain which passed along the plaintiff's garden. The plaintiff alleged that the liquids foul smelled and noxious to the health of the people and damaged him in comfort, health and the market value of the property. The judge granted perpetual injunction and awarded the plaintiff one thousand rupees as damages.

Negligence:- in the law of tort, negligence has two meanings – negligence as a mode of committing certain tort and negligence as a separate tort. The first category is covered under trespass and nuisance. The second category refers to the conducts which create a risk of causing damage which consist neglecting ordinary care or skill towards a person to whom a duty to take care lies on behalf of the defendant. To prevent environmental pollution a common law action for negligence may be brought. The plaintiff has to prove that the defendant was under a duty to take reasonable care to avoid the damage, there was a breach of such duty, and the plaintiff suffered damage. In *Mukesh Textile Mills (P) Ltd. Vs. H. R. Subramanaya Sastry*,⁸⁰ the appellant/defendant Mukesh Textile Mills had a sugar factory and the respondent/plaintiff owned several extent of land nearby the factory which were irrigated by channel of reservoir in between the factory. The appellant stored by-product of

79 AIR 1987 Kant 87

80 *Mukesh Textiles vs HR Subramanya Sastry* AIR 1987 KANT87

sugar in three tanks close to the respondent land. One of the tanks collapsed and a large quantity of by-product overflowed in to the water channel. The respondent brought a suit for damages contending that paddy and sugarcane were damaged. The court held that the appellant was negligent and therefore, liable to pay damages of Rs. 12,200 to the respondent.

Damages and injunction:- Under law of tort the remedy may be either damages or injunction or both. Damages means monetary compensation for committing tort. Substantial damages are meant for restitution of the plaintiff to the position he would have been if the tort have not been committed. Exemplary damages are intended to punish the wrongdoer for his conduct. An injunction is a judicial process whereby a person is prevented from infringing a right. Injunction is of two kinds – temporary and perpetual. The purpose of temporary injunction is to maintain the state of thing at a given date until trial on merit is done. It is regulated by section 94, 95 and order 39 of the CPC. A perpetual injunction permanently restrains the wrongdoer from doing a wrong. It is regulated by section 37 – 42 of the specific relief Act 1963. *B Venkatappa vs. B. Lovis*⁸¹ is a typical case where the Andhra Pradesh High Court upheld the mandatory injunction granted by the lower court directing the defendant to close the whole in a chimney facing the plaintiff's property.

III. Compensation under the PLI Act 1991 or NET Act 1995:- In addition to the remedies under the law of torts and the writ jurisdictions, the Public Liability Insurance Act 1991 and the National Environmental Tribunal Act 1995 provided statutory remedy to the victims of industrial accidents. Abolishing the defenses, no fault liability was adopted by both the enactments and speedy claim-disposal machinery was created a claim up to Rs. 25,000 may be filed to the District Collector and a

81 *B. Venkatappa vs. B. Lovis* AIR 1986 AP 582.

National Tribunal, constituted under the Act have jurisdiction to award a larger amount. The National Environmental Appellate Authority Act 1997 envisaged an appellate forum where affected citizen may challenge the environmental approval granted for sitting an environmental project. The decision of the Environment Impact Assessment Authority created under the Regulation 1994 may be examined by the Appellate Authority.

The statutory recognition of liability has already been established by judicial decisions. (M.C. Mehta vs. UOI 1987 SC 1086 and PLI ACT 1991) But the Public Liability Insurance Act 1991 is not exhaustive as it provides only Ad-hoc relief to the victims. It says nothing about State's responsibility as the ultimate responsibility lies upon the State to ensure that the victim is assured their constitutional and legal rights. The principle of strict and absolute liability is applicable only to particular situations. It does not abolish other principles of tortuous liability. The decisions of the Supreme Court in various cases also justify the conclusion that there are some industries which are not hazardous or inherently dangerous. That cannot attract the application of new principle. The courts in India should follow the absolute liability principle and make necessary discrimination regarding the enterprise. Of course, when the rule is applied, the liability indeed will be absolute. In cases where the defendant is not a private enterprise but the State, the compensation claims may be covered under Article 21 and 32 of the constitution. In such cases, while awarding the compensation to the victims, the same principle of absolute liability should be followed. (B. P. Dwivedi, "An Industrial Disaster: A Judicial Response" 25 1&2 The Banarass Law Journal 1989 at 105 & 106

III. Criminal Remedies

I. Criminal Procedure Code 1973:- Section 133 of the Code of Criminal Procedure proved as a successful tool and potent instrument to

prevent environmental pollution by way of public nuisance. *Ratlam Municipality case*⁸² is pointer to this effect. Under this section a magistrate can *suo motu* or on a complaint, take cognizance of any kind of pollution by way of public nuisance and pass appropriate orders. After the Ratlam Municipality decision many High Courts extended the scope and ambit of the section.⁸³ It is to be noted that the jurisdiction under any specialized law on environment such as the Air Act or Water Act does not repeal the jurisdiction under section 133 of the Cr.PC. The Supreme Court in *State of MP vs. Kedia Leather Industry*⁸⁴ held that in spite of the provisions in the Water and Air Act, section 133 of the Cr.PC can be called in aid to remove public nuisance and thus avoid hardship to the general public.

II. A Complain under the Environment (Protection) Act 1986:- The scope of section 19 of the Environment Act is very limited. The section lays down that a court shall take cognizance of any offence under the Act only on a complaint filed by any authorized officer of the Central Government or any person who has given notice of not less than 60 days in the prescribed manner of the alleged offence or of his intention to make a complaint to the Central Government or any authorized officer.

82 *Municipal Council of Ratlam Vs Wardhichand AIR 1980 SC 1622.*

83 AIR 1980 SC 1622

84 (2003) 7 SCC 389

CHAPTER – 5

ROLE OF THE JUDICIARY

Position in India.

Position in America

Position in Colombia

Position in Costa Rica

Position in Argentina

Position in Guatemala

Position in Pakistan

Position in Bangladesh .

CHAPTER - 5

ROLE OF THE JUDICIARY

“In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known to any civilised society.”

The Supreme Court of India, AIR 1996 SC 1051 at 1053.

Environmental consciousness the world over, supported by judicial activism supplemented the drawbacks, deficiency and lacunae of the legislative process and executive red-tapism. Article 142 of the Constitution empowers the Supreme Court to pass appropriate orders to meet the ends of justice even to go beyond law and find out the habitation of justice. Indian judiciary, more precisely the Supreme Court and High Courts has played an important role in the evolution and development of the right to environment. Various laws were enacted to deal with the problem of environment and the superior courts played a pivotal role by interpreting those enactments. Public Interest Litigation is proved to be a successful instrument in majority of the environment related cases. The study of the role of judiciary laying down principles and broad parameters for enforcement of various environmental laws are very important in the study of the right to environment. The interest shown by the judiciary in the protection of the environment is also equally necessary to dig out the importance of the right to environment. The deficiencies and difficulties of judiciary in the administration of

environmental justice have also been discussed so that some changes may be suggested in the administration of environmental justice.

During 1990s Indian legal system underwent a radical change in sorting out new horizons of social justice. In modern time, justice has to meet social realities and demand of the time. The development of right environment through judicial intervention by national Courts in various parts of the world, shows two things: *first*, the courts are recognising it as a fundamental right; *second*, the courts are defining the content and nature of the right through landmark decisions. The emergence of right to environment in India started from *Maneka Gandhi*¹ and completely emerged in the *Subhash Kumar*.² Though the inactively the right to life which includes the right to environment was explained by the court in 1951 in the famous case *A. K. Gopalan vs. State of Madras*³ but a complete expression of the right to life took place in *Maneka Gandhi's* case.

Position in India

Indian legislature and Administration failed to tackle India's myriad environmental problems. Laws granting vague and sweeping authority and powers to the Government agencies contributed to this failure. Apathy and a slower tendency to adapt to rapid environmental changes have also given rise to the need for the active plenary role of the Court. Judicial rulings have completely changed the nature and understanding of the law in the Indian environmental jurisprudence. The judiciary looked to the provisions of the Indian constitution to solve the various problems of environment within the framework of Public Interest

1. *Maneka Gandhi vs. Union of India* AIR 1978 SC 597.

2. *Subhash Kumar vs. State of Bihar*, AIR 1991 SC 420.

3. AIR 1950 SC 27.

Litigation. Article 142 afforded the Supreme Court considerable power to mould its decisions in order to deliver complete environmental justice. In the matters of constitutional interpretation, the Supreme Court is the final authority, which assumes a primary position in the Indian legal system.⁴

Environmental law making in India has not followed any consistent and logical path of serious deliberations both at the stage of drafting and consideration on the floor of legislatures, before becoming the law of the land. Even chance remarks or an expression of displeasure over an undesirable environmental situation by charismatic political leaders have often led to the making of laws. The circulars and guidelines as to joint forest management and notification as to Coastal Regulation Zone apparently are illustrations of this. Lack of vision in foreseeing environmental problems, not evolving appropriate policies plans and programmes, non-dynamic and non-reactive laws appear to be the judicial activism.⁵

*Maneka Gandhi vs. Union of India*⁶ is the turning point in the history of development of life and personal liberty where the Supreme Court interpreted Article 21 ensuring that the procedure under the law should be reasonable, fair and just. The scope of fundamental right got a liberal expansion to cover all those areas connected with the persons and personality. Justice Bhagwati observed:

“The attempt of the court should be to expand the reach and ambit of the Fundamental Right rather than attenuate their meaning and content by a process of judicial construction”

⁴ See, Y.K. Sabarwal, "The Supreme Court's Contribution to Environmental Law" in *Nyay Deep*

⁵ *id.* note 1.

⁶ *id.* note-1

In Noise pollution first case came before the Bombay High Court⁷ in which the Bombay High Court asked authorities to regulate the use of loudspeaker during Navaratri Festival. The Court ordered strict implementation of Environmental Acts and Rulings so that celebration of festivals must not disturb the peace and tranquillity of the neighbourhood.

In *Godham Construction Company Vs. Amulya Krishna Ghosh*⁸ Calcutta High Court held that no money could afford appropriate relief to the plaintiff who was discomforted by the noise pollution.

Another case was decided by the Calcutta High Court, *Rabin Mukharjee Vs. west Bengal*⁹ in which the court held that the authorities should strictly implement the Motor Vehicle Act and ban the use of multi toned electric horns and impose fine whenever necessary.

In *Om Birangana Religious Society vs. State of Orissa*¹⁰ the court upheld the power of the Sub-Divisional Magistrate to direct religious organisations that use of microphones may hinder the right of citizens to live a peaceful life.

In *P.A Jacob Vs Superintendent of police, Kottayam*,¹¹ the Kerala High Court asked the Christians not to use loudspeaker which would disrupt the law and order and create inconvenience to for the other groups of citizens.

In *Free Legal Aid Cell Vs Government of NCT Delhi*¹² a separate court for dealing the problem of noise was directed to be established and all the District Magistrates be empowered to issue prohibitory orders to limit

⁷ *State of Bombay Narasu Appa Mali*, AIR 1952 Bom. 82

⁸ AIR 1968 Cal 61.

⁹ AIR 1985 Cal 222.

¹⁰ 1996 100 CWN 617.

¹¹ AIR 1993 KER 1.

¹² AIR 2001 Del 455.

the use of loud speaker, restrict the use of fire crackers in religious festivals, marriages etc.

In *Sayeed Moqsood Ali vs. the State of M.P.*¹³ a dharmasala was being operated near the residence of a cardiac patient. It was held that even a single individual is entitled to maintain a writ petition and the dharmasala was ordered to limit the level of noise.

Burra bazaar fire works dealers Association vs. the Commissioner of Police, Calcutta,¹⁴ the Calcutta High Court took a highly activist stand and put restrictions on manufacture store and selling of fire crackers and held that right to a decent environment, the right to live peacefully, the right to sleep at night and the right to leisure which are the necessary ingredients of the right to life under Article 21 of the Constitution.

In *Maulana Mufti Syed Barkati vs. State of West Bengal*¹⁵ the Calcutta High Court held that use of loud speaker for calling for Azan is not an integral part of Islam and it would not violate the right to religion under Article 25 of the Constitution. Use of loudspeaker is a technological development and not a part of Islam.

In *Church of God vs. KKRMC Welfare Society*¹⁶ it was reported that loud speaker was used in the church during prayer, which added to the existing noise. The Madras High Court ordered that the noise caused by prayer meetings be controlled. The Church challenged the order on the ground of interference with the right to profess, practice and propagate religion and thus violative of Article 25 and 26 of the Constitution. The Supreme Court rejected the contention holding that:-

13. AIR 2001 MP 220.

14. 1997 (2) CLJ 468

15. AIR 1999 Cal 15.

16. AIR 2000 SC 2773.

“no religion prescribes that prayer be performed through voice amplifier or by beating of drums and that and that Article 25 and 26 are subject to public order, morality and health.”

It relied on the observation in *Acharya Maharajshri Narendra Prasadji vs. State of Gujarat*¹⁷ that Fundamental Right of one person must co-exist in harmony with that of another person and also with the power of the state in the light of the directive principles in the interest of social welfare as a whole.

About soil pollution due to dumping of waste and effluents of factories, use of pesticides and insecticides, gases, acid rains, etc. has resulted in the destruction of vegetation and change in the composition of soil that makes it unfit for cultivation. Vegetable, egg, meet, fish, grapes, oil and cereals contain DDT and BHC above permissible limit. The Chemical industries in Bichri village were discharging chemical wastes which rendered the soil unfit for cultivation. Iron-based and gypsum-based sludge if not properly treated, pose grave threat to Mother Earth. The court held that the industries are absolutely liable to compensate the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence they are bound to take all necessary measures to remove the sludge and other pollutant lying in the affected area and also to defray the cost of remedial measures required to restore the soil and underground water sources. Section 3 and 4 of the Environment Act 1986 confers the Central Government the power to give directions to the above effect. Levy of cost for remedial measures implicit in the two sections.

In the field of tobacco smoking, *K. Ramakrishna vs. State of Kerala*¹⁸ the court held that the tobacco smokers violate the fundamental right to life guaranteed under Article 21 of the constitution as the exposure to tobacco smoke was slow prior, causing death and passive smoking

17. AIR 1974 SC 2098.

18. AIR 1999 Ker 38.

where the judges deemed it a punishable offence under section 278 of the Indian Penal Code.¹⁹ The earliest specific law on smoke is the Bengal Smoke Nuisance Act 1905, the Bombay Smoke Nuisance Act 1912, **In the area of Cultural heritage, Taj Trapezium case²⁰** is a typical case where the Supreme Court recognized and that since the Taj is a World Heritage Site, the Supreme Court would itself monitor some issues such as air pollution, proper management of the Mathura refinery, construction of a hospital, a bypass to divert all traffic away from Agra etc. Subsequently, a governmental Agra Mission Management Board was constituted in 1997 followed by the Taj Trapezium Zone Pollution (Prevention & Control) Authority set up in 1999, to monitor progress of the implementation of various schemes for protection of the Taj. *In Rajiv Mankotia vs. Secretary to the President of India²¹* prevented the government of India from converting a part of Viceregal Lodge in Shimla constructed in 1888 into a tourist hotel being a historical monument of national importance.

Protection of monuments and religious shrines from environmental pollution came up for consideration before the Supreme Court in *Wasim Ahmed Sayeed vs. Union of India and Others²²* To prevent damage to monuments, particularly the Dargah of Moinuddin Chisti in Ajmer and the heritage city of Fatehpur Sikri, the Supreme Court directed the removal of shops within a certain distance from the monuments so that no damage is caused to them. The Kerala High Court examined the importance of pre-historical monuments in *Niyamvedi vs. Government of India²³* and held that pre-historical monuments needed to be preserved.

Monetary compensation:- Right to compensation due to environmental

19 . Padma, "women empowerment towards safer environment and justice" IBR 28 2&3, 2001.

20 . AIR 1997 SC 734.

21 . (1997) 10 SCC 441.

22 . (2002) 9 SCC 472.

23 . Kerala High Court WA No. 1427/1994-B 6th Nov. 1995.

catastrophe i.e. for violation of any right under Article 21 of the constitution, right to claim compensation has been recognized in many cases. Right to a healthy environment is included under Article 21 of the constitution and hence for violation of this right monetary compensation can be claimed as matter of right.²⁴

In the field of hazardous substances, in *M. C. Mehta vs. Union of India*²⁵ popularly known as *Shri Ram Gas Leak Case* the Supreme Court Observed: “an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to community to ensure that harm results to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken.

In the field of ecological balance *Sachidananda Pandey vs. the State of West Bengal*²⁶ the Supreme Court reminded the citizen and the Government of their social obligation to preserve and maintain ecological balance. *Rural Litigation and Entitlement Kendra v. State of U.P.*²⁷ was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin v. Union Territory of Delhi*²⁸ where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life.

In the area of water and air *Subhash Kumar vs. State of Bihar*²⁹ is a

24. *M. C. Mehta vs. Union of India* (1997) 1 SCC 395.

25. *AIR 1987 SC 96. (Shri Ram Gas Leak Case)*

26. *AIR 1987 SC 1109.*

27. *Rural Litigation and Entitlement Kendra, Dehradun vs. State of UP*, AIR 1985 SC 652.

28. *AIR 1981 SC 746.*

29. *Subhash Kumar vs. State of Bihar*, AIR 1991 SC 420.

landmark judgment in which justice K. N. Singh observed:

“Right to live is a fundamental right under Article 21 of the constitution and it includes pollution free water.”

In *AP Pollution Control Board vs. M.V Naydu*,³⁰ the Supreme Court Observed:

“The right to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water”

In *Surendra D Sinha vs. Union of India*³¹ The Apex Court emphasized that there can be no denying of the fact that right to life guaranteed under Article 21 of the Constitution surely include a right to clean water In *Narmada bachao Andolan vs Union of India*³² justice Kripal observed:

“Water is the basic need of the human being and part of right to life and human right as enshrined in Article 21 of the Constitution of India”

In *D.K Joshi vs. State of U.P.*³³ and *Dr. Ajay Singh Rawat vs. Union of India*³⁴ (it was alleged that the water supplied for drinking was extremely polluted and unhealthy for human consumption. The writ petition was filed under Article 32 of the constitution which only for enforcement of Fundamental Right. It is implied that right to water, which is a component of environment, is considered as Fundamental Right. Various High Courts also passed judgments on clean water.³⁵

Development vs. Environment

30. AIR 1996 SC 781.

31. 2001 (3) Scale 533.

32. AIR 2000 SC 3751.

33. (1997) SCALE 181.

34. *Ajay Sing Rawat vs. Union of India* (1995) 3 SCC 266.

35. *Hamid Khan vs. State of U.P* AIR 1997 M.P. 191, *F.K. Hussain vs. Union of India* AIR 1990 KER 321, *S.K Garg vs. State of U.P*, AIR 1999 All 87, *Attakoya thangal vs. Union of India*, 1990 KLT 580.

The Vienna Declaration and Programme of Action held the right to development as “a universal and inalienable right and an integral part of fundamental human rights.”³⁶ The right to development has also been given prominence in the mandate of the High Commissioner for Human Rights, (General Assembly Resolution 48/141, 1993) and the General Assembly required the High Commissioner to establish “a new branch whose primary responsibilities would be the promotion and protection of the right to development.”³⁷ The right is regularly mentioned in declarations of international conferences and summits and in the annual resolutions of the General Assembly and the Commission on Human Rights.

In *Goa Foundation vs. Diksha Holdings Pvt. Ltd.*³⁸ the Supreme Court considered the controversy between environment and development. The Court held that there can be no development at the cost of environment and environment at the cost of development. A balance between the two should be maintained. Justice Pattanaik observed:

“the society shall have to prosper but not at the cost of the environment and in similar vein, the environment shall have to be protected but not at the cost of the development of the society - there shall be both development and proper environment and as such a balance has to be found out and administrative actions ought to proceed in accordance with and d’hors the same”

In *Calcutta wetland case*³⁹ the Calcutta High Court recognised that the environmental concern had to be addressed at the same time as

36 . *Vienna Declaration and Programme of Action* 1993.

37 . *General Assembly Resolution* 50/214, 1995.

38 . *AIR 2001 SC 184.*

39 . *Peoples United for Better Living at Calcutta vs. State of West Bengal AIR 1993 Cal. 125.*

developmental concern and that development must progress at a rate that took into account the interest of posterity as well.

In *the State of Himachal Pradesh vs. Ganesh wood products*⁴⁰ the Supreme Court held that the Government could not allow the approval of new industry where use of forest products had a deleterious effect on forest, wealth, ecology, and the environment.

The Supreme Court gave an understanding of Sustainable Development, which designed subsequent law making that the development, and the ecology is not opposed to each other. It is internationally accepted concept that the quality of human life should be improved within the capacity of the ecosystem. The trend of the Supreme Court was to apply the principle of sustainable development to ecologically harmful industry but recently it seems that the trend shifted also to support incursion on the forest cover in the interest of the development. In *Consumer Research Education vs. Union of India*,⁴¹ the State Government altered the boundary of Chinkara Sanctuary for allowing mining within the Sanctuary, which was challenged. The Court observed:-

“Where an attempt is made by the State Legislature to balance the need for environmental protection and the need for economic development of an impoverished backward area, it would be improper to apply the principle of prohibition instead the court would apply the principle of sustainable development and intergenerational equality”

In *Live Oak Resort vs. Panchgani Hill Station Municipal Corporation*⁴² the Supreme Court maintained a balance between environment, ecology and environment. The petitioner sought to prevent construction of a five star

40. (1995) 6 SCC 363.

41 . (2000) 2 SCC 599.

42 . (2001) 8 SCC 329.

luxurious hotel in Panchgani Hill Station. The Court allowed construction and observed that obviously the state Government had in its mind that ecology cannot be given a go-bye, in the same vein the development process can not be ignored as a matter of fact the law court evoked the factum of sticking a balance between development and ecology as in the developing country, there can not be only development or only ecology but both must exist and thus a balance has to be struck else otherwise society will perish in the absence of the elements.

Soil pollution

The Supreme Court of India in *Ratlam Municipality* case⁴³ first of all recognised the right to environment without any specific reference to Article 21, 48(A) and 51(A) (g) of the constitution. The Supreme Court observed that:

“Public nuisance, because of pollutants being discharged by big Factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law.”

A little later in the decision, it was said that,

“Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies”.

In this case the court recognized the importance of pollution free environment and rendered it the status of human right. The Court clarified that pollution is a challenge to the social justice component of rule of law. Municipal Council constituted for the purpose of preserving public health can not runaway from its principal duty by pleading financial inability. This judgment opened the door for further developments in the environmental jurisprudence.

In *Chetriya Pradushan Mukti Morcha Sangharsha Samity -Vs- State of Uttar Pradesh*,⁴⁴ and *Subhash Kumar vs. State of Bihar*,⁴⁵ the

43 . *Municipal Council of Ratlam vs. Vardichund* AIR 1980 SC 1622.

44 . AIR 1990 SCC 2060.

45 . *id.* n 28.

Supreme Court treated the right to pollution free environment as integral part of right to life under Article 21 of the Constitution. Therefore, if anything endangers or impairs the quality of right in derogation of laws a citizen has right to recourse to Article 32 of the constitution for removing pollution of water or air which may be detrimental to the quality of life.

In *the State of Rajasthan vs. G. Chawla*⁴⁶ the Supreme Court held that the State Legislature has the right to prevent/control/penalize loud noise, it would not violate the freedom of speech and expression, as it would be reasonable restriction in the interest of public. In addition, such laws fall under public health and sanitation under entry 8 of List II of the 7th schedule of the Constitution.

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 importance of the theory lies in its potential for use by courts as a means of ensuring environmental compliance.⁴⁷

Application of International principles

It is worthwhile to mention here that principle 10 of Rio declaration, 1992 states that:

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including

46 . AIR 1995 SC 544.

47 . See, Pritviraj Dutta, "The Politics of Sustainable Development" 2 IJEL 2001.

information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

The first case on which the Supreme Court of India applied the doctrine of **Sustainable Development** was the *Vellore Citizen Welfare Forum vs. Union of India*.⁴⁸ In this case, dispute arose over some tanneries in the state of Tamil Nadu that they were discharging effluents in the river Palar, The Hon'ble Supreme Court held that:

"We have no hesitation in holding that the precautionary principle and polluter pays principle are part of the environmental law of India"

The court also held that:

"Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

But before this case, the Apex Court has tried to keep the balance between ecology and development in many cases. *In Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh*,⁴⁹ which was also known as Doon valley case, dispute arose over mining in the hilly areas. The Supreme Court after much investigation ordered the stopping of mining work and held that:

"This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of

48. *Vellore Citizen Welfare Forum Vs Union Of India*, AIR 1996 SC 2715.

49. *Id.* n 28.

ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment."

However, in this case, the Supreme Court allowed a mine to operate until the expiry of lease as an exceptional case on condition that land taken on lease would be subjected to afforestation by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lacks to the fund of the monitoring committee. This has been directed on the principle of 'polluter pays'. Justice Ranganath Misra held that preservation of the Environment and keeping the ecological balance unaffected is task which not only Governments but also every citizens must undertake. It is a social obligation and let us reminds every Indian citizens that it is his Fundamental Duty as enshrined in Article 51 A (g) of the constitution.

The absolute Liability principle was laid down by the Supreme Court in *M. C. Mehta vs. Union of India*⁵⁰ rather than environmental law principle for compensation. But in *Indian Council for Enviro-Legal Action vs. Union of India*,⁵¹ the Supreme Court applied Polluter pays Principle and held that Manufacturers would be liable for the payment of compensation as per the absolute liability principle as laid down in Oleum Gas Leak Case as well as the pre-cautionary principle and sustainable development principle.

In *Vellore Citizens Welfare Forum vs. Union of India*,⁵² the Supreme Court applied the principle of sustainable development on a theoretical standpoint. The Court observed:

"while industries are vital for the country's development but having

50. AIR 1987 SC 1086.

51. (1996) 3 SCC 212.

52. (1996) 5 SCC 647.

regards to pollution caused by them the principle of sustainable development is to be adopted as a balancing concept.....though leather industry is of vital importance to the country as it generates foreign exchange and provide employment avenues, it has no right to destroy ecology, degrade and pose a health hazard.”

In a landmark decision in *Tarun Bhagat Singh, Alwar vs. Union of India*,⁵³ the petitioner filed a Public Interest Litigation and brought to the notice of the Supreme Court that the State government of Rajasthan was failed to make rules and in contrary allowed mining work to continue within the forest area. Consequently, the Supreme Court issued directions that no mining work or operation could be continued within the protected area.

In *M. C. Mehta vs. Union of India*⁵⁴ the Supreme Court issued directions towards the closing of mechanical stone crushing activities in and around Delhi. However, it realized the importance of stone crushing and issued directions for allotment of sites in the new 'crushing zone' set up at village Pali in the state of Haryana. Thus it is quite obvious that the courts give equal importance to both ecology and development while dealing with the cases of environmental degradation.

Under Article 21 of the Indian constitution, the right to life is residuary in nature. Way back in 1967, the Apex Court in *Satwan Singh vs. A.P.O New Delhi*⁵⁵ Justice Despandey opined that life and personal liberty included variety of rights though not included in part III of the constitution provided they were necessary for the full development of the personality of the individual. Again in 1981 the Supreme Court in *Francis Coralie vs. Union Territory*⁵⁶ of Delhi, Justice Bhagwati explained

53 .*Tarun Bharat Sangha, Alwar vs. Union of India* (1993) 1 SCC 4.

54 . *M. C. Mehta vs. Union of India* (1997) 2 SCC 253.

55 . AIR 1967 SC 1867.

56 AIR 1981 SC 746.

that right to life includes all faculties of thinking and feelings.

*Indian handicraft Emporium vs. Union of India*⁵⁷ the Apex Court held that a trade dangerous to ecology to be either regulated or totally prohibited. The fundamental Right to trade are to be balanced with the demand of social interest. This balance is reflected in Article 48A and 51 A (g) of the constitution. According to the Court prohibition of import of African ivory had a laudable object. Under the pretext of dealing in ivory, killing Indian elephant is to be stopped. The Court observed:

“Animals play a vital role in maintaining ecological balance. The amendment (1991 Wild Life Protection Act 1972) have been brought for the purpose of saving the species from extinction as also for arresting depletion in their numbers caused by callous exploitation thereof.”

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

In *Surendra D Sinha vs. Union of India*⁵⁸ the apex court emphasized that there can be no denying that right to life guaranteed under Article 21 of the constitution would surely include a right to clean environment. Matters involving the degradation of the environment have often come to

57 AIR 2003 SC 3255.

58 (2001) 3 Scale 533.

the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum due to the lenient view adopted by the Court towards concepts such as *locus standi* and the 'proof of injury' approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an 'aggrieved person' test, which means a right or recognised interest that is direct and personal to the complainant.

Right to environment

The Constitution Forty Second Amendment Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures."

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body such as the Supreme 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 what it must in any event do; namely, 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 have come 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 Phillipines. Section 16, Article II of the 1987 Phillipine Constitution states: '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'.⁵⁹ 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.

In *V. Lakshmi pati Vs. State of Karnataka*⁶⁰ the Karnataka high Court clearly and specifically declares that Article 21 guarantees right to environment. The Court pointed out:

"Entitlement to clean environment is one of the recognized basic human rights.....the right to life inherent to Article 21 of the constitution of India does not fall short of the requirement of quality of life which is possible only in an environment of quality where on account of human agencies the quality of air and quality of environment are threatened or affected, the court would not hesitate to use its innovative power to enforce or safeguard the right to life to promote public interest."

*Rural Litigation and Entitlement Kendra v. State of U.P.*⁶¹ is one the

59 . *Peoples United for Democratic Rights vs. Union of India* AIR 1983 SC 1473.

60. AIR 1992SC 652.

61 . AIR 1985 SC 746.

earliest case where the Supreme Court dealt with environment and ecological balance. The concept of the right to life under Article 21 of the Indian Constitution was further expanded and elaborated in *Francis Coralie Mullin v. Union Territory of Delhi*⁶² where the Supreme Court has given a list of positive obligations of the State, as a part of its duty correlative to the right to life. The willingness of the Court to assert in adopting and expanding the understanding of human rights in this case is very important. It is only through such an understanding that claims of right to environment can be accommodated within the broad scope and ambit of human rights. The relation between environment and right to life was further addressed the Supreme Court in the *Charan Lal Sahu v. Union of India*⁶³ Similarly, in *Subhash Kumar v. State of Bihar*,⁶⁴ the Court observed that 'right to life' under Article 21 of the constitution includes the right of enjoyment of pollution-free water and air for full enjoyment of life. The Court recognised that the right to environment is part of the fundamental right to life. These case also indicated governmental agencies may be compelled to take positive measures to improve the environmental quality and control environmental pollution.

The Supreme Court used the right to life as a tool for emphasizing drastic steps to combat air and water pollution in *V. Mathur vs. Union of India*,⁶⁵ It has directed closure or relocation of industries and evacuated land to be used for the needs of the community in *M.C. Mehta v. Union of India*,⁶⁶ The courts took notice of unscientific and uncontrolled quarrying and mining in *Rural Litigation and Entitlement Kendra v. State of U.P.*,⁶⁷ and issued orders for the maintenance of ecology around coastal areas in *Indian Council for Enviro-Legal Action v. Union of India*,⁶⁸

62. AIR 1981 SC 746.

63. AIR 1991 SC 420.

64. AIR 1991 SC 420.

65. 1997) 1 SCC 388.

66. 1996) 4 SCC 35

67. 1996) 5 SCC 281.

68. (1996) 5 SCC 281.

shifting of hazardous and heavy industries in *M.C. Mehta v. Union of India*,⁶⁹ and in restraining tanneries from discharging effluents in *M.C. Mehta v. Union of India*⁷⁰

Another expansion of the right to life is the right to livelihood under Article 21 of the constitution, which is though a directive principle of state policy, but this extension can check governmental actions in relation to an environmental impact, which threatens to dislocate the poor and disrupt their lifestyles. This Article directed the state to ensure to the people within the limits of its economic capacity and development – employment, education, and public assistance in case of unemployment, old age, sickness, and disbalance. Thus, a strong connection between the two rights i.e. the right to livelihood and the right to life in the context of environmental rights has been established. Especially in relation to the rights of tribal people being evicted by development projects, the Court has been guided by the obligations of article 48A and 51 A (g), and has ordered adequate rehabilitation and compensation of the evicted persons.

Cases relating to environmental degradation often come to the Court in the Public Interest Litigation has gained importance due to the liberal view adopted by the Court towards the concept of *locus standi* and the 'proof of injury' approach of common law. It is to be noted that, the Bangladesh and Pakistan courts apply the test of 'aggrieved person', which means a right or recognised direct interest to the complainant.

The emerging challenges of development and the environment have made a consensus on the concept of "sustainable and environmentally sound development". The Earth Summit 1992 endeavoured to focus by defining the programme of action; Agenda 21 clarified 27 principles, adopted on that occasion. We can also refer to the content of the

69 . (1996) 4 SCC 351.

70 . AIR 1998 SC 1037.

Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, which clearly recognizes that "Economic development must be environmentally sound and sustainable."

The concept of sustainable development has three basic components. *First* is the precautionary principle, whereby the state must *anticipate, prevent* and *attack* the cause of environmental degradation.⁷¹ The Rio Declaration affirmed the principle under Principle 15, by stating that where ever there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Rio Declaration on Environment and Development (1992). In 1996, the Supreme Court in *Vellore Citizen's Welfare Forum*⁷² stated that environmental measures, adopted by the State Government and the statutory authorities, must anticipate, prevent and attack the causes of environmental degradation. Under the light of the definition given in the Rio Declaration, the Court stated that where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The Supreme Court has and applied the principle on several other occasions. In the *Taj Trapezium Case*,⁷³ Supreme Court applied the precautionary principle and ordered a number of industries surrounding the Taj Mahal to relocate or introduce pollution abatement measures to protect the Taj from deterioration and damage.

The High Courts in India also decided many cases explaining the right guaranteed under Article 21. In *T. Damodhar Rao*⁷⁴ AP High Court drew an inference that Article 21 can be extended to protect the citizen's

71. (1996) 5 SCC 647.

72. *Vellore Citizen Welfare Forum vs. U O I*. AIR 1996 SC 2715.

73. *M. C. Mehta vs. Union of India* 1982 2 Scale 7 (SP).

74. *Damodara Rao Vs The Special Officer. Municipal Corporation, Hyderabad*, AIR 1987 AP 171.

life against the polluted environment. In *Kinkri Devi*⁷⁵ the Himachal Pradesh High Court held that if a balance between the needs of development and protection of ecology is not maintained, it would result in the violation of citizen's fundamental right under the constitution. The Kerala High Court has not given preference to right to livelihood at the risk of environmental pollution in *Madhavi vs. Thilakan*.⁷⁶ In *Damodara Rao* case,⁷⁷ the AP High Court took into consideration an open plot of land which was kept for recreational purpose. The court held that it is reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the constitution embraces the protection and preservation nature's gift without which life cannot be enjoyed. Depending on this decision, the Karnataka High Court in *V Lakshmipati* case,⁷⁸ held that once a development plan had earmarked the area for residential purpose the land is bound to be put to such use only. The Court pointed out that entitlement to clean environment is one of the recognized basic human right and human right jurisprudence can not be permitted to be thwarted by status quoism on the basis of unfounded apprehensions. In *Attakoya Thangal's*⁷⁹ case also, the Kerala High Court established the right to clean water as included under Article 21 of the constitution. Justice Sankaran Nair observed that the right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritisation of human needs and a new value system has been recognized in this area. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements, which sustain life itself. In relation to use of ground water, the right to quality

75. *Kinkri Devi -Vs- State of Himachal Pradesh*, AIR 1988 HP 4.

76. *Madhavi -Vs- Thilakan* 1988 (2) KLT 730.

77. *Id.* 74.

78. *V. Lakshmipathy Vs State of Karnataka* AIR 1992 Kant 57.

79. *Attakoya Thangal vs. Union of India* 1990 KLT 580.

of life and environment was also emphasized by the Rajasthan High Court in *L.K. Koolwal's* case.⁸⁰ Looking at the impact of Article 51 (A) (g) of the constitution the Court expressed the view that the maintenance of health, sanitation and environment falls within Article 21 of rendering the citizens the fundamental right to ask for affirmative action.

Thus, the High Courts were more active and direct in declaring the right to clean and human environment as a fundamental right included under Article 21 of the constitution.⁸¹ Though the decisions of the High Courts were under the inspiration of the Supreme Court but The Supreme Court was more hesitant, in the beginning, to declare a clear right to environment. Only in 1990, first time the Supreme Court almost declared the right to environment as included under Article 21 in *Chetriya Pradushan Mukti Sangarsh Samiti vs. State of UP*⁸² and *Subhash Kumar vs. State of Bihar*.⁸³ In the first case, Chief justice Sabhyasachi Mukherji, in clear terms observed that every citizen has a fundamental right to have the enjoyment of life and living as contemplated in Article 21 of the constitution of India. In the second case, Justice K. N. Singh observed that the right to live includes the right to enjoyment of pollution free water and air for full enjoyment of life.

Another component of sustainable development is the 'polluter pays principle'. The principle states that the polluter has an obligation to make good the loss and bear the cost of rehabilitation of the

80 . *L. K. Koolwal vs. State of Rajasthan*, AIR 1988 Raj. 3.

81 . Article 21 reads, " No person can be deprived of his life and personal liberty except according to procedure established by law."

82 . *Chetriya Pradushan Mukti Morcha Sangharsha Samity Vs State of Uttar Pradesh*, AIR, 1990, SCC 2060.

83. *Subhash Kumar vs. State of Bihar*, AIR 1991 SC 420.

environment to its original state.⁸⁴ practically, this principle is applicable along with the precautionary principle.

The last important component of sustainable development is the principle of intergenerational equity. The Brundtland Commission defined sustainable development as the development to meet the needs of the present generation without compromising the ability of the future generations to meet their own needs. The principle lays down that each generation is required to conserve the diversity of the natural and cultural resource so that it does not restrict the options available to future generations in solving their problems. They should also satisfy their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. *Secondly*, each generation is required to maintain the quality of the planet in the same condition in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. *Thirdly*, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations.⁸⁵

Another aspect of the right to life is the public trust doctrine to protect and preserve public land which serves two purposes: firstly, affirmative state action for effective management of resources and empower the citizens to question ineffective management of natural resources. Public trust is being related to sustainable development, the

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

85 . Edith B. Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations University, 1989).

precautionary principle and bio-diversity protection. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension. When the Supreme Court has applied the public trust doctrine, it has considered it not only as an international law concept, but also as one which is well established in our domestic legal system. Its successful application in India shows that this doctrine can be used to remove difficulties in resolving tribal land disputes and cases concerning development projects planned by the government. In *M.C. Mehta v. Kamal Nath and Others*,⁸⁶ the court added that 'it would be equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of ways for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required.' In both *M.I. Builders Pvt. Ltd v. Radhey Shyam Sahu*⁸⁷ and *Th. Majra Singh, vs. Indian Oil Corporation*⁸⁸ the court reconfirmed that the public trust doctrine 'has grown from article 21 of the constitution and has become part of the Indian legal thought process for quite a long time.

Thus, the Supreme Court played the role of environmental ombudsman to enforce the environmental legislations in India. A humble beginning of environmental awareness was made with the Bhopal Tragedy. It also acted just like a policy maker, lawgiver, monitoring authority and educator to ensure environmental justice to the citizens. It adopted and applied various international environmental law principles to Indian environmental jurisprudence. The Supreme

86. *M. C. Mehta vs. Kamal Nath* (1997) 1 SCC 388.

87. *M.I. Builder Pvt.Ltd. Vs Radhey Shyam* AIR 1999 SC 2468.

88. *AIR 1999 J&K 81.*

Court also innovated and shaped new judicial tools to strengthen the Principle of 'Sustainable Development' for effective protection of the environment to ensure environmental to India.

The Judicial activism supported by active participation of Non-Government Organisations and public spirited citizens worked as a substitute for legislative and administrative inefficiency. From 1980's writ Petitions and Public Interest Litigations proved as a weapon for the environmental crusaders. The higher judiciary, owing to its unique position and power played a stalwart role. The principles of Indian environmental law are deep rooted in judicial interpretation of the constitution and laws containing internationally recognised principles, which maintained domestic and global environmental standard. The higher judiciary, particularly the Supreme Court made a good success in achieving the ignored environmental goals.

The Supreme Court and High Courts judicial pronouncements the balancing approaches of the value of trade and industrial development vis-à-vis the value of environmental protection. The judiciary always upheld the importance and preciousness of environment not by choice but as a need of the situation. Thus the present environmental jurisprudence as envisaged by various decisions of the higher judiciary includes a range of principles and fundamental norms as follows:-

1. Under the right to life guaranteed under Article 21 of the constitution, every person enjoys the right to a wholesome environment.⁸⁹
2. Enforcement Agencies are under an obligation to strictly enforce and implement environmental laws.⁹⁰

89. *Indian Council for Enviro-legal Action vs. Union of India AIR 1996 SC 2969.*

90. *Tarun Bharat Sangha, Alwar Vs U O I, (1993) 1 SCC 4*

3. Agencies of the Government may not plead non-availability of fund, inadequacy of staff to justify non-performance of their statutory duties under environmental laws.⁹¹
4. The Polluter Pays Principle is applicable in India under which the polluter bear the remedial and clean up cost as well as compensation to the victim.⁹²
5. Under pre-cautionary principle, the Government authorities are required to prevent the causes of pollution. The principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally benign.⁹³
6. Decision making agencies are required to give due regard to ecological factors, the environmental policies, sustainable development and utilization of natural resources and the obligation of the present generation to preserve natural resources and pass on future generation an intact environment as we inherited from the previous generation.⁹⁴
7. Stringent action ought to be taken against defaulters and persons who carry on industrial or development activities for profit without regard to environmental laws.⁹⁵
8. The powers conferred by environmental statutes may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law.⁹⁶
9. The State is the trustee of all natural resources, which are by nature

91. *Dr. B. L. Wadhera vs. Union of India* (AIR 1996 SC 2969).

92. *Indian Council of Enviro-Legal Action Vs UOI*, 996 3 SCC 212

93. *Vellore Citizen Welfare Forum Vs U O I*. AIR 1996 SC 2715.

94. *State of Himachal Pradesh Vs Umed Ram* AIR 1986 SC 847.

95. *State of Himachal Pradesh Vs Umed Ram* AIR 1986 SC 847.

96. *Bangalore Medical Trust Vs B.S Mudappa*, AIR 1991 SC 1902.

meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running water, air, forest, and ecologically fragile lands. These resources can not be converted into private ownership.⁹⁷

The credit for the creation of a host of environmental rights and enforce them as fundamental rights goes to the higher judiciary in India. This is a very significant as one learns from experiences elsewhere. The legal system may guarantee a constitutional right to environment and statutes may accord the right to participate in environmental protection. However, when no tools for their protection are made available, then they are as good as non-existent. This is the experience in Spain, Portugal, Brazil, and Ecuador. Indian experience contrast significantly. There is no direct articulation of the right to environment anywhere in the constitution or for that matter in any of the laws concerning environmental management in India. But activist lawyers motivating the courts to find and construct environmental right from the available legal material. The salutary effect of such an articulation is of insulating the right, like any other fundamental right, from any legislative perception or administrative action leading to its violation. Constitutional remedies in the form of writs are available for any violation of the right. One may approach the higher judiciary directly challenging the state action for its violation.

What the courts achieved in a little over a decade and half are to view the fundamental right to life to include different standard of environmental rights that are at once individual and collective in character. Thus in the *Doon Valley Litigation*, the Supreme Court found the indiscriminate granting of license to limestone quarries that resulted in soil erosion, deforestation and silting of river bed, as affecting the right of the people to live in a healthy environmental degradation amounted to the violation of fundamental right to life.

97. *M. C. Mehta -Vs- Kamal Nath* (1997) 1 SCC 388

The content of the right, from its vague and general formulation, began getting viewed in far clearer term as the court started addressing specific environmental problems. 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. In *Mathew Lucose vs. Kerala State Pollution Control Board*⁹⁸ the Kerala High Court went a step ahead by holding that the discharge of effluents by a chemical industry even when it was on one's own premise as 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 thwarted by the Andhra Pradesh High Court. Such a measure, the court felt, was tantamount to violating the fundamental right to live in a well-planned hygienic environment.⁹⁹

Public interest Litigation:

Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of the public in general. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi to file a case and continue the litigation and the non-affected persons had no locus standi to do so. And as a result, there was hardly

98. *Mathew Lucose vs. Kerala State Pollution Control Board* (1990) 2 KER LR 686

99. M. K. Ramesh, "Environmental Justice: Courts and beyond" *IJEL* 3 (1) 2002.

any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other.

However, this entire scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the apex court of India into a Supreme Court for all Indians. As a result any citizen of India or any consumer groups or social action groups can approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation.

The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. The Hon'ble judges have introduced PIL in Indian Law. The traditional concept of *Locus Standii* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, environmentally conscious individuals, groups or NGOs may have access to the Supreme Court/High Courts by way of PIL. The Hon'ble Supreme Court while taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

According to Hon'ble Mr. Justice Kuldeep Singh, Former Judge, Supreme Court of India - the Constitution of India is a living tree and is

not a static document. The Courts have to interpret the Constitution keeping in view the needs of the present generation. Some of the leading public interest litigations are Taj Mahal case, Hazardous industries matter in Delhi, Vellore Citizen's Welfare Forum case and Rural litigation and Entitlement Kendra case relating to lime stone queries in Dehradun.

Various Authorities have been constituted under the Environment (Protection) Act, 1986 in compliance with the directions of the Hon'ble Supreme Court during the pendency of the public interest litigations. These Authorities have been constituted for specific assignments, which are:

1. *The Dahanu Taluka Environment Protection Authority* – In the District of Thane, Maharashtra, to protect the ecologically fragile areas in Dahanu Taluka and to control pollution in the area¹⁰⁰
2. *The Central Ground Water Authority* - For the purpose of regulation and control of Ground Water Management and Development¹⁰¹
3. *Aqua Culture Authority* – To deal with the situation created by the shrimp culture industry in the Coastal States and Union Territories¹⁰²
4. *The Water Quality Assessment Authority*-To direct the agencies (Govt./local bodies/non-Governmental) for taking action in accordance with the powers and functions of the Authority¹⁰³
5. *The Environment Pollution (Prevention and Control) Authority* for NCR of Delhi - for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution¹⁰⁴

100. *Constituted on 19.12.1996.*

101. *Constituted on 14.1.1997*

102. *Constituted on 19.12.1996.*

103. *Constituted on 6-2-1997.*

6. *The loss of Ecology (Prevention and Payments of Compensation) Authority* for the State of Tamil Nadu; To assess the loss to the ecology and environment in the effected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families¹⁰⁵ and

7. *The Taj Trapezium Zone Pollution (Prevention and Control) Authority*- The Authority should within the geographical limits of Agra Division in the Taj Trapezium Zone in the State of Uttar Pradesh, to monitor progress of the implementation of various schemes for protection of the Taj Mahal and programmes for protection and improvement of the environment in the said area .¹⁰⁶

IMPORTANT DECISIONS OF THE HON'BLE SUPREME COURT IN THE PIL AND SUBSEQUENT STEPS TAKEN:-

1. TAJ POLLUTION MATTER:¹⁰⁷This writ Petition was filed by Shri M. C. Mehta, Advocate, as a public interest litigation regarding pollution caused to the Taj Mahal in Agra. The sources of air pollution in Agra region were particularly iron foundries, Ferro-alloys industries, rubber processing, lime processing, engineering, chemical industries, brick kilns, refractory units and automobiles. The Petitioner also alleged that distant sources of pollution were the Mathura Refinery and Ferozabad bangles and glass industries. It was also stated that the sulphur dioxide emitted by the Mathura Refinery and the industries located in Agra and Ferozabad when combined with moisture in the atmosphere forms sulphuric acid and causes "acid rain" which has a corroding effect on the

104. *Constituted on 30-9-1996.*

105. *Constituted on 29-1-1998.*

106. *Constituted on 17-5-1999.*

107. *M.C.Mehta Vs UOI & Ors. W.P.(C) No.13381 /1984.*

gleaming white marble. The industrial and refinery emissions from brick kilns, vehicular traffic and generator sets were alleged primarily responsible for polluting the ambient air in and around Taj Trapezium Zone (TTZ) as identified by the Central Pollution Control Board. The Petitioner also referred the "Report on Environmental Impact of Mathura Refinery" (Varadharajan Committee) published by the Government of India in the year 1978. Subsequently, the reports of the Central Pollution Control Board under the title "Inventory and Assessment of Pollution Emission: In and Around Agra-Mathura Region (Abridged)" and the report of the National Environmental Engineering Research Institute (NEERI) entitled "Over-View Report" regarding status of air pollution around the Taj published in the year 1990 were also referred. On the directions of the Hon'ble Supreme Court, the NEERI and the Ministry of Environment & Forests had undertaken an extensive study for re-defining the TTZ (Taj Trapezium Zone) and re-alienating the area management environmental plan. The NEERI in its report had observed that the industries in the TTZ (Districts of Agra Mathura, Ferozabad and Bharatpur) were the main sources of air pollution in the area and suggested that the air polluting industries in the area be shifted outside the TTZ. The Hon'ble Supreme Court after examining all the reports viz, four reports from NEERI, two reports from Varadarajan and several reports by the Central Pollution Control Board and U.P.Board, on 31.12.1996 directed that the industries in the TTZ were the active contributors to the air pollution in the said area. All the 292 industries were to approach/apply to the GAIL before 15.2.1997 for grant of industrial gas-connection. The industries, which were not in, a position to obtain gas-connections, to approach UPSIDC/U.P. Government before 28.2.1997, for allotment of alternative plots in the industrial estates outside TTZ. Those industries, which neither applied for gas-connection nor for alternate industrial plots should stop functioning using coke/coal as fuel in the TTZ w.e.f. 30.4.1997. The supply of coke/coal to these

industries shall be stopped forthwith. The GAIL should commence supply of gas to the industries by 30.6.1997, with these directions the issue relating to 292 industries was disposed off. Now, none of the 292 industries is using coal/coke as fuel. As per the information given by the Government of Uttar Pradesh to the Hon'ble Supreme Court, the present operational status of those industries is as follows:

Units closed	: 187
Units based on electricity	: 53
Units based on CNG/LPG/Electricity	: 42
Units not using any fuel	: 03
Units not found	: 07

Total: 292

Constitution of Mahajan Committee: The Mahajan Committee was constituted by the orders of the Hon'ble Supreme Court dated 5.2.1996. The Mahajan Committee was consisted of Shri Krishan Mahajan, Advocate and two senior scientists of the Central Pollution Control Board. The Hon'ble Supreme Court on 30.8.1996 directed the Mahajan Committee to inspect the progress of the green belt developed around the Taj Mahal every three months and submit progress report in the Court for the period of next three years. Earlier, on the basis of the report submitted by the NEERI regarding development of green belt around Taj Mahal, the Hon'ble Supreme Court on 30.8.1996 and 3.12.1996 directed the Ministry of Environment & Forests, Government of India for monitoring and maintenance of the trees planted in the green belt. The officials of the Central Pollution Control Board were also directed for inspection of the Green Belt area in every three months. The Central Pollution Control Board had submitted so far 35 reports in compliance of

the Hon'ble Supreme Court orders. On the directions of the Hon'ble Supreme Court, dated 13.9.2000 the Central Pollution Control Board inspected the Foundry Nagar Industrial area, Agra and the premises of the Taj and submitted its report with its recommendations. The Hon'ble Court on 7.11.2000 while accepting the recommendations of the Central Board directed that the four Ambient Air Quality Monitoring Stations be installed in Agra region and these stations be run continuously for one year all the seven days in a week. These air quality monitoring stations are to be run by the Central Pollution Control Board and monitoring report of these stations be submitted in the Court every month. The Central Pollution Control Board submitted a detailed proposal for establishing four air quality-monitoring stations in Agra region before the Court. The Hon'ble court considered the proposal of the Central Board and accepted the recommendations of the Mahajan Committee in the matter on 4.5.2001 and directed that the full cost towards the hardware for monitoring stations and hardware for Central Laboratory would be provided by the Mission Management Board (MMB) (functioning under the Ministry of Environment, Government of Uttar Pradesh and is located in Lucknow) and with regard to the remaining amount of operational cost would be made available by the Central Government to the Central Pollution Control Board within four weeks from the date of the order. The Central Board has established four ambient air quality-monitoring stations in Agra and these stations have been commissioned in the month of January 2002. Monitoring reports are being submitted to the Hon'ble Court on regular basis since February, 2002. Apart from the establishment and operation of four monitoring stations in Agra, the Hon'ble Supreme Court, is monitoring several other important issues which were directly related to the pollution problems of Agra and TTZ area. The following issues are under active consideration of the Hon'ble Supreme Court:

industries located in Agra including foundry units;

1. compliance of direction of the Hon'ble Supreme Court by the Mission Management Board;
2. traffic management & encroachment within the 500 metre zone of the Taj Mahal;
3. slaughter house;
4. Agra Heritage Fund;
5. opening of Taj Mahal in the night;
6. unauthorized construction within 100 metre from the southern gate of the Taj Mahal;
7. booking window at Taj Mahal for collection of Toll Tax;
8. supply of gas to the industries located in Firozabad;
9. brick kilns located 20 km away from Taj Mahal or any other significant monument in the TTZ area including Bharatpur Bird Sanctuary ;
10. promotion of Non-Conventional Energy Source; and
11. security of Taj Mahal.

2. GANGA POLLUTION MATTER:¹⁰⁸The Central Pollution Control Board filed an Interlocutory Application in 1999 before the Hon'ble Supreme Court seeking directions in respect of the municipalities/ Nagarpalikas/ local bodies located in the State of Uttar Pradesh, Bihar and West Bengal to maintain sewage treatment plants/ sewerage systems, pumping stations, crematoria, low cost community toilets or any other assets or infrastructure created under the Ganga Action Plan. The Hon'ble Court on 28.3.2001 after consideration of the replies of the States of Uttar Pradesh, Bihar and West Bengal directed that it was appropriate that the Central Pollution Control Board jointly with the respective State Pollution Control Boards, examine and inspect the functions of the aforesaid assets/infrastructure created under the Ganga Action Plan in the State

108 . *M.C.Mehta Vs UOI & Ors. Writ Petition (Civil) No. 3727/1985.*

of Bihar, West Bengal, Uttar Pradesh and Uttaranchal and submit a comprehensive report indicating to what extent the orders of this court have been complied with by the respective authorities. The Central Board after carrying out in-depth inspection in each of the States, jointly with the concerned Pollution Control Board, submitted the report before the Hon'ble Supreme Court. The Central Pollution Control Board along with the State Pollution Control Boards of Uttar Pradesh, Bihar and West Bengal carried out inspection of 35 sewage treatment plants in Uttranchal, Uttar Pradesh, Bihar and West Bengal from May 28th, 2001 to June 19th, 2001. The State Board of Uttranchal had not started functioning during the period of inspection; the U. P. Pollution Control Board joined the inspection of 3 sewage treatment plants in Uttranchal. The inspection report of the Central Pollution Control Board provided an overview of the operation and maintenance, performance evaluation of sewage treatment plants, conclusions and recommendations for four States. Out of 35 sewage treatments plants (STP) planned under Ganga Action Plan Phase - I. 32 are commissioned and 29 were found functioning. Based on the inspections of the STPs and examination of various issues, the Central Pollution Control Board recommended that the staff responsible for operation and maintenance of STPs should be professionally qualified and trained. There should be detailed operational manual for each STP. There should be one laboratory in each town where sewage treatment plant with activated sludge unit is incorporated and the laboratory should be have basic facilities for analyzing pH, conductivity, BOD, COD, SS, Volatile SS and Dissolved Oxygen. The treatment plant should be monitored for its performance on daily basis for BOD, COD and SS. There should be a separate cell in the State Pollution Control Board for monitoring and management of sewage treatment plants. The decentralized approach in management of sewage needs to be encouraged. The Co-operative group housing societies, multistoried housing complexes, big hotels etc. need to set up

appropriate on site wastewater treatment facilities for recycling of wastewater for gardening and other non-domestic uses to the extent possible. The STPs should be brought under regulatory mechanism for effective monitoring and pollution control. The municipalities must apply and obtain consent from the concerned State Pollution Control Boards under the Water (Prevention and Control of Pollution) Act, 1974. The Hon'ble Court accepted the report of the Central Board and directed the concerned State Governments to submit their comments on the said report. The matter is under consideration of the Hon'ble Supreme Court.

3. VEHICULAR POLLUTION IN DELHI:¹⁰⁹This writ petition was filed in the year of 1985 under Article 21 of the Constitution of India regarding air pollution in Delhi. The Petitioner challenged the inaction on the part of the Union of India, Delhi Administration (now known as Government of National Capital Territory of Delhi) and other Authorities whereby smoke, highly toxic and other corrosive gases were allowed to pass into the air due to which the lives of the people of Delhi were put to high risk especially in thickly populated areas where most of the hazardous industries were functioning. The residents of the area were suffering from chronic ailments of nose, throat and eyes due to air pollution. The Petitioner prayed before the Hon'ble court that pollution is due to industries and vehicles and appropriate directions might be issued to the owners of vehicles emitting noxious carbon monoxides, oxides of nitrogen, lead and smoke from their vehicles. During the pendency of this Writ Petition, the Hon'ble Supreme Court passed several orders/directions to deal with the situations arising from time-to-time and impressed upon the concerned authorities to take urgent steps to tackle the acute problem of vehicular pollution in Delhi.

109 . *M.C.Mehta Vs UOI & Ors Writ Petition (Civil) No.13029/1985 (.)*

The important directions issued by the Hon'ble Court on 26.7.1998:

- i. augmentation of public transport to 10,000 buses by 1.4.2001
- ii. elimination of leaded petrol from NCT Delhi by 1.9.1998;
- iii. supply of only pre-mix petrol by 31.12.1998 for two stroke engines of two wheelers and autos;
- iv. replacement of all pre-1990 autos and taxies with new vehicles on clean fuels by 31.3.2000;
- v. no 8 year old buses to ply except on CNG or other clean fuels by 1.4.2000;
- vi. entire city bus fleet (DTC & private) to be converted to single fuel mode on CNG by 31.3.2001;
- vii. new ISBTs to be built at entry points in North and South-West to avoid pollution due to entry of inter state buses by 31.3.2000;
- viii. GAIL to expedite and expand from 9 to 80 CNG supply outlets by 31.3.2000;
- ix. two independent fuel testing laboratories to be established by 1.6.1999;
- x. proper inspection and maintenance facilities to be set up for commercial vehicles with immediate effect;
- xi. comprehensive inspection and maintenance programme to be started by transport department and private sector by 31.3.2000; and
- xii. CPCB/DPCC to setup a few more stations and strengthen the air quality monitoring stations for monitoring critical pollutants by 1.4.2000. The Hon'ble Court also directed that the time frame as fixed by the Environment Pollution (Prevention and Control) Authority should be strictly adhered to by all the authorities.

The Hon'ble Supreme Court on 26.3.2001 further directed that in public interest and with a view to mitigate the sufferings of the commuter public

in general and the school children in particular some relaxation and exemptions were given.

While dealing with the issues relating to conversion to CNG mode of public transport in NCT Delhi, the Hon'ble Supreme Court on 5.4.2002 further directed that under Articles 39(e), 47 and 48-A it is the duty of the of the State to secure the health of the people, improve public health and protect and improve the environment. The Hon'ble Court observed that the Environment (Prevention and Control) Authority was a statutory Authority constituted u/s 3 of the Environment (Protection) Act, 1986 and its directions were final and binding on all persons and organizations concerned. The directions of the said authority should be complied with.

The Hon'ble Supreme Court earlier extended the limit for the conversion of commercial vehicles to avoid the unnecessary hardship, the first time it was extended to 31.5.2001 and then to 31.1.2002. On 5.4.2002, the Hon'ble Supreme Court has relied on the judgment of *Vellore Citizen Welfare Forum Vs Union of India & Others*¹¹⁰ in which precautionary principle and 'polluter pays principle' was discussed. The Hon'ble Court also referred various studies which co-related the increase of air pollution with increase in cardiovascular and respiratory diseases and also the carcinogenic nature of respirable suspended particulate matter (RSPM) – PM-10 (i.e. matter less than 10 microns in size). The Hon'ble Supreme Court also referred the CPCB Newsletter "Parivesh", published in September, 2001 relating to air pollution and human health, and observed that there was need to control air pollution, and one of the measures was to reduce the use of diesel.

110. (1996) 5 SCC 64.

The Hon'ble Supreme Court issued the following directions for compliance:

1. The Union of India would give priority to Transport Sector including private vehicles all over India with regard to the allocation of CNG, i.e first the transport sector in Delhi, and in other polluted cities of India.
2. Those persons who have placed orders with the bus manufacturers and not taken the delivery of the bus should do so within 2 weeks failing which their permits should stand automatically cancelled.
3. Those owners of the diesel buses continued to ply diesel buses beyond 31.1.2002, in contravention of this Court's orders, the Director of Transport, Delhi would collect from them costs @ Rs.500/- per bus per day increasing to Rs.1000/- per day after 30 days of operation of the diesel buses w.e.f. 6.4.2002.
4. The NCT of Delhi should phase out 800 diesel buses per month from 1.5.2002 till all the diesel buses are replaced.
5. The Union of India and all Government Authorities including Indraprashta Gas Limited (IGL) should:
 - a. Allocate and make available 16.1 lacs kg per day (2 mmscmd) of CNG in the NCT of Delhi by 30.6.2002 for use by the transport sector.
 - b. Increase the supply of CNG whenever the need arises.
 - c. Prepare a scheme containing a time schedule for supply of CNG to the other polluted cities of India which includes Agra, Lucknow, Jharia, Kanpur, Varanasi, Faridabad, Patna, Jodhpur and Pune.
 - d. The Union of India might supply LPG in addition to CNG as an alternate fuel or to supply any other clean non-adulterable fuel as the Bhure Lal Committee might recommend.

4. POLLUTION BY INDUSTRIES IN DELHI:¹¹¹This Writ Petition was filed by Shri M. C. Mehta in 1985 regarding the pollution in Delhi by the Industries located in residential areas of Delhi. The Hon'ble Supreme Court after considering the reports submitted by the Central Pollution Control Board and the Delhi Pollution Control Committee, finally ordered vide its various orders, dated 8.7.1996, 6.9.1996, 10.10.1996, 26.11.1996 and 19.12.1996. These orders in brief are:

(i) Hazardous/Noxious heavy and large industries:- The Hon'ble Court vide its order, dated 8.7.1996 directed that 168 industries falling in 'Ha' and 'Hb' categories under the Master Plan of Delhi – 2001 (MPD-2001) and which were hazardous/noxious/heavy and large industries, to stop functioning and operating in city of Delhi w.e.f.30.11.1996. However, those industries could relocate/shift themselves to any other industrial estate in the National Capital Region (NCR) or outside.

(ii) The Hon'ble Court vide its order, dated 6.9.1996 ordered that 513 industries falling under 'H' category under the MPD-2001, should stop functioning and operating in the city of Delhi w.e.f.31.1.1997. However, those industries could relocate/shift themselves to any other industrial estate in NCR.

(iii) Hot Mix Plants:- The Hon'ble Court vide its order, dated 10.10.1996 directed that 43 Hot Mix Plants operating in Delhi be relocated/shifted to any other industrial estate in the NCR region. It was also directed that those 43 Hot Mix Plants close down and stop functioning and operating in the city of Delhi w.e.f. 28.2.1997.

111. *M.C.Mehta Vs Union of India & Ors. Writ Petition (Civil) No.4677/1985.*

(iv) Brick Kilns:- The Hon'ble Court vide its order, dated 26.11.1996 directed that 246 brick kilns operating in the Union Territory of Delhi falling under category 'H' under the MPD-2001, should close their functioning w.e.f.30.6.1997. However, these brick kilns could relocate/shift themselves in NCR.

The Hon'ble Supreme Court further directed that it was liberty to the brick kiln owners to indicate before 31.1.1997 in writing to the NCT of Delhi and Delhi Pollution Control Committee that the concerned brick kilns intended to shift to the new technology of manufacturing bricks by flyash - sand - lime technology. The Delhi Pollution Control Committee should monitor the setting up of the new project of the concerned brick kiln. After obtaining the consent and no objection certificate from the Delhi Pollution Control Committee and also from the Central Pollution Control Board, the concerned brick kiln permitted to operate at the same site, if it is permitted under Delhi Master Plan - MPD-2001. The Hon'ble Court further directed the NCT of Delhi to render all possible assistance to the concerned brick kiln owners to changeover the new technology and in the setting up of the modern plants with flyash- sand-lime technology.

(v) Arc/Induction Furnaces:- The Hon'ble Court vide its order, dated 26.11.1996 directed that the 21 arc/induction furnaces falling under 'H' category industries under the MPD-2001 to close down and stop functioning and operating in the Union Territory of Delhi w.e.f.31.3.1997. However, these arc/induction furnaces could relocate/shift themselves to any other industrial estate in the NCR.

(vi) The Hon'ble Court vide its order, dated 19.12.1996 directed that 337 industries falling under 'H' category industries under the MPD-2001 were directed to close down and stop functioning and operating w.e.f. 30.6.1997 in Union Territory of Delhi. However, those industries could relocate/shift themselves to any other industrial estate in the NCR.

(vii) 'F' category industries located in residential area:- The Hon'ble court vide its order, dated 12.9.2000 directed and appointed the Ministry of Urban Development to act as the Nodal Agency for the matter of relocating/shifting of 'F' category industries as per MPD-2001 functioning and operating in residential areas of Delhi. The said Nodal Agency was directed to supervise the implementation of various orders/directions passed by the Hon'ble Court as well as implementation of the Master Plan of Delhi. The powers under Sections 3(3) and 5 of the Environment (Protection) Act, 1986 were given to the said Nodal Agency for implementation. The Hon'ble court on 7.12.2000 directed that under the supervision of the Nodal Agency, the Government of National Capital Territory of Delhi, the Municipal Corporation of Delhi and the Delhi Development Authority would close all the polluting units functioning in non-conforming/residential areas or zones within a period of four weeks from the date of the order. The Hon'ble Court further directed that the Nodal Agency was at liberty to direct closure of the polluting units under its supervision.

5. POLLUTION IN RIVER YAMUNA:^{112A} A news item titled '...and Quite Flow Maily Yamuna...' was published in a daily News Paper 'The Hindustan Times', New Delhi on 18.7.1994. The said news item was based on findings of Central Pollution Control Board. The Hon'ble Supreme Court took suo-moto cognizance of this news item and issued notices on 2.12.1996 to the Central Board with the directions to conduct investigations in the cities of Ghaziabad, NOIDA and Modi Nagar with a view to having an assessment of environment impact and to the status of pollution due to generation of industrial wastes, municipal sewage, household wastes and other types of wastes. It was also directed that the Central Board should give positive suggestions/schemes to be made

112. Writ Petition (Civil) No.725/1994, News Item 'HT', dated 18.7.1994, A.Q.F.M. Yamuna Vs Central Pollution Control Board & Ors.

operative, so far as controlling pollution. The Central Pollution Control Board conducted inspections in the cities of Ghaziabad, NOIDA and Modi Nagar and submitted a detailed report on 18.12.1996 for the consideration of the Hon'ble Court. After examining the report of the Central Board, the Hon'ble Court issued notices to the National River Conservation Directorate (NRCD) and also to the Ghaziabad Municipal Corporation for their response.

The Central Board further submitted that the plan for cleaning of Kali Nadi was required to be evaluated in detail through a Committee of experts. On the suggestions of the Central Board, the Hon'ble Supreme Court ordered on 20.3.1998 that the committee which was constituted in the Writ Petition (Civil) No. 914/1996 might also be associated for the evaluation of the project proposal for the Kali Nadi and Ghaziabad, NOIDA action plans and evaluate the appropriate technology to be adopted for these projects. On the directions of the Hon'ble Court, the Committee under the Chairmanship of Shri P.K.Kaul, Ex- Cabinet Secretary submitted its reports before the Hon'ble Court for consideration. The matter is still under consideration of the Supreme Court.

The Central Board is regularly monitoring water quality of river Yamuna and drains joining it in Delhi, in compliance of the Hon'ble Court's order. Till date, several reports have been submitted for the consideration for the Hon'ble court. In its reports, the Central Board recommended that there should be proper collection of wastewater generated in Delhi by augmenting sewerage facilities, laying down by sewer lines. Untreated sewage should not be allowed to flow into the storm-water drains. Sewage treatment plants are required to be operated to their full capacity. The existing sewerage network should be appropriately maintained using three-tier maintenance schedule.

Adequate sanitary arrangements for slums and J. J. Colonies, and use of wastewater after treatment for irrigation, gardening and other uses were suggested. Delhi might exchange treated wastewater to fresh water with the State of Haryana.

The Hon'ble Court directed the Ministry of Environment & Forests and Ministry of Urban Development, Government of India to study the problem with regard to the treatment of sewage in Delhi and give their positive and concrete suggestions, so that after 31st March 2003, no untreated sewage should go to the river Yamuna. The matter is still under consideration of the Hon'ble Court.

Yamuna Pollution Matter

The Hon'ble Court on 10.4.2001 after considering various reports submitted by the Central Pollution Control Board on the status of Yamuna River, observed that it was not the denied fact that right to life guaranteed under Article 21 of the Constitution include a right to clean water. This right to clean water being deprived to 31.8 million citizens of Delhi because of the large scale pollution of the river Yamuna. The entire pollution takes place only in the stretch of the river Yamuna that passes through Delhi, which is about 22 km. The quality of water of river Yamuna, when it enters in Delhi, is far superior than when it leaves Delhi and by the time Yamuna enters into Agra canal. The Hon'ble Court further directed that when an Integrated Action Plan was furnished, steps might be taken so as to ensure that at least by 31.3.2003 the minimum desired water quality (i.e. of class-C) in the river Yamuna is achieved in Delhi Stretch. The Hon'ble Supreme Court further directed the Ministry of Urban Development to submit how its Integrated Action Plan could be implemented within the prescribed time frame. The Chief Secretary of Delhi would also inform this Court as what steps could be taken to ensure to attain the required quality of water in the river

Yamuna so that it could no longer be called "Mailee Yamuna" after 31.3.2003.

The Hon'ble Court on 6.11.2001 while considering the status of pollution in the river Yamuna observed that the deterioration of water quality became a serious health hazard for the inhabitants of Delhi. The Government with all the resources at their command should ensure that unpolluted water or tolerable standard of water was maintained. The Hon'ble Court directed the Delhi Administration to submit a time schedule as to what it would propose to do and also indicate the phases in which the pollution level will come down to ensure that after 31st March, 2003 no untreated sewage enters river Yamuna.

The Hon'ble Court on 4.12.2001 directed that the Government should not allow construction of additional floor or increase FAR without increasing the corresponding civic amenities because any such addition in the construction would increase population and the extinction of the river Yamuna. The Hon'ble Court further directed the Central Government to consider and inform the Court whether any amendment is required of the Environment (Protection) Act, 1986 so that the requirement of Environment Impact Assessment for the purposes of the town planning is incorporated.

Distilleries Matters

The Hon'ble Court considered the petitions filed by the Distilleries located in Haryana on 23.1.2001 and directed that a committee comprising Additional Secretary, Ministry of Environment & Forests or such other senior officer as may be deputed by the Ministry and the Chairmen of Central Pollution Control Board and Haryana State Pollution Control Board be constituted and the said Committee, should take decision with regard to allowing all or any of the distilleries to

operate or not to operate. The said Committee might seek such technical assistance, as it may deem fit and proper. Accordingly, the Committee consulted experts who were well acquainted with the distilleries and its effluent treatment, to evolve criteria for treatment and disposal of distillery wastewater. Some of the distilleries in Haryana were allowed to operate after compliance of this criteria developed by the Committee.

6. POLLUTION IN NOIDA, GHAZIABAD AREA:¹¹³ This Writ Petition was filed by the association of the residents of Sector 14, NOIDA regarding the discharge of effluents from the Delhi territory through Shahadra/Gazipur drain, which flow via Chilla Regulator, and passing through various sectors of the NOIDA area. The petitioner has alleged that various colonies, which are part of the Delhi territory, also discharge their untreated sewage besides industrial effluent through the above drains as a result of which the residents of NOIDA area are being adversely effected and get exposed to the environmental problems like the foul smell, mosquito breeding, stagnant water accumulation, discharge of untreated sewage, groundwater pollution, etc. The Hon'ble Supreme Court after hearing the matter on 6.1.1998 directed that a committee under the Chairmanship of Shri P. K. Kaul, Former Cabinet Secretary be constituted to deal with the problem and submit their report. The said committee after deliberation with different officials of local bodies of the Delhi and NOIDA submitted their reports suggesting short term measures and long term measures. The Hon'ble Court after consideration of the reports of the committee directed the Environment Pollution (Prevention and Control) Authority for NCR for monitoring and implementation of the recommendations of the Committee.

113. *Sector 14 Resident's Welfare Association vs. State of Delhi & others.*

7. NOISE POLLUTION BY FIRECRACKERS:¹¹⁴ The Hon'ble Court after hearing the matter on 27.9.2001 issued following directions to all the States and the Union Territories to control noise pollution arising out of bursting of firecrackers, on the eve of the Dushehra and Diwali festivals and other festivals : -

- i. The Union Government, the Union Territories as well as all the State Governments should take steps to strictly comply with the rules framed under the Environment (Protection) Act, 1986. These Rules are related to the noise standards for firecrackers mentioned at S. No. 89 of Notification No. GSR 682(E), dated 5.10.1999.
- ii. The use of fireworks or firecrackers should not be permitted except between 6.00 p.m. and 10.00 p.m. No fireworks or firecrackers should be used between 10.00 p.m. and 6.00 a.m.
- iii. Firecrackers should not be used at any time in silence zones.
- iv. The State Education Resource Centres in all the States and the Union Territories as well as the management/principals of schools in all the States and Union Territories should take appropriate steps to educate students about the ill effects of air and noise pollution.

The Hon'ble Court also directed that these directions should be given wide publicity both by electronic and print media.

8. IMPORT OF HAZARDOUS WASTE:¹¹⁵ This Writ Petition was filed as Public Interest Litigation seeking Hon'ble Court's intervention to impose

114. *Writ Petition (Civil) No.72/1998. / Noise Pollution – Implementation of the laws for restricting use of loudspeakers and high volume producing sound systems Vs UOI & Ors.*

115. *Research Foundation for Science, Technology & Natural Resource Policy vs. Union of India*

ban on the import of toxic wastes from the industrialized countries into India. The High Power Committee was appointed by the Hon'ble Court vide its order, dated 13.10.1997 to look into various aspects of hazardous wastes and suggest measures. The Hon'ble Court after hearing on 12.2.2001 passed an order to acknowledge the receipt of the report of the High Power Committee headed by Prof. M.G.K.Menon. The Hon'ble Court also considered the report relating to the hazardous wastes off loaded at Alang in Gujarat. The reports were filed by the Central Pollution Control Board vide its affidavits dated 29.2.2000 and 10.8.2000 in compliance of Hon'ble Court's order. The Hon'ble Court further directed that since, there was no specific finding by the National Institute of Oceanography, Goa, the Union of India should file an affidavit indicating whether the material imported was hazardous or not. If necessary, opinion of the High Power Committee be obtained. The matter is pending with the Hon'ble Court.

9. POLLUTION IN PORBANDAR, GUJARAT:¹¹⁶ Dr. Kiarn Bedi, an IPS Officer filed this Petition in public interest for the protection of the Monument at Porbander, the birthplace of the Father of the Nation. The Hon'ble Supreme Court after consideration of the submissions of the petitioner on 16.10.1998 directed the Central Pollution Control Board to submit a report about the conditions prevailing in and around the memorial built in memory of the Father of the Nation at Porbander. In its report, the Central Board was directed to furnish the report on the fish-drying activity carried on in the area surrounding the memorial as also the overall sanitary conditions prevailing in this area. The conditions of the roads leading to the memorial should also be reported. The report should indicate the specific distance from the memorial to the land or plots on which fish drying activities were carried on. The hygienic conditions around the memorial and the landing sites for the fishing

116. *Dr. Kiran Bedi vs. Union of India & others.*

vessels including the distance of the landing sites from the memorial should be reported. The Central Board was directed to suggest, in consultation with the Gujarat Maritime Board whether the landing sites for the fishing vessels could be shifted to a distance of 3 kilometres at least from the memorial and also suggest proposals for shifting of fish drying activities.

A team from the Central Board after visiting Porbander city submitted its inspection report on the status of condition of sanitation in the city, fishing activities and suggested short-term and long-term recommendations. The Hon'ble Supreme Court after examining the matter on 9.4.1999 directed that the area between Manik Chowk and Sardar Vallabh Bhai Patel Road should be treated as "Walking Plaza" and no vehicular traffic would be allowed on this road subject to the special permission of the S.P.(Traffic) or the Collector of the District for urgent Government works. No hawkers would also be allowed in this area. No fish drying activity would be carried out in and around an area of three kilometres from Kirti Mandir. The State of Gujarat and Municipality of Porbander should submit the progress made concerning the sewerage system. The Hon'ble Supreme Court on 19.9.2000 observed that sufficient steps were taken to protect the birthplace of Mahatama Gandhi and fishing area has been shifted to a distance of 4½ kilometres. The appropriate authority has taken steps for having the sewerage system in the city in place. In view of that, no further orders were necessary. The Writ Petition was disposed off on 9.4.1999.

10. MANAGEMENT OF MUNICIPAL SOLID WASTE:¹¹⁷ This Writ Petition was filed under Article 32 of the Constitution of India. The Petitioner prayed before the Hon'ble court to issue directions to the Municipal Corporation of Delhi (MCD) and New Delhi Municipal Council

117 . *Dr. B. L. Wadhera vs. Union of India (AIR 1996 SC 2969).*

(NDMC) to take action in accordance with the Municipal Laws specifically for collection, removal and disposal of garbage and other wastes. On the directions of the Hon'ble Supreme Court, the concerned authorities filed their replies. In its reply the MCD submitted that the total number of garbage collection centres were 1604 (337 dalao, 1284 dustbins, 176 open sites and 7 steel bins). The garbage collection trucks collected the garbage from the collection centres and took it to the nearest Sanitary Land Fill (SLF). In its reply, NDMC stated that average of 300-350 tonnes of garbage generated in the NDMC area and there were 944 garbage collecting places (650 trolleys and 394 dustbins). The Court on 1.3.1996 passed the order that the ambient air was so much polluted that it was difficult to breath. The people of Delhi were suffering from respiratory diseases and throat infections. River Yamuna, - the main source of drinking water supply - was the free dumping place for untreated sewage and industrial waste. The rapid industrial development, urbanization and regular flow of persons from rural to urban areas had made major contribution towards environmental degradation. Article 21, 48A and 51A (g) of the Constitution of India, which guarantees "Right to Live" In light of the facts and circumstances stated above, the following directions were issued for compliance

1. The experimental schemes of MCD and NDMC for distribution of polythene bags, door-to-door collection of garbage and its disposal were approved. The garbage/waste should be lifted from the collection centers everyday and transported to the designated place for disposal. All receptacles/collection centers should be kept clean and tidy everyday.
2. The Government of India through its Secretary, the Ministry of Health, Government of NCT of Delhi, MCD through its Commissioner and NDMC through its Administrator were to construct and install incinerators in all the Hospitals/Nursing

Homes with 50 beds and above under their Administrative control. This was to be done within 9 months.

3. The All India Institute of Medical Sciences through its Director was to install sufficient number of incinerators to dispose of the hospital waste.
4. The MCD and NDMC were to issue notices to all the private hospitals/nursing homes in Delhi to meet their own arrangements for the disposal of their garbage and hospital waste and construct their own incinerators.
5. The Central Pollution Control Board and the Delhi Pollution Control Committee should send their inspection team regularly in different areas of Delhi and New Delhi to ascertain that the collection/transportation and disposal of garbage/waste was carried out satisfactorily. The Central Pollution Control Board and the Delhi Pollution Control Committee should file their reports after every two months for a period of two years.
6. The Government of NCT of Delhi was to appoint Municipal Magistrates (Metropolitan Magistrates) for the trial of offences under the MCD Acts and NDMC Acts. Residents of Delhi were to be educated through Doordarshan that they should be liable for penalty in case they violate any provision of these Acts in the matter of collecting and disposal of garbage and other wastes.
7. The Doordarshan through its Director General was to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and New Delhi Act.
8. The Secretary, Ministry of Defence Production, Government of India should make arrangements to have the 200 tippers supplied to MCD as expeditiously as possible.
9. The Development Commissioner, Government of NCT of Delhi was to handover the two sites near Badarpur or Jaitpur/Tejpur quarry pits

and Mandi Village near Jaunpur quarry pits. These sites were to be handed over to MCD within three months.

10. The compost plant at Okhla should be revived and put into operation w.e.f.1.6.1996 and four additional compost plants as recommended by Jagmohan Committee should also be examined for construction.
11. The MCD should not use the filled up Sanitary Land Fills (SLF) for any other purposes except for forest and gardens. The MCD was to develop forests and gardens on these sites. The work of afforestation should be undertaken by the MCD w.e.f. 1.4.1996.
12. The MCD and NDMC should construct/install additional garbage collection centers in the form of dhalaos/trolley/steel bins within four months.
13. The Union of India and NCT/Delhi Administration were to consider the request from MCD and NDMC for financial assistance.
14. The NCT/Delhi Administration and MCD and NDMC were to engage an expert body like NEERI to find out alternate method or methods of garbage and solid waste disposal in case non-availability of SLF methods.

Earlier, in compliance of the Hon'ble Supreme Court's order dated 1.3.1996 and 23.1.1998 the Central Pollution Control Board conducted inspection and surveyed different areas of Delhi/New Delhi to ascertain the collection transportation and disposal of garbage/waste and submitted bi-monthly reports to the Supreme Court. In its reports the Central Board made recommendations in respect of collection transportation and disposal of garbage/waste. In all 11 reports have been submitted in the Supreme Court by the CPCB. As per estimate of the CPCB the municipal solid waste (MSW) generated in Delhi was around 4000-5000 tonnes per day in 1997 and is likely to go as high as 10,000 tonnes per day in 2005. In view of these estimates, the CPCB

observed that there will be tremendous strain on municipal infrastructure services in terms of water supply, waste water collection, conveyance and treatment, and disposal of municipal solid waste. This Writ Petition was transferred on 23.1.1998 to the Hon'ble High Court of Delhi.

11. MANAGEMENT OF SOLID WASTE IN CLASS-I CITIES¹¹⁸ This writ petition was filed by Ms. Almitra H. Patel regarding management of solid waste in Class-I cities. In its petition the petitioner alleged that the practices adopted by the municipalities for disposal of garbage in urban areas were faulty and deficient. The management of solid waste by the municipalities had direct impact on the health of the people in the country. The petitioner had appreciated the guidelines and recommendations made by the Central Pollution Control Board for the management of municipal waste. In its reply, the Central Pollution Control Board submitted that the responsibilities of management of solid waste were vested with the municipal corporations of the municipalities which are under the administrative control of respective states/union territories. At the central level, the Ministry of Urban Affairs is the nodal Ministry to deal with the matters relating to municipal solid wastes. The Central Pollution Control Board itself has taken several initiatives for improvement, collection, transportation disposal and utilization of municipal solid wastes. On the basis of the replies of the various departments, Central/State Pollution Control Boards and concerned State Government, the Hon'ble Supreme Court on 16.1.1998 directed to constitute a committee to look into all aspect of solid wastes management in Class-I cities of India. The Chairman of the Committee was nominated Shri Asim Barman. The said committee has submitted its report in the month of March 1999 before the Supreme Court for consideration. The committee made several recommendations including

118 . *Almitra H Patel vs. Union of India & others.*

technical aspects also for the management of solid waste in class I cities. The recommendations have further categorized under three heads (i) mandatory recommendations for citizens/associations; (ii) mandatory recommendations for local bodies/state Governments; and (iii) Discretionary recommendations for urban local bodies. On the basis of the report of the committee, draft rules known as the Management of Municipal Solid Wastes (Management and Handling) Rules, 1999 were framed and circulated to all the State Governments for their suggestions and w.e.f. 25.9.2000 the Municipal Solid Wastes (Management and Handling) Rules, 2000 came in to effect. In pursuance of the Hon'ble Supreme Court's order, dated 24.11.1999 the Central Pollution Control Board carried out inspections and submitted a comprehensive report with regard to five cities (Bangalore, Calcutta, Chennai, Delhi and Mumbai) in the Supreme Court. In its report, the Central Pollution Control Board gave their observations in the implantation of the recommendations, mentioned in the Barman Committee (Constituted by the Hon'ble Supreme Court). The matter is pending in the Supreme Court for consideration.

12. POLLUTION IN MEDAK DISTRICT, ANDHRA PRADESH:¹¹⁹ This Writ Petition was filed in 1990 in the Supreme Court by the Indian Council for Enviro Legal Action & Others against the industries and the CETP managements of PETL at Pathancheru and Bolaram for the pollution of the ground water and surface water caused by the discharge of the effluents from these CETPs. Among others, the A.P. Pollution Control Board and the Central Pollution Control Board were made respondents in this case.

The Patancheru Industrial Estate was established in the year 1975 at Pathancheru in Medak district of Andhra Pradesh and is about 15

119 . *Indian Council of Enviro-Legal Action Vs UOI*, 996 3 SCC 212.

kms from Hyderabad. Bulk drugs, chemicals, textile, leather finishing industries etc. are located in this industrial estate and to take care of the effluents a common effluent treatment plant is set up and operated by M/s. Pathancheru Envirotech Limited and has 72 member industries. The total effluent handled by the PETL is about 2860 cu m per day. To provide treatment of the industrial effluents PETL obtains domestic sewage from BHEL which is located nearby and also raw water from Isakawagu drain and discharges the treated effluent in the Isakawagu drain which falls into Nakkawagu drain which finally discharges into Manjira river after traversing a distance of about 40 kms. Manjira River is the major source of water supply for the city of Hyderabad.

The Bolaram Industrial Estate is located in the Bolaram village in the district of Rangareddy in Andhra Pradesh and is about 35 km from Hyderabad city. The main water polluting industries in this industrial estate are the bulk drug industries. The CETP was established in this industrial estate and presently there are 25 member industries contributing to this CETP. The CETP at present is handling around 340 cu m per day of effluent. In order to homogenize and enhance the treatability of effluents domestic sewage is added. The treated effluents presently are discharged on land for plantations.

The Hon'ble Supreme Court vide its order, dated July 29, 1997 in I.A. No. 2 & 9-11 in WP (C)No. 1056/90 inter-alia directed the Central Pollution Control Board to take up the following activities :

A. CPCB was to assess the following :

- i. capacity of Common Effluent Treatment Plants (CETPs) installed at Patancheru and Bollaram;
- ii. functioning of these CETPs;
- iii. extent of treatment carried out in the CETPs;

- iv. whether the discharge from these CETPs meet the pollution control standards of CPCB;
 - v. extent of the areas damaged around the industries as a result of discharge of effluent from industries;
 - vi. extent of such damage;
 - vii. whether individual units have complete effluent treatment plants or only primary treatment is provided to the effluents; and
 - viii. The quality of effluent discharged from the individual effluent treatment plants belonging to each of these industries and whether they meet the prescribed standards.
- B. The Hon'ble Court further directed CPCB to suggest:
- i. Steps which should be taken to restore the affected areas to their non-polluted conditions;
 - ii. Steps which were required to be taken for proper functioning of the two CETPs, known as 'Progressive Effluent Treatment Limited' (PETL), Bollaram and 'Patancheru Envirotech Limited (PETL)', Patancheru;
 - iii. The time frame within which these steps can be taken;
 - iv. CPCB to deal comprehensively the entire problem and suggest some measures as they think appropriate for rectifying the situation; and
 - v. CPCB, in their report, to mention about the industries which have their own effluent treatment plants, indicating whether it was a complete plant or whether it was only for primary treatment of effluents

The CPCB conducted detailed investigations in the Bollaram and Patancheru areas and submitted a comprehensive report of effluent management in Nakkawagu drainage basin to the Hon'ble Supreme Court in March 1998. Vide its report the Central Board suggested mechanism of self-regulations of member industries to Patancheru and Bollaram Common Effluent Treatment Plants. The CPCB has suggested

the following inlet standards for CETP so that the effluent received in the CETP are amenable for biological treatment.

Parameters	Desirable limit (not to exceed)	Maximum Allowable Limit
COD	15000 mg/l	20000 mg/l
TDS	15000 mg/l	20000 mg/l
SS	1000 mg/l	1000 mg/l
pH	6.5 - 8.5	6.5 - 8.5

CPCB also suggested norms for the discharge of treated effluent for individual industries (large) and also the following norms for treated effluents from the CETP.

Parameters	Disposal to Nakkavaagu with cunnette system	Disposal to land for afforestation	Disposal to sewer
pH	6.5-8.5	5.5-9.0	5.5-9.0
O & G	10 mg/l	10 mg/l	20 mg/l
BOD	100 mg/l	150 mg/l	350 mg/l
TDS	3000 mg/l	3000 mg/l	-

Source: <http://www.envfor.ac.in>

The CPCB further dealt with the problem of disposal of the treated effluents from these CETPs and suggested the following four options and also given an Intercomparison of Various Options.

Option I : In this option, large industries should treat their effluent to bring down BOD to 1000 mg/l and following norms of TDS,

COD, SS as discussed earlier discharge their effluent to CETP. CETP would will also receive the effluent from SSI units meeting the norms of COD & TDS and should collect sewage from local areas/sewer network. CETP must achieve the sewer standard and discharge treated effluent to main sewer which leads to sewage treatment plant.

Option II : In option II, the same rule for option I was applicable to industries both large and small, alongwith collection of sewage. However, instead of disposal to sewer, CETP effluent would be discharged to land for afforestation, under this option.

Option III : The same proposition with respect to the provision of industrial effluent at individual level as sewage collection from local area holds good, but here CETP effluent disposal to Isakavaagu/Nakkavaagu with cunnette system was suggested.

Option IV : In this option, large industries were allowed to discharge into Isakavaagu/Nakkavaagu with a stringent limit of BOD 300 mg/l, COD 250 mg/l and TDS 2100 mg/l. Of course, the drains have to be provide with cunnette. Incase of SSI, effluent would be treated at CETP and discharged to Isakavaagu/Nakkavaagu drain.

The Hon'ble Supreme Court inter-alia further directed the Central Pollution Control Board and A.P.Pollution Control Board to jointly recommend measures short-term, mid-term and long-term to contain water contamination of Isakavaagu and Nakkavaagu, and ensure satisfactory functioning of the CETPs at Patancheru and Bollaram and restore the affected areas to normal conditions. In compliance of these directions, a joint action plan was submitted to the Hon'ble Supreme

Court. The Option I as mentioned above was finally agreed to be implemented and the PETL management had already deposited Rs.2 crores with Hyderabad Water Supply & Sewage Disposal Board and a time schedule has already been drafted for laying of the pipeline connecting PETL with K & S main. In the meantime NGOs from Musi river basin had raised objections to the proposed laying of the pipeline as they claim that Musi is already heavily polluted and transfer of the effluents from the CETP at Bollaram and Patancheru will further aggravate the problem. At present the Amberpet Sewage Treatment Plant has only primary treatment and secondary treatment is non-existent. Unless, the Amberpet Sewage Treatment Plant is upgraded and provided with secondary treatment which consists of biological treatment system, the treated effluent from CETP should meet the standards stipulated for disposal into inland surface waters. If the sewer standards are to be followed for discharge of the treated effluents from CETP, the Amberpet Sewage Treatment Plant needs to be upgraded to provide the secondary biological treatment system.

It was submitted for consideration of the Hon'ble Supreme Court that the upgradation of Amberpet Sewage Treatment Plant be taken up simultaneously alongwith the laying of the pipelines from CETPs for discharge of the effluents from CETP into K&S main so that both the systems are ready more or less at the same time. That the treated effluents from CETP with a TDS levels of a maximum of 10,000 mg/l, when discharged into public sewer, to K&S main, are expected to achieve a dilution of about 1:75 (considering the volume of treated effluents from the CETP as 3 MLD and the sewage received at Amberpet-STP as 225 MLD). By such dilution, the TDS levels in the combined effluent will be brought within the acceptable level of 2,100 mg/l for disposal into inland surface water or on land for irrigation.

At present, TDS limit of 15,000 mg/l for inlet of CETP was required to be met by the industries. However, in order to reduce the TDS load on CETP and consequently on STP and at the receiving water body/land, the industries were required to reduce the TDS in a phased manner. By the time, the discharge of treated effluent from CETP into the public sewer was materialized through laying of 18km pipe line and as well as the STP was augmented, the industries contributing to CETP should reduce the TDS levels upto 10,000 mg/l. This should be followed by further reduction of TDS levels upto 5000 mg/l in another 3 years from then.

The Hon'ble Court after hearing the matter on 10.10.2001 finally directed that further proceedings in the matter would be monitored by the Andhra Pradesh High Court. The High Court would ensure the implementation of the orders passed by the Hon'ble Supreme Court and would deal the Writ Petition as well as Application filed therein in accordance with the law.

13. POLLUTION BY CHEMICAL INDUSTRIES IN GAJRAULA AREA:¹²⁰

The Petition was filed in 1998 regarding pollution caused by several industries, a distillery, two single super phosphate industries, a silica washing industry, a tyre & tube manufacturing unit etc. located in the Gajraula (Jyotiba Phule Nagar) District, U.P. It was alleged that those industries were discharging untreated effluent and letting out emission beyond the prescribed limit as a result of which the health of the people and agricultural crops in the region severally got affected. The discharge from the industries carrying industrial and chemical waste entered in the Bagad nullah which ultimately pollutes the river Ganga. The Hon'ble court issued various directions to control the pollution in the area and the Central Pollution Control Board submitted inspection reports in compliance of the Hon'ble Court orders. The Central Board submitted its inspection report on 20.3.2001 after conducting inspection of M/s

120. *Intiaj Ahmed vs. Union of India & others.*

Insilco. In compliance of Hon'ble Court's order dated 31.10.2001, the Central Board submitted comments on the report of the NEERI in respect of the Sodium Absorption Ratio (SAR) issue concerning silica washing industry.

The Hon'ble Supreme Court on 28.2.2002 after considering the report of the NEERI and subsequent comments of the Central Board, observed that the concerned industry M/s Insilco had complied with required norms and measures in accordance with the recommendations of the Central Board. Therefore, M/s Insilco was permitted to continue with the industry operating at present premises. The Hon'ble Court referred the recommendations of the Central Board and further directed that the recommendations of the Central Board should be considered as a part of the order of this Court and all industries including M/s Insilco should abide by the said recommendations.

Further, the U.P. State Pollution Control Board was directed to take effective measures for necessary inspections in terms of the recommendations of the Central Board. The U.P. State Industrial Development Corporation (UPSIDC) should draw an environmental management plan in accordance with this order and it was further directed that no new large or medium polluting unit should be allowed to establish or the existing units should not be allowed any expansion without the consent of the appropriate Authority of the State of U.P., with these directions the writ petition ordered for 'disposed off' accordingly.

14. POLLUTION IN RIVER GOMTI:¹²¹ This writ petition was filed in 1990 regarding pollution caused by the industries located in the cities of Luchnow, Sitapur and Lakhimpur Khiri. The Central Pollution Control Board submitted various inspection reports in respect of the status of

121. *Vineet Kumar Mehta vs. Union of India & others.*

pollution in the river Gomti. In the same matter, the Hon'ble court ordered that it appeared that Nagarpalikas and Municipalities were directly discharging the polluted water into the river Gomti without any treatment. It was suggested that modern low cost technologies are now available where with least expenses the water could be treated before discharge into the river. The Hon'ble Court on 29.3.2001 directed the Central Board to submit a detailed scheme indicating for adoption of these modern low cost technologies. The Central Board submitted on 9.5.2001 the details of the low cost technologies for treatment of sewage. The Hon'ble Court on 7.11.2001 after considering of the submission of the Central Board directed the State of U.P. to acquire necessary land for having the oxidation ponds in different cities through which the river Gomti passes. The State of U.P. submitted that in view of the policy decision of the high level meeting of National River Conservation Authority (NRCA) held on 13.1.2001, it might not be necessary for the State to identify the land in towns referred in the Court order unless and until the NRCA include the towns for providing appropriate sewage treatment by way of oxidation ponds. The Hon'ble Court on 16.1.2002 observed that since, these towns have been identified as the main source of pollution of river Gomti, it was the obligation of the State to provide necessary land required to have oxidation ponds and directed the State of U.P. to acquire the necessary land required for the said towns for having oxidation ponds and complete the process of acquisition within three months from the date of this order. The State of U.P. should submit an affidavit that identification of land and the acquisition process also completed in the aforesaid towns so that further directions could be given for providing funds for having the oxidation ponds. The matter is under consideration of the Hon'ble Court.

LEADING CASES ON ENVIRONMENTAL LAWS

1. OLEUM GAS LEAK CASE ON STRICT LIABILITY:¹²² The petitioner, Shri M.C.Mehta filed this Writ Petition in the year 1985 under Article 32 of the Constitution of India, and sought directions from the Hon'ble Court that various units of Shriram Industries were hazardous to the community therefore directed to be closed. After hearing the arguments, the three judges Bench passed the judgment on 17.2.1986, permitted the Shriram Food and Fertilisers Industries (hereinafter referred to as SFFI) to restart its power plant and also plants for manufacture of caustic chlorine including its by-products and recovery plants like soap, glycerin and technical hard oil subject to certain conditions given in the three judges Bench judgment. The only point in dispute related whether the units of SFFI should be directed to be removed from the place where they were presently situated and relocated in another place where there would not be much human habitation so that these would not be any real danger to the health and safety of the people is to be decided. But while the writ petition was pending, there was a leak of oleum gas from one of the units of SFFI on 4th and 6th December, 1985. A Number of applications were filed by the Delhi Legal Aid & Advice Board and the Delhi Bar Association for award of compensation to the persons who suffered on account of leakage of oleum gas. When the matter for compensation heard by three judges Bench it was felt that since the issues raised involved substantial question of law relating to the interpretation of Article 21 and 32 of the Constitution, and the case was referred to a larger Bench of five judges. On behalf of SFFI Industries, a preliminary objection was raised that the Court can't proceed to decide compensation since there was no claim for compensation originally made in the writ petition and those issues could not be said to arise on the writ petition. The Petitioner even not applied for

122. *M. C. Mehta vs. Union of India* (AIR 1987 SC 96.)

amendment of the Petition so as to include a claim for compensation for the victims of the oleum gas. After hearing the counsels of the both sides, the Hon'ble Court held as follows:

"These applications for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hypertechnical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of Law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court".

The Hon'ble Court further observed that if the court was prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who could not approach the court for justice, there was no reason why these applications for compensation of the persons affected by the oleum gas leak should not be entertained under Article 21 of the Constitution.

"As regards to the first question as to what is the scope and ambit of the jurisdiction of this Court under Article 32, the Hon'ble court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people particularly in the case of poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning".

The Hon'ble Court observed that the industry was located in an 'air pollution control area' and also subjected to regulation of the Air (Prevention and Control of Pollution) Act, 1981. Moreover, the SFFI industries were engaged in the manufacturing of caustic soda, chlorine, etc. Its various units were set up in a single complex surrounded by thickly populated colonies. The Chlorine gas is admittedly dangerous to life and health. If the gas escaped either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well being of the people living in the vicinity could be seriously affected. Thus, the SFFI was engaged in an activity which has the potential to invade the right of life of large section of people. The Court while determining the liability of the industry, the question as to what was the measure of liability of an enterprise which was engaged in an hazardous or inherently dangerous including if by an accident persons died or were injured. Did the rule in Rylands Vs Flecher apply? The rule in Rylands Vs Flecher was evolved in the year 1866 and it provided, "a person who for his own purposes bring on to his land and collect and keeps there anything likely to do mischief if it escaped must keep it at his peril, if he failed to do so, was prima facie liable for the damages". The liability under this rule was strict and it was no defence that thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that a person who on his land collected and kept anything likely to harm and if such things escaped and did damage to another, he was liable to compensate for the damage caused. This rule applies only to non-natural user of the land or where the escape was due to an act of God and an act of a stranger or by the default of the person injured. The Hon'ble Court observed that an enterprise which was engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-

delegable duty to the community to ensure that no harm caused to anyone on account of hazardous or inherently dangerous nature of the activity which it had undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since, the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous matter of inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. The Hon'ble Court therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous

activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate 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 vs. Fletcher*. The Hon'ble Court observed that the measure of compensation be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. The Hon'ble Court further ordered that it would not be justified in setting up a special machinery for investigation of the claims for compensation made by the victims of oleum gas leak. But the Delhi Legal Aid and Advice Board directed to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from the date of this order and the Delhi Administration was directed to provide necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court would nominate one or more Judges as may be necessary for the purpose of trying such actions so that they might be expeditiously disposed of. With these directions the petition was disposed of on 20.12.1986.

2. BICHHRI CASE ON STRICT LIABILITY AND POLLUTER PAY PRINCIPLE:¹²³ This Writ Petition was filed by an NGO on behalf of the people living in the vicinity of chemical industrial plants located in a Village Bichhri in District Udaipur, Rajasthan. The problem began in the

123. *Indian Council of Enviro-Legal Action Vs UOI*, 1996 3 SCC 212.

year 1987 when the Hindustan Agro Ltd. started producing chemicals like oleum (concentrated form of Sulphuric acid) and Single Super Phosphate. The real calamity occurred when a sister concern, the Silver Chemical commenced production of H-acid in the same complex. Due to production of H-acid, large quantity of highly toxic effluents and iron and gypsum sludge caused damage to the land. Another industry named M/s Jyoti Chemical was also established to produce H-acid besides other chemicals. All those chemical industries were located in the same complex in Village Bichhri. It was estimated that about 2400-2500 tonnes of highly toxic sludge was produced while producing 375 tonnes of H-acid. Because of high quantity of sludge from those industries thrown in the open, in and around in the complex, the leachate from toxic sludge percolated deep into the ground polluting the aquifers and subterranean supply of water. The water in the wells and the stream turned dark and dirty and became unfit for human consumption. The Water became unfit even for cattle and for irrigation. The soil was spoiled and turned unfit for cultivation. Due to that, death and disaster in the village and surrounding areas were reported. The District Magistrate himself directed to close down both the units, M/s Silver Chemical and M/s Jyoti Chemicals. The manufacturing of H-acid was stopped from the month of January, 1989. The toxic sludge damaged the soil, groundwater, human beings, cattle and economy of the village. The Indian Council for Enviro-Legal Action filed this Writ Petition in August, 1989 with the prayer to the Court that appropriate remedial action may be initiated. The Rajasthan Pollution Control Board in its affidavit stated that (i) the Hindustan Agro Chemicals Ltd. obtained NOC from the Board for manufacturing sulphuric acid and alumina sulphate. But, this unit changed its products without clearance from the Board and started manufacturing oleum and single super phosphate (SSP). The consent was refused and directions were issued under the Air (Prevention and Control of Pollution) Act, 1981 to close down the unit; and (ii) the Silver

Chemical stated to be manufacturing of H-acid without obtaining NOC from the Board. The Waste generated from the manufacture of H-acid was highly acidic and contained very high concentration of dissolved solids alongwith several other pollutants. The unit was closed in 1989; (iii) the Jyoti Chemical had applied for NOC for producing ferric alum and oleum in 1988. The unit again applied for consent for manufacturing of H-acid but the consent was refused and the industry was closed in 1989. The Rajasthan Board also submitted that the sludge lying in the open in the premises of these industries ought to be disposed of in accordance with the provisions of the Hazardous Waste (Management and Handling) Rules, 1989 notified under the Environment (Protection) Act, 1986. The State Government of Rajasthan stated that the State Government was aware of the pollution being caused by these industries. Therefore, the State Government had initiated action through Rajasthan Pollution Control Board. The Ministry of Environment & Forests, Government of India stated that M/s Silver Chemical was merely granted letter of Intent but it never applied for conversion of the letter of Intent into Industrial Licence and was an offence under the Industries (Development and Regulation) Act, 1951. M/s Jyoti Chemicals did not approach the Government at any time even for a letter of Intent.

The Ministry of Environment & Forests also submitted a report of the Centre for Science and Environment (CSE), NGO. In its report, the Centre for Science and Environment after conducting the inspection of the village Bichhri stated that the effluents were very difficult to treat as many of the pollutants were non-compliant in nature. Setting up such highly polluting industry in a critical groundwater area was ill-conceived. About 60 wells appeared to have been significantly polluted. The aquifer was showing sign of pollution. After considering the replies of the Rajasthan State Pollution Control Board, the State of Rajasthan, the Ministry of Environment & Forests and the industries, the Court on

11.12.1989 requested the National Environmental Engineering Research Institute (NEERI) to study the situation in and around village Bichhri and submit their report. After in depth study, NEERI submitted its report and suggested both short term and long term measures required to be taken in the area. The Court noted the statement of the Petitioner that though the manufacture of H-acid might have been stopped but large quantity of highly dangerous effluent/sludge had accumulated in the area and unless properly treated, stored and removed; it would be a serious danger to the environment. Accordingly, directions were issued to the Rajasthan Pollution Control Board to arrange for its transportation, treatment and safe storage in accordance with the procedure provided in the Hazardous Waste (Management and Handling) Rules, 1989 and also reasonable expenses for the said operation were directed to be borne by those industries.

Earlier, on 5.3.1990 the The Hon'ble Court directed that the sludge lying on the land be removed immediately to avoid the risk of seepage of toxic substances into the soil during the rainy season. On 4.4.1990, the Court further directed the Ministry of Environment & Forests, Govt. of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron based sludge and to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was directed to be recovered from the industries located in the Complex. The Rajasthan Pollution Control Board submitted a report that about 720 tones out of the total contaminated sludge scraped from the sludge dump side was disposed of in six lined entombed pits covered by lime/fly ash mix, brick soling. The remaining scraped sludge and contaminated soil was laying near entombed pits for want of additional disposal facility. After final hearing, the Court passed the final order on 13.2.1996:

"they are in the view that if an enterprise which is engaged in a hazardous or inherent industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, it is an absolute and non delegable duty to the community to ensure that no harm to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken. It is therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm to any one on account of an accident, the enterprise is strictly and absolutely liable to compensate all those who are effected by the accident and such liability is not subject to any of the exceptions as laid down in tortious principles of strict liability under the rule laid down in Rylands Versus Flecher. The law laid down in the case of Oleum Gas leak case¹²⁴ is also applicable in the present case and the industries (Respondent No.4 to 8) are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the groundwater and hence they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area which is about 350 hectares. The polluter pays principle demands that the financial cost of preventing or remedying damage caused by pollution should lie with the industries which caused the pollution".¹¹⁷

The Central Government should determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of the industries within six weeks and the said amount were liable to be paid by the industries. If the said amount was not paid by the industries, the factories, plant, machinery and all other immovable assets of these industries be attached. So far as the claim for damages for the loss suffered by the villagers in the affected

124. *M. C. Mehta -Vs- Union of India.* (1987) 4 SCC 464.

area was concerned, it was opened to them or any organization on their behalf to file suits in appropriate Civil Court. The Central Government should consider whether it would not be appropriate that chemical industries were treated as a category apart. All chemical industries whether big or small should be allowed to be established only after taking into consideration all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment even the existing chemical industries if found on such scrutiny that it was necessary to take any steps in the interest of the environment, appropriate directions may be issued under Sections 3 & 5 of the Environment (Protection) Act, 1986. The Central Government and the Rajasthan Pollution Control Board should file quarterly report with respect to the progress in the implementation of these directions. The need for creating environment courts to deal with all matters, Civil and criminal relating to the environment is considered. The industries (Respondent No.4 to 8) should pay a sum of Rs.50, 000/-by way of costs to the petitioner who fought this litigation over a period of more than six years with its own means. The Writ Petitions were disposed of with the aforesaid directions.

4. POLLUTION BY TANNERIES IN TAMIL NADU¹²⁵ The Vellore Citizen Welfare Forum filed this Writ Petition as public interest litigation. It was alleged that the tanneries and other industries were discharging untreated effluent into the agriculture fields, roadsides, waterways and open lands in the State of Tamil Nadu. The untreated effluent of these tanneries and industries were finally discharged in the river Palar which was the main source of water supply to the residents of the area. The Welfare Forum further alleged that the entire surface and sub-soil water of river Palar was polluted resulting in non-availability of potable water to

125. *Vellore Citizen Welfare Forum Vs U O I* AIR 1996 SC 2715.

the residents of the area. Due to the operation of these tanneries in the state of Tamil Nadu environmental degradation was caused. According to the survey conducted by the Tamil Nadu Agricultural University Research Centre, Vellore, nearly 35,000 hectares of agricultural land in the tanneries belt had turned out partially or totally unfit for cultivation. These tanneries used about 170 types of chemicals in the Chrome tanning processes. These chemicals include common salt, lime, sodium sulphuric, chromium sulphate, fat liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Approximately 35 cubic metre of water is used for processing 1 kg finished leather resulting in dangerously enormous quantity of toxic effluents which were let out in the open by the tanning industries. The effluents have spoiled physico chemical properties of the soil and have contaminated groundwater by percolation.

An independent survey was conducted by Peace Members, Non-Governmental Organization and Peddiar Chatram Anchayat Unions found that 350 wells out of total 467 used for drinking and irrigation purposes were polluted. Women, children were forced to walk miles to get drinking water. On the request of the Legal and Aid Advise Board of Tamil Nadu, two lawyers visited the area and submitted their report indicating the pollution caused by the tanneries. It was reported that the entire Ambur town and the villages situated nearby did not have good drinking water. During rainy days and floods, the chemicals deposited into the river bed were spreading out quickly. The State Government also informed the Court about the 59 villages that were affected by the tanneries. In those villages, there was acute shortage of drinking water. The Tamil Nadu Pollution Control Board also submitted that their Board perusuated for the last 10 years to control the pollution generated by these tanneries. These tanneries were given option by the Board that either to construct common effluent treatment plants (CETPs) for a

cluster of industries or to setup individual pollution control devices. The Central Government were earlier agreed to give substantial subsidies for the construction of CEPTs. The Hon'ble Court observed that it was pity that till date most of the tanneries operating in the State of Tamil Nadu did not take any step to control the pollution caused by the discharge of effluent. On the direction of the Hon'ble Court, the National Environmental Engineering Research Institute also submitted the feasibility report for setting up of CETPs for clusters of tanneries situated at different places in the State. The NEERI, the Tamil Nadu Board and Central Board visited the tanning units and other industries in the Tamil Nadu and submitted their reports. The Hon'ble Court observed that the leather industry was of vital importance to the country as it generated foreign exchange and provided employment avenues. But, it had no right to destroy the ecology, degrade the environment and cause a health hazard. It could not be permitted to expend or even to continue with the present production unless appropriate action taken by the industry itself. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" would be the answer. The "Sustainable Development" has been accepted as a viable concept to eradicate poverty and improve the quality of human life. While living within the carrying capacity of the supporting eco-systems. "Sustainable development" means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-system. The "*Precautionary Principle*" and the "*The Polluter Pays Principle*" were the essential features of "*Sustainable Development*".

The Hon'ble Court directed the Central Government to constitute an Authority under section 3(3) of the Environment (Protection) Act, 1986

and to confer on the Authority all the powers necessary to deal with the tanneries and other polluting industries in the State of Tamil Nadu. The authority so constituted would invoke the *precautionary principle* and the *polluter pays principle*. The Authority should determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The Authority should direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. A fine of Rs.10,000/- each on all the tanneries in the districts of North Arcot, Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. was imposed. The said fine was directed to be paid before 31.10.1996. The Chief Justice of the Madras High Court was requested to constitute a special bench "Green Bench" to further monitor this case. The Ministry of Environment & Forests, Government of India constituted the Loss of Ecology (Prevention and Payments of Compensation) Authority in the year 1996 and appointed Mr. Justice P. Bhaskaran, as it's Chairman. The Authority after detailed studies and deliberations delivered its award on March 12, 2002. Accordingly, 546 tanneries in the District of Vellore were directed to pay a compensation amounting to Rs. 26.82 crores to 29,193 families as pollution damages. The Central Board has also analysed the soil, sludge and water samples concerning this matter. The in depth investigations were taken up and reports were submitted to the Hon'ble Supreme Court for consideration.

In the history, evolution, and development of the right to environment and environmental jurisprudence in India, through judicial interpretation, *Maneka Gandhi's*¹²⁶ case is a turning point in which it got a liberal expansion to cover all those areas which were not otherwise provided in the constitution but some how connected with the person,

126. *Maneka Gandhi -Vs- Union of India*, AIR 1978 SC 597

within the scope of fundamental right. Then *Francis Coralie case*¹²⁷ elaborated the concept of right to life to include the faculties of thinking and feeling. The *Ratlam Municipality case*¹²⁸ started deliberations on the human right in the polluted environment where the health of the people was put to risk because of the failure to perform the duty of the Municipal authorities on account of financial deficit. In the *Dehradun quarrying*¹²⁹ case, which was just a letter seeking appropriate relief for violation of ecological balance, The Supreme Court entertained the letter as a writ petition and exercised jurisdiction under Article 32 of the constitution which pre-supposes the violation of a fundamental right. Though, no direct observation has been given by the court but the trend of the court leaves no doubt that the right to ecological balance is a Fundamental Right.

It may be said that the *Kanpur Tanneries case*¹³⁰ is the first case where the Supreme Court categorically stated that the life, health and ecology has greater importance to the people. Further in *Chhetriya Pradushan Mukti Sangarsh Samiti case*,¹³¹ the citizen's right to file a petition on account of deterioration of quality of life due to environmental degradation. Then in the *Subhash Kumar*¹³² case the Supreme Court explicitly observed that right to live is a fundamental right under Article 21 of and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Virendra Gaur Vs State of Haryana*,¹³³ the Supreme Court emphasized and enunciated the links between pollution free air, water and right to life under Article 21

127. Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.

128. *Municipal Council of Ratlam Vs Wardhichand* AIR 1980 SC 1622

129. Rural Litigation & Entitlement Kendra, Dehradun -Vs- State of U.P. AIR, 1991 SC 2216.

130. M. C. Mehta vs. Union of India AIR 1988 SC 1037.

131. *Chetriya Pradushan Mukti Morcha Sangharsha Samity vs. State of U P*, AIR, 1990, SCC 2060.

132. *Subhash Kumar -Vs- State of Bihar*, AIR 1991 SC 420.

133. *Virendra Gaur -Vs- State of Haryana* 1995 2 SCC 577.

of the constitution. The *Indian Council for Enviro-legal Action vs. Union of India*¹³⁴ the court observed that failure of the Central Govt., State Govt. and Pollution Control Board to carry out their statutory duty was seriously undermining the right to life of the people under Article 21 of the constitution.

Position in America

The 1993 Vienna Declaration and Programme of Action called the Right To Development (RTD) “a universal and inalienable right and an integral part of fundamental human rights.” The RTD has also been given prominence in the mandate of the High Commissioner for Human Rights, and the General Assembly required the High Commissioner to establish “a new branch whose primary responsibilities would include the promotion and protection of the right to development.” The right is regularly mentioned in declarations of international conferences and summits and in the annual resolutions of the General Assembly and the Commission on Human Rights.

An American case namely *Munn vs. Illionis*⁵⁷ Justice Field explained the literal meaning of the word “life” in the following words:

“by the term life as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which the life is enjoyed. The deprivation not only of life but of whatever God has given to everyone with life, for its growth is prohibited by the provision in question.”

Position in Columbia

In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court

134. *PLD 1994 SC 693.*

observed that:

“Side by side 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.”

Position in Argentina

In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.

Position in Costa Rica

In the same year, the Supreme Court of Costa Rica affirmed the right to a healthy environment in a case concerning the use of a cliff as a waste dump. In the case of *Carlos Roberto García Chacón*, the Supreme Court stated that life

“is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination.”

Position in Guatemala

Guatemala too has seen the environmental ombudsman note in a 1999 case ⁵⁸ that

“Lack of interest and irresponsibility on the part of authorities in charge of National Environmental Policy amounts to a violation of human rights, considering that it impairs the enjoyment of a healthy environment, the dignity of the person, the preservation of the cultural and natural heritage and socio-economic development.”

Position in Pakistan

Article 9 of the Pakistan Constitution states that no person shall be deprived of life or liberty except in accordance with the law. The Supreme Court in *Shehla Zia v. WAPDA*¹³⁵ held that Article 9 includes 'all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally'. The Court noted that "under the Pakistan Constitution, Article 14 provides that the dignity of man, privacy of home shall be inviolable, subject to law. The fundamental right to preserve and protect the dignity of man and right to 'life' are guaranteed under Article 9. Article 19 and 9 read together, question arises whether a person can be said to have dignity of man if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. The Supreme Court of Pakistan made a very important comment in the instant case. The Court observed:

"The precautionary policy is to first consider the welfare and the safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to be a policy of prudence or precaution."

135. AIR 1996 SC 1446.

CHAPTER – 6

WORKING OF THE PRESENT ENVIRONMENTAL LEGISLATIONS

1. A Preview

2. Working of the present Environmental legislations

- A. The Water Act 1974.
- B. The Water Cess Act 1977.
- C. The Air Act 1984.
- D. The environment (Protection) Act 1986.
- E. The Public Liability Insurance Act 1991.
- F. The National Environmental Act 1995.
- G. The Indian Forest Act 1927.
- H. The Atomic Energy Act 1962.
- I. The Wild Life Protection Act 1972
- J. The National Environmental Appellate Authority Act 1997.
- K. The Forest (Conservation) Act, 1980, amended in 1988.
- L. Hazardous Waste (Management & Handling) Rules 1989,
- M. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
- N. The Manufacture, use, import, export and storage of Hazardous
- O. The Factories Act 1948.

3. PROBLEMS IN ENFORCEMENT OF LEGISLATIONS.

4. POLICY INSTRUMENTS FOR POLLUTION ABETMENT

5. INITIATIVES TAKEN FOR POLLUTION PREVENTION

6. AN OVERVIEW

CHAPTER- 6

"Every human has a fundamental right to an environment of quality that permits a life of dignity and well-being"

United Nations Conference on the Human Environment, Stockholm

1. A Preview

The quality of the environment has been deteriorating steadily over the past few decades as a result of rapid industrialisation and parallel growth in urbanisation. Ambient standards of air, water and soil pollution are routinely exceeded with potentially disastrous consequences. India being a developing country, this problem tends to become more severe everyday with the ever increasing number of industries. In India, as in the rest of the world, the past two decades have witnessed a dramatic rise in environmental concern.

The Government of India has adopted various measures for conservation, upgradation and protection of the environment. India is an original signatory to the solemn declaration of the United Nations conference held in Stockholm on 'Human Environment' in the year 1972. This 'Declaration' acts as an eye-opener to mankind and the people of the world on the essential and imperative need to protect the environment. The issue of protection of the environment and sustainable use of natural resources has received due attention in our planning process in the early seventies. The Fourth Five Year Plan (1968-73) gave explicit recognition for integrating environmental dimensions into the planning and development processes. A full-fledged Ministry of Environment & Forests was constituted in 1985 to oversee these functions at the National level. The steps taken up by the Government to curb the pollution problem in India have been discussed in this section. India, being a developing country, adopted various measures and enacted

various laws for, conservation, up-gradation and protection of the environment and controlling environmental pollution. The success of all these laws depends upon proper implementation. The successfulness or otherwise of the environmental laws with reference to their objectives have been discussed on a theoretical and practical basis in this chapter. Under the present regulatory regime, the authorities responsible for the implementation of environmental laws are also facing some difficulties and constrains, a reference has also been made in this respect. Whether the legislations are properly serving its purpose for which it was designed or enacted by the parliament and achieving its objectives or not, have been discussed in this chapter. In relation to non-implementation of laws what is the role and responsibility of the courts in discharging judicial function have also been discussed in this chapter.

India is the first country in the world, which has provided for constitutional safeguards for the protection and preservation of the environment. In the constitution of India, specific provisions for the protection of environment have been incorporated by the Constitution (42 amendment) Act, 1976. Now, it is an obligatory duty of the State and every citizen to protect and improve the environment. The Directive Principles of State Policy contain specific provisions enunciating the State commitment for protecting the environment. Furthermore, duties of the citizens towards environment are contained in Article 51-A (g). This constitutional mandate has also been strengthened and reflected in various judicial decisions by adopting and applying a range of to guide the development of environmental jurisprudence.

Thus, up to 25 years after independence, India did not have any specific legislation on any of the field of environment. Although there are more than two hundred legislations in India which have some bearing on environmental protection, but in most cases environment concern is

incidental.¹ For example, the Fisheries Act 1897 prohibited destruction of fish by use of explosive or poisoning. In the fourth five year plan an environmental approach was adopted and the Water (Prevention and Control of Pollution) Act 1974 was passed and again in 1977 the Water (Prevention and Control of Pollution) Cess Act was passed. Nation wide deforestation necessitated forest conservation and the Forest (Conservation) Act 1980 was enacted. Then in 1981 the Air (Prevention and Control of Pollution) Act was passed. The Acts provided for establishment of Pollution Control Boards at the Central and State Level by the Governments. The Boards were empowered to exercise various powers under the Acts including advice to the respective Governments on appropriate sites for new industries. But they do not have any power to give directions to the Governments rather they are bound by the directions of the Governments. By the year 1986 an umbrella legislation, i.e. the Environment (Protection) Act was passed with a view to maintain a co-ordination among all environmental laws and Central and State Governmental agencies. 1990s witnessed fresh legislation dealing with insurance cover for hazardous industries.

The success of all these laws depends on proper implementation. An analysis of the working of the environmental legislations in India is necessary. In the *CRZ Notification case*,² the court said that tolerating infringement of an enacted law is worse than not enacting it at all. The theme of the 1990s Supreme Court judgements is poor implementation of laws.

The constitutional provisions are implemented through various environmental protection laws of the country. India has a large body of laws and regulations governing the environment. These include laws enacted by Central and State Governments as well as an increasing

1. Govt. of India, Department of Science and technology, Report of the Tiwari Committee, 1980.

2. *Indian Council for Enviro-legal Action vs. Union of India* 1996 (5) SCC 281.

body of judicial decision's affecting industrial activities that generate pollution. Further, there are more than 200 statutes that have a bearing on environmental matters in India. However, the major legal provisions made in India are summarized below.

2. Working of the present Environmental legislations:

A. The Water (Prevention and Control of Pollution) Act 1974

(amended in 1978 and 1988):- The Water Act is a comprehensive legislation providing for the Prevention and Control of Water Pollution and for maintaining or restoring the wholesomeness of water in streams or wells. The Act provides for the establishment of the Central Pollution Control Board at the Centre and State Pollution Control Boards in the respective States. The functions of the Central Board at the national level are to (i) Advise the Central Govt. on matters relating to prevention and control of water pollution. (ii) Coordinate the activities of the State Board and resolve disputes among them (iii) Provide technical assistance and guidance to the State Boards (iv) Carry out and sponsor research and investigation in the problems of water pollution (v) Set the standards for streams and wells. (vi) Create environmental awareness and (vii) Act as State Board for the Union Territories.

State Board has executive and territorial functions which include (i) Planning for prevention, control or abatement of pollution of streams and wells (ii) Advise the State Govt. on matters relating to water pollution (iii) Inspection of sewage or industrial effluent, including municipal wastewater treatment plants for the treatment of sewage or trade effluents (iv) Setting standards for the sewage and industrial effluents discharge. There is a provision of joint boards for two or more contiguous States. In case of dispute between two State Boards, the Central Board has authority to arbitrate.

Important provisions in the Water (Prevention and Control of Pollution) Act, 1974 (As amended In 1978 And 1988) are Pollution Control Board (PCB) has the right to obtain any information regarding

the construction, installation or operation of an industrial establishment or treatment and disposal system, to take samples of trade effluent for the purpose of analysis in the prescribed manner, to enter and inspect any industrial establishment, record, register, document or any other material object, to prohibit use of stream or sewer or land for disposal system without prior consent of the PCB, Restriction on establishment and the operation of any industry process or any treatment and disposal system without prior consent of the PCB. PCB's right to refuse or withdraw consent, for discharge of effluents. Industry to comply with the conditions stipulated in the consent. PCB's to grant consent within four months after the date of receipt of the application complete in all respects. Industry to appeal to the Appellate Authority, in case of grievances against the order passed by the PCB regarding grant, refusal or withdrawal of the consent within the specified time in the prescribed manner. Industry to furnish information to the PCB and other specified agency in case of discharge of poisonous, noxious or polluting matter into a stream, sewer or land, occurred or likely to occur resulting in pollution due to an accident or any other unforeseen event. PCB's right to issue orders restraining or prohibiting an industry from discharging any poisonous, noxious or polluting matter in case of emergencies, warranting immediate action. PCB's have power to make an application to the court for restraining likely disposal of polluting matter in a stream or on land. Bar of jurisdiction in civil court in respect of any matter under purview of the Appellate Authority constituted under the Act and no grant of injunction in respect of any action taken or proposed in pursuance of the Act. (xi) Bar on filing of any suit or legal proceedings against the Government or Board officials, for action taken in good faith in pursuance of the Act. (xii) PCB's to make inquiries, in the prescribed manner, for grant of consent for discharge of effluents. PCB's power to issue directions for the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply

electricity, water or any other service to industry in the prescribed manner. (xiv) Industry to comply with the directions of the PCB within the specified time PCB's to maintain a consent register containing particulars of the consent issued and to provide access to industry at all reasonable hours. The water Act was enacted for the purpose of prevention and control of pollution of water. The State Government is empowered under section 19 of the Act to exercise overriding power to exempt certain areas from the operation of the Act but no guideline to follow such power has been given. Under section 24 (2) also the Act granted exemption of holder of easementary, customary and other right from the operation of the Act. More over, with a view to ensure economic development, the Government has been given discretionary power in application of the provisions of the Act to identified pollution prone areas.

One of the lacunas of the Water Act is that it does not provide specifically for the control of ground water pollution or control of dumping of waste on the land, which may eventually pollute underground water. The British Control of Pollution Act 1974 provided that it is unlawful to discharge into underground strata by means of well, bore hole or pipe, any trade effluent or sewage except with the consent of the river authority. In India the Water Act defines stream which means underground water. Therefore, in an indirect way ground water is included. The Amendment Act 1978 prohibited discharge of poisonous, noxious, or other polluting matter not only into any stream or well but also into sewer or on land. Only after this amendment, dumping of polluting matters which may eventually pollute water came to be regulated. Now the Pollution Control Board can take appropriate measures against pollution of ground water.

B. The Water (Prevention and Control of Pollution) Cess Act, 1977 (Amended in 1991):- The Water Cess Act provides for the levy of a cess on water consumed by persons carrying on specified industries given in

Schedule-I of the Act and also local authorities entrusted with the duty of supplying water under the laws by or under which they are constituted at the rates specified in Schedule-II of the Act. The Cess is levied and collected by the State Government concerned and credited to the consolidated Fund of India. An industry which installs and operates its effluent treatment plant is entitled to a rebate of 25% on the cess payable. The cess has been introduced mainly to augment the resources of the Central and the State Pollution Control Boards.

C. The Air (Prevention and Control of Pollution) Act 1981:-The Air Act was enacted by Parliament under Article 253 of the constitution invoking the Central Government's power to make law for implementing decisions taken at international conferences.³ The Act provides for the setting up of Central / State Boards for prevention and control of Air Pollution, however, Section 4 of the Act stipulates that in any State in which the Water (Prevention and Control of Pollution) Act, 1974 is in force and the State Government has constituted a State Pollution Control Board, that State Board shall be deemed to be the State Board for the prevention and control of air pollution. For Union Territories the Central Pollution Control Board is empowered to perform the functions of a State Pollution Control Board under the Act. The State Governments in consultation with their respective State Boards are empowered to declare air pollution control areas. As per the provisions of the Air Act no person can establish or operate any industrial plant in an air pollution control area without obtaining the consent from the concerned State Board. The Air Act was enacted on the line of the provisions of the Water Act. The Central and State Pollution Control Boards created under the Water Act carry out the functions of the Board, envisaged under the Air Act. The Air Act requires under section 19 all the

3. *Preamble of the Act states that it represents an implementation of the decisions taken at the UN Conference on Human Environment held at Stockholm in 1972.*

industries to obtain consent certificate from the State Pollution Control Board. The State Governments are required to prescribe emission standard and ambient air quality standard after consulting the Central Pollution Control Board for industries. This made the State Board more subordinate and taken away the force of enforcement.

The penalties prescribed by the Act are also minimal and more profitable to the industries to pay the fine rather than to implement environmental clean up measures. Mensrea is also made essential for prosecution under the Act which is a source to avoid liability. Under section 25, a person will be liable for the act if it is committed knowingly, willfully. The managers avoid liability through this loophole and lower level employees come under the net. However, the amendment in 1988 empowered the State Board to close down the defaulting units of industries or stop supply of water, electricity and initiate criminal proceedings against them. But the Board does not have the power to restrain activities already polluting environment. Only it can bring injunction from the court.⁴ The rules under the Acts also have not served to achieve the purpose of the Act because they purely administrative and incidental matters.⁵

D. The environment (Protection) Act 1986:- The provisions under this Act are to take all necessary measures for protecting the quality of environment, to plan and execute a nationwide programme for the prevention, to control and abatement of environmental pollution, to lay down standards for discharge of environmental pollutants. Empower any persons to enter, inspect, to take samples and test. Establish or recognise environmental laboratories, to Appoint or recognise government analysts to Lay down standards for the quality of environment, to Restrict areas in which any industries, operations,

4. Section 33 Water Act and Section 22 A Air Act.

5. Vandana Pai, "Environmental Regulation and the Industry" 2 IJEL 2002 p -74.

processes may not be carried out or shall be carried out subject to certain safeguards to Lay down safeguards for prevention of accidents and take remedial measures in case of such accidents to Lay down procedures and safeguards for handling hazardous substances, to Constitute an authority or authorities for exercising its powers to Issue directions to any person, officer or authority including the power to direct closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of supply of electricity, water or any other service. It confers powers on persons to complain to the courts regarding any violation of the provisions of the Act, after a notice of 60 days to the prescribed authorities.

The Central Government is empowered to take action under the provision of the Environment (Protection) Act, 1986. Powers under Section 5 of the Environment (Protection) Act, 1986 have been delegated by the Central Government to States and Union Territories. Rules have been framed and agencies / authorities have been notified under specific sections for carrying out specific functions. These include *Environmental Statement* All those carrying on an industry, operation or process requiring consent under Water (Prevention and Control of Pollution) Act, 1974⁶ and/or under Air (Prevention and Control of Pollution) Act, 1981⁷ (84 of 1981) and or authorization under the Hazardous Waste (Management & Handling) Rules, 1989, are required to submit the Environmental Statement in prescribed 'Form -V', for the Financial Year ending 31st March to the concerned State Pollution Control Boards / Pollution Control Committees in the Union Territories on or before 30th September every year. As a reaction to the Bhopal Gas Leak Disaster and the *Shri Ram* case in 1984 and 1985 respectively and strong public opinion, the Government recognized the legislative short

6. Act 6 of 1974.

7. 84 of 1981.

coming and enacted the Environment (Protection) Act 1986 which is called the Umbrella Legislation because the Act aimed basically at co-ordination between State Government and other authorities to develop nation wide comprehensive program.

Under section 9 of the Act a person in charge of a plant is required to take steps to prevent or mitigate any discharge of an environmental pollutant in excess of the prescribed standard. If a person or company is able to prove that the offence was committed without his knowledge or he exercise due diligence to prevent the commission of such offence no liability arises.⁸ Further, cognizance of a case can only be taken only on a complaint filed by the Central Government or its authorized officer⁹ which provision narrowed down wide invocation of the provisions of the Act. Empowering affected persons to lodge complaint would help in bringing the defaulting persons to the eye of the authorities and also reduce administrative cost. Under section 3(3) the Government is authorized to constitute an authority to carry out the powers and functions as specified in the Act but so far the Government has not constituted the authority as provided by the Act.

All those carrying on an industry, operation or process requiring consent under Water (Prevention and Control of Pollution) Act, 1974 and/or under Air (Prevention and Control of Pollution) Act, 1981 and or authorization under the Hazardous Waste (Management & Handling) Rules, 1989, are required to submit the Environmental Statement in prescribed 'Form -V', for the Financial Year ending 31st March to the concerned State Pollution Control Boards/Pollution Control Committees in the Union Territories on or before 30th September every year.

E. The Public Liability insurance Act 1991:- A gap was felt to give immediate relief to the victims of accidents and environmental

8. Section 18 EPA

9. Section 19 EPA

catastrophe while handling hazardous substances, and to fill up the gap the Public Liability Insurance Act 1991 was passed which combined enviro-health protection and social security to the effected persons. This is an Act to provide for Liability Insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling hazardous substances. The Act casts on the person, who has control over handling any hazardous substance, the liability to give the relieves specified in the Act to all the victims of any accident which occurs while handling such substance. It would be the duty of every owner to take necessary insurance policies to discharge his liabilities.

On the principle of no fault liability, the Act under section 3(1), made the owner liable to give such relief as specified in the schedule for death, injury or damage. The claimant shall not be required to establish that the death, injury or damage was due to any wrongful act, neglect or default, of any person. (Section 3 (2)). It is also the liability of the owner to take out insurance policies against liability to give relief under section 3 (1) of the Act.¹⁰ The Public Liability Insurance (Amendment) Act 1992 inserted a provision for establishment of Environmental Relief Fund by the Central Government which shall be utilized for paying relief for the award made by the collector under section 7 of the Act.¹¹ The Central Government may also constitute an Advisory committee from time to time on the matters relating to the insurance policy under this Act.¹²

F. The National Environmental Tribunal Act 1995:- This is an Act to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident. This was enacted with a view to giving relief and compensation for damages to

10. *Section 4 (1).*

11. *Section 7-A*

12. *Section 21.*

persons, property and the environment and for matters connected therewith or incidental thereto. The NET Act 1995 is a comprehensive piece of legislation which deals with disposal of compensation petitions by the victims of environmental accidents. The Act *inter alia* provides for liability to pay compensation, its procedure, composition of tribunal, jurisdiction, penalties, etc. The Act is based on the polluter pays principle as an alternative method of liability to resolve liability.

The Public Liability Insurance Act 1991 and the NET Act both provide for relief only against accidents arising out of handling hazardous substances. The Act empowered the Central Government to establish a national tribunal at New Delhi to entertain applications for compensation, hold inquiry, and make award determining the quantum of compensation to be paid with the power to grant interim award. Section 19 of the Act imposes a bar on all civil courts to entertain any application for any claim of compensation. An award made by the Tribunal under the Act may be challenged before the Supreme Court or High Court under Article 226 and 227 of the constitution.

G. The Indian Forest Act 1927:- Being a British Colonial law, the Indian forest Act reflects the exploitative intention of the colonial and feudal society rather than ecological and environmental purpose. The preamble to the Act states that the Act was passed to consolidate the existing law relating to forest produce and the duty leviable on timber. The Act was revenue oriented to regulate dealings with forest produce and levy of duty on timber. The Act divided forest into reserve forest, protected forest and village forest over reserve forest no right could be acquired except by succession or under a grant or contract or by pre-existing rights. Protected forest is not reserve forest. The protected forest and the manner of its use depend upon the notification of the State Government. Some states for example Assam and Tamil Nadu enacted legislations in the past for forest protection even before the central

legislation.¹³ There are three categories of forest envisaged under the Act namely, reserved forest, protected forest, village forest and private forest. A state may declare forest lands or waste lands as reserved forest and may sell the produce from these forests. Any unauthorized felling of trees grassing, hunting, or quarrying in the reserved forest is punishable with fine or imprisonment or both. Reserved assigned to any village community is called village forest. The state Governments are empowered to designate protected forest and prohibit felling of trees and removal of forest produces and quarrying from these forests.

H. The Atomic Energy Act 1962:- The Atomic Energy Act 1962 and the Radiation Protection Rules 1971 regulate nuclear energy and radioactive substances in India. The Central Government is required, under the Act, to prevent radiation hazards, guarantee public safety, and the safety of workers handling radioactive substances and ensure disposal of radioactive wastes. Under the authority of the central Government, nuclear research, production and supply of atomic energy and manufacture and transport of radioactive substances also fall. The Center's apparently unfettered power to withhold from the public what it deems to be 'restricted information' shrouds India's nuclear activity in secrecy. The Government may classify as 'restricted information' any published information, regarding the location, quality, quantity, processing, acquisition and disposal of radioactive substances; the theory, design, construction and operation of nuclear reactors and of industrial plants that produce radioactive substances and any information relating to nuclear research.¹⁴

I. The Wild Life Protection Act 1972:- Under article 252 of the constitution parliament passed the Wild Life (Protection) Act 1972 on request of states for the purpose of protecting, propagating or developing wild life and its environment. The central Government and State

13. P. Leelakrishna, "Environmental Law in India" Buuerworth edition p-16.

14. Armin Rosencranz, "Environmental Law and Policy in India" oxford university Press p-65.

Governments are empowered to proclaim national parks and wild life sanctuaries. It extends to selling or transferring wild animals, trophies and animal articles. Under the Act, hunting wild animals, keeping wild animals in captivity or possessing trophy against the rules are punishable offences. On a complaint filed by the Chief Wildlife Warden or any other officer authorized by the State Government, a first class Magistrate can take cognizance of an offence. The Act was amended in 1987 and 1991 which brought radical changes. However, under section 11 and 12 of the Act, special permits are given for killing animals for the purpose of education, scientific research, management and collection of species. Proviso to section 17-A of the Act allowed schedule tribes to collect and possess any specified plant for their bonafide use.

The amendment in 2002 to the Act a new administrative mechanism i.e. a National Wildlife Board in the place of Advisory institution for better management of wildlife. The board is responsible for impact assessment of various activities and projects on wildlife and its habitat and to take up measures for the protection and development of wildlife and forest. The amendment also prohibited construction of buildings, lodges, hotels and safari parks inside a sanctuary except with the approval of the Board. Under the amendment also more public participation and involvement is envisaged by representation of NGOs, local communities, and panchayat in the Board. The amendment also provided that the property acquired from illegal hunting and trade will be forfeited and dispose off by the State Government. The amendment also gave power to the executive government to change the extent of a protected area on recommendation of the Board, which was earlier given to the state legislature and created confusion.

J. The National Environmental Appellate Authority Act 1997:- The National Environment Appellate Authority Act 1997 requires the Central Government to constitute a National Environmental Appellate Authority headed by a retired justice of the Supreme Court or chief justice of a

High Court, to hear appeals against orders granting environmental clearance with respect to areas in which restrictions¹⁵ are imposed to establish certain classes of industries or carrying on any operation or process. Any person aggrieved by any order of granting environmental clearance may challenge the order which includes project clearance by the Impact Assessment Authority. However, the National Environmental Appellate Authority has no power to hear appeals directly by the project authorities for denial of their project from environmental clearance. In the *A P Pollution Control Board vs. M.V. Naidu*,¹⁶ the Supreme Court expressed the view that the National Environmental Appellate Authority is an ideal forum with judicial as well as technical expertise to adjudicate on complex environmental issues.

K. The Forest (Conservation) Act 1980:- Forest maintains the ecological balance, prevent soil erosion, shelter animals, and protect the tribal population, supply raw materials to industries and as source of revenue and a source of fodder and fuel. The large scale deforestation, environmental degradation and resultant ecological imbalances in India compelled the Government to enact the Forest (Conservation) Act 1980. The main purpose of the Act is to restrict de-reservation of forest, and use of forest and forest land for non-forest purpose. The Act aimed at providing for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. The Act requires that the approval of the Central Government before a state de-reserves a reserved forest or uses forest land for non-forest purposes or to assign a forest land to a private person or corporation or clear forest land for reforestation is needed. Explanation to section 2 of the Act explains the expression 'non-forest purpose' as breaking up or clearing any forest land for the cultivation of tea, coffee, spice, rubber, palms, oil bearing plant, horticulture crops or medical plants. Section 3 of the Act

15. Section 3(1) and 3(2)(v) of the Environment Act 1986.

16. AIR 1999 SC 812.

empowers the Central Government to appoint a committee to advise on the grant of prior approval and other matters connected with conservation of forest. The main function of the Advisory Committee is to advise the Central Government with regard to the grant of approval under section 2 i.e. restrictions on preservation of forest or use of forest land for non-forest purpose.¹⁷

L. Hazardous Waste (Management & Handling) Rules, 1989

The Hazardous Wastes (Management and Handling) Rules, 1989, provide for an effective inventory and controlled handling and disposal of hazardous wastes. Under the rules 18, categories of hazardous waste are identified along with their regulatory quantity Industries generating any of these waste beyond the regulatory quantity are required to seek authorization from the concerned State Pollution Control Board for its temporary storage in the premises and their disposal. Possibility, of common treatment facilities including landfill are envisaged. The operator of such facility is also required to obtain authorization from the Board. The Boards are expected to specify conditions on safe handling and disposal of the waste in the authorization. Treatment of the waste at the premises before disposal could also be specified. Import of hazardous waste for processing has to be got approved by the Central Government.

M. Manufacture, Storage & Import of Hazardous Chemical Rules

1989:- The principal objective of the regulation is the prevention of major accidents arising from industrial activity, the limitation of the effects of such accidents both on humans and the environment and the harmonization of the various control measures and the agencies to prevent and limit major accidents. The industrial activities covered by the regulation are defined in terms of process and storage methods involving specified hazardous chemicals.

17. Section 3 of the Act.

An important feature of the regulation is that the storage of hazardous chemicals not associated with the process is treated differently from those coming under process use for which a different list of hazardous chemicals and their manufacture and storage procedures applies. Under the provisions isolated storage / cover sites are to be separate tank farms or warehouses. The Central Pollution Control Board and the State Pollution Control Board, as the case may be, are the enforcement agency for these storages.

A safety report is required to be prepared as per Rule 10 in this Act. It involves identification of the nature and use of hazardous chemicals at the installation. The report will also give account of arrangements for safe operation of an installation including control of any serious deviation that could lead to a major accident and for emergency preparedness at the site. The report will identify the type, and the relative likelihood of consequences for any major accident that might occur. It will also demonstrate that the manufacturer or the occupier has identified the major potential accidents from the activity and has provided appropriate controls.

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O. The Factories Act 1948:- The amendment to the Factories Act 1987 inserted special provisions on hazardous industrial activities. The amendment was made under the light of the judgment in *Shri Ram Gas Leak Case*¹⁸ which empowered the states to appoint site appraisal committees to advice on the initial location of the factories using hazardous processes. The occupier of every hazardous unit must disclose to his workers, the Factory inspector and the local authority all particulars regarding health hazards in the factory and the preventive measures taken. Every occupier must also draw an emergency disaster control plan which must be approved by the Chief Inspector of Factories. It is also the responsibility of the occupier to maintain medical record of each worker with the help of an employed personnel experienced in handling hazardous substances. The limits of exposure to toxic substance are prescribed in the schedule. Safety committee consisting of workers and managers are required to review the safety measures of the factory periodically.

3. PROBLEMS IN ENFORCEMENT OF LEGISLATIONS.

1. The enforcing agencies find it difficult to enforce the regulatory standards on the industries. The major problems faced by the enforcing agencies are (i) less than required regulatory/enforcing manpower in regulatory agencies compared to the ever increasing number of industries, (ii) Lack of adequate technical knowledge/skills required for enforcement of regulations (iii) Resistance to change/attitudinal problems prevalent in industry (iv) Lack of financial resources in general.
2. *Concentration Based Standards:-* The Central Pollution Control Board has laid down ambient air and water quality standards, whereas the

18. *M.C. Mehta vs. Union of India AIR-1987 SC 965.*

actual enforcement provisions relate to at source pollution. The absence of an appropriately defined link between ambient and source standards have had an immense impact on the environment. It is evident that despite increasing number of individual industries meeting emission standards, the total quantity of pollutants (pollution load on the environment) in the environment has been rising due to increase in the number of industries setting production facilities in a given area.

3. *Command and Control Policies*:- Till recently, the Government has tended to rely on the policy of direct regulation i.e. the command and control principle for pollution control. Little attention has been paid to alternative strategies such as minimizing the cost of achieving certain ambient standards, or improvement in manufacturing efficiencies etc., for achieving enhanced social and cost benefits etc. In fact most studies have indicated that pure command and control regimes are often four to six times costlier than market based regimes. It has been recognized that the problem of pollution has become more acute over time despite the regulations and hence conventional regulatory instruments should be combined with fiscal incentives, voluntary agreements, information and public participation etc.

4. POLICY INSTRUMENTS FOR POLLUTION ABETMENT

Environment Policy for industry in India, till recently, had focussed mainly on pollution control through end-of-pipe treatment, which itself is wasteful whereby pollutants are often transferred from one media to another media through the various treatment processes. Huge quantities of resources and energy are thus consumed during such treatment processes. With due recognition to the future raw material and energy scenario, the impact that the industry and its products have on the natural resource base and the environmental quality and the necessary thrust being given to the industrial growth in the country, the Ministry of Environment and Forests has formulated comprehensive policies for promoting sustainable development. It is against this background that

the Ministry of Environment and Forests issued a comprehensive Policy Statement for abatement of pollution and development of the National Conservation Strategy. Recently, MoEF has also prepared the Environment Action Programme. The statement has made a welcome attempt to shift the emphasis of policy from definition of objectives to practical questions of actual implementation. The salient features of the policy framework are discussed here

Policy statement for abatement of pollution:- The overall policy objective is to integrate environmental considerations into decision making at all levels. The policy aims at Prevention of pollution at source, Encouraging, developing and applying the best available practicable technical solutions", Ensuring that the polluter pays for the pollution and control arrangements, Focusing on the protection of the heavily polluted areas and river stretches and Involvement of the public in decision making

1. *National Conservation Strategy and Policy Statement on Environment and Development* :- It has been set out with the following priorities Conservation of natural resources, Land and Water, Prevention and control of atmospheric pollution including noise pollution, Industrial Development by using a mix of promotional and regulatory steps
2. *Environment Action Programme:-* It sets out the following priority areas
(i) Control of industrial and related pollution with emphasis on reduction and/or management of wastes particularly hazardous wastes.- Tackling urban environmental issues (ii) Strengthening scientific understanding of environmental issues as well as establishing a structure for training at different levels, orientating and creating environmental awareness, focusing on resource assessment/conservation, water management problems etc. In all these policies, emphasis is on prevention of pollution and conservation of natural resources which will enable Indian Industry to compete in the international market.

5. INITIATIVES TAKEN FOR POLLUTION PREVENTION

Coupled with the shift in policy with more emphasis on prevention of pollution, the government has also introduced a number of schemes which will motivate the entrepreneurs to take up steps to curb pollution. A review of the schemes which have so far been introduced in India for pollution abatement is given here (i) Fiscal incentives (ii) The economic incentives (iii) *Strengthening Of Emission Standards* (iv) *Scheme for adoption of Cleaner Technologies in Small Scale Industries* (iii) *Ecolabelling*.

(i) *Fiscal incentives for pollution control*:- The economic incentives which have been introduced include the following:

a. *Water Cess Act 1977*:- The act provides for a 25% rebate on the cess payable if the person or local authority concerned installs a plant for treatment of sewage or trade effluent. It is instrument for pollution abatement.

b. *Effluent Charges*:- Effluent charges based on nature and volume of effluents released are being considered. The scope of charges will be extended to air emissions and solid wastes. These charges may generate initiatives towards optional releases and encourage new / advanced technology adaptations in the production processes.

c. *Credit and Loan at reduced rate of interest*:- The World Bank assisted Industrial Pollution Prevention Project is targeted at introducing Cleaner Technologies in industrial units. Under the investment component of the Project, the World Bank line of credit is available to industrial units for undertaking appropriate measures for Pollution abatement, with a focus on Waste Minimisation and adoption of Cleaner Production methodologies.

d. *Customs or Excise Duties and Sales Tax Rebate*:- The customs duty on some specified pollution control equipment has been reduced to a concessional rate of 35%. The countervailing duty has also been

eliminated for such items and auxiliary duty has been reduced to 5%. Since March 1992, a rebate of over 5% has been allowed on excise duty of over 5%. In addition to the rebate on customs and excise duties levied by the Central Government, certain states too have offered concessions on Sales Tax for specified pollution control equipment

- e. *Depreciation Allowance:-* There is provision for allowing the deduction of a certain percentage of written down actual cost of capital assets, net of any subsidies and concessions from gross profit in computing the base for levy of corporate tax. A notification issued in February, 1983 introduced for the first time a higher rate of depreciation for pollution control equipment as compared to 25% applicable for the general plant and machinery. This 30% was gradually increased to 100% in 1993-94 budgets.
 - f. *Investment allowance:-* A provision is available in the Income Tax Act under which a company can deduct upto 25% of the actual cost of some specified new assets for computation of taxable profit. This allowance was raised to 35% for pollution control equipment.
 - g. *Tax Benefits through contributions towards natural resource conservation:-* A provision has been made in the income Tax Act which allows deduction of contribution made by tax payers to any institution engaged in the conservation of natural resources while computing taxable income.
 - h. *Exemption From Tax On Capital:-* The Income Tax act also provides for exemption of capital gains arising from transfer of building, land, machinery etc., for establishing business in a new place to reduce industrial congestion.
- (ii) *Strengthening Of Emission Standards:-* In order to promote resource conservation by industry, rules related to standards for consumption of water by polluting industries (example Chemicals , Pulp and Paper,

Fertilizers, Tanneries, Sugar and Distilleries and Metallurgical industries) have been notified. To promote the shift from pollution control to pollution prevention regime, rules related to load based standards instead of concentration based standards have been notified for a limited number of industries viz. Refineries, Smelters, manufacturing of Inorganic Acids, Coke ovens, Aluminium Plants, Glass manufacture and some synthetic fibers.

(iii) *Ecolabelling*:- Eco-labelling scheme by Government of India supports Cleaner Production Policies as there is a strong emphasis on Cleaner manufacturing process for grant of eco-labels.

(iv) *Scheme for adoption of Cleaner Technologies in Small Scale Industries*:- The main aim of the scheme is to promote the development and adoption of Clean technologies and best practices and techniques including waste reuse and recycling for SSI's to realise economic and environmental benefits. The scheme provides financial assistance for undertaking Waste Minimisation assessments and Demonstration projects in selected sectors, preparation of sector specific manuals on Waste Minimisation / Demonstration projects undertaken, creation of data base on the availability of clean technology or present status of clean technologies used in the industries, identification and diffusion of clean technology to the industry and conducting training and awareness programme among small scale industries regarding pollution prevention and cleaner production.

6. AN OVERVIEW

Environmental law enforcement presents an unhappy picture, which is characterized with lack of training and skill, lack of infrastructural facilities, poor understanding of law, and lack of co-ordination among different agencies. The results achieved so far with the existing regulatory regime though positive are apparently limited. In case of air quality, ambient air quality has been deteriorating in the four

metropolitan cities (Delhi, Calcutta, Chennai, and Mumbai), despite reducing intensity of air emissions from industries. In the case of water quality, the degree and extent of violation of prescribe emission standards/norms appears to have declined and especially so for key parameters such as BOD and coli form count etc., as discharged by industries across the country. However, the continual degradation of the environment despite provision of several rules and regulations can be attributed to various reasons, some of which have been enumerated here.

The enforcing machinery for legislations dealing with the protection of various issues environmental pollution is basically same. The Central Pollution Control Board and the State Pollution Control Boards are given the responsibility of implementation of pollution control laws. The Environment (Protection) Act 1986 which is known as umbrella legislation provides for creation of separate authority under direct control of the Central Government. Three tools have been given to the Central Board for controlling the environmental matters. *Firstly*, granting license to new industries, *secondly*, reviewing pollution control measures in existing industries, and *thirdly* prosecution of offenders. Besides these, Municipal Corporations, Jal Nigam, District Industrial Development Centre, Flood Control and Irrigation Departments, Municipal Development Authority, department of revenue and transport, local self government and constitutional authorities are responsible for implementation of environmental laws. Difficulty arises regarding jurisdictions of all the authorities. The authority of general administration extends to every conceivable aspect of public nuisance.¹⁹ The State Pollution Control Board is empowered under both the Water Act and The Air Act to control and abate pollution. Conflict arises when the administration attempts to initiate action over as it amounts to

19. Section 133 Cr.P.C.

public nuisance and the Board wants to deal with pollution. In resolving the conflict of jurisdiction different High Court also pronounced conflicting judgments. In *Tata Tea Ltd. Vs. State of Kerala*²⁰ it was held that specific pollution related laws were designed to prevent pollution, they impliedly repealed the provision of section 133 Cr.PC to the extent they relate to prevent and control of pollution. But the A.P. High Court in *Nagarjun Paper Mills Ltd. Vs. Sub-Divisional Magistra*²¹ expressed the view that jurisdiction under Cr.PC does not conflict with the authority of the Pollution Control Board as long as it did not interfere with an order under Section 133 Cr.PC.

To examine various aspects of pollution control laws I took opinion of experts regarding the efficacy and efficiency of pollution control laws. I interacted with various local and constitutional bodies, non-government organizations, social organizations, and general public. I distributed different sets of questionnaire and interviewed them personally. A close analysis of the responses given authorities, experts and the general public shows that the efficacy and efficiency of environmental laws are sufficient though not excellent. The existing environmental laws in India are very comprehensive in their length and coverage but they suffer from in-effective enforcement. The Environment (Protection) Act 1986 not only aims at protection but also improvement of the environment as a whole. To achieve these objectives, the Act employs various preventive measures and control mechanisms, mainly applied through Central and State Pollution Control Boards. But the indifferent, lethargic, and callous attitude of the Boards and other authorities in taking cognizance of various kinds of pollution and equally negligent and oblivious nature of civic bodies the Act failed to achieve its goal.²² It is also observed that public participation is also very important in environmental law and

20. 1984 Ker.LT 645.

21. 1987 Cr.LJ 2071.

22. Z. M. Nomani, "water pollution and conservation: existing legal framework and strategy for reforms" in F.A. Khan (Ed) "Water Resource Management: thrust and challenges" 1997 at 207.

policy making. Illiteracy, poverty over population, low standard of living, lack of environmental awareness are common features in Indian societies where no law can serve its purpose without democratization of laws and public co-operation. That is why law is least venerated and generally observed more in breach than in compliance.

Some scholars expressed the view that there is shortage of trained and skilled personals in law. There was a legal cell in the Ministry of environment and Forest which exist no longer. Legislative drafts and policy papers are prepared by persons having no legal knowledge without giving proper attention as the subject may demand. Scientific officers in the Ministry and its regional offices pay much attention to the technical aspects rather than the substance. Moreover, officers in the policy making do not remain in the same position for long time and thus do not understand the nature of work and deep knowledge in its functioning. In *Delhi Bottling Company Vs. Central Pollution Control Board*²³ the CPCB lost the case on technical ground that the Governmental agency did not strictly observe the procedure prescribed by the Water (Prevention and control of pollution) Act 1974.²⁴ The constrains under which the agencies are functioning are poor and inadequate budget allocation, withdrawal of prosecution without assigning any reason, lack of equipment for measuring emission standard etc. It appears that the statutory authorities trying to avoid their responsibility but the authorities can not be expected to give a better account under such a circumstances. In recent years a considerable progress is made in bringing excellent policies in expansion of environmental administrative set up. The Five Year Plans stressed on for making enforcement machinery more effective and efficient, infrastructural facilities have been considered. But transmission of these into actual practice and adequate budget and effective functioning

23. AIR 1986 Del 152

24. M. K. Ramesh, "environmental justice Delivery in India" 2 IJEL 2001.

machinery for proper implementation yet to take place.

Experts opined that at the inception environmental governance in India raised a lot of hope but after sometime it lost its goal in politics and administrative inefficiency that the common man got compelled to look elsewhere for overcoming environmental problems faced by them. Clash, conflict, and bureaucratization among agencies results into lack of consensus in the decision making process. Administrative high handedness lack of procedural formalities in the implementation of environmental law have often resulted in industries getting away with violations, an example is *Suma traders vs. Chairman, Karnataka State Pollution Control Board*²⁵ On a complaint the chairman of the Pollution Control Board ordered closure of industry, on challenge of such order the Board confirmed that the chairman did not have the power to issue such an order. The court held that it amounted to abuse of power and pay a penalty of Rs. 2500/ by way of cost.

It is also observed by some of the experts that political interference in appointments and in the day to day functioning of agencies hindered the agencies to become professionally competent and efficient bodies. The nature of qualification required for members and the chairman of pollution control board paved the way for the Govt. in making arbitrary appointments. Moreover, major industries like coal, petroleum electricity, iron and steel, agro- chemicals and heavy industries under public sector having strong Govt. representation in the Board. The environmental law enforcers are reluctant to enforce the law who occupy lower position in the administration.

Centralized power of policy framing, and not by experts but by bureaucrats is yet another difficulty felt by the environmental law enforcing agencies. Even the subordinate legislation under environment protection Act framed by the central department of environment and

25. AIR 1998 Ker 8.

forest overrides any other Central or State legislation.²⁵ The joint forest management by local community people is a benefit sharing arrangement under the forest department for the service rendered in lieu of payment of wages for the labour. But decisions are being taken at the central and state level.²⁶ Decisions on the issues of development which also affects the environment are being taken by the central and state level only after Environment Impact Assessment and public hearing. Public hearing is just a formality of giving some information to local community of a proposed developmental activity and to hear their objection and not with the objective of prior informed consent and making them participants. There is no guarantee that the objections of the local people would form a part of decision making.

The use of criminal sanctions for environmental violations has proved ineffective. Environmental laws contemplate deterrent value in the imposition of punishment on the violators. Imperfection in definitions of environmental fences and the complexities involved in the prosecution of offenders have forced the pollution control boards to go for provocative action rather than prosecution. But ineffective enforcement has reduced the threat of punishment. There has been much increase in the penal sanctions but more increase in the dose punishment will not bring the desired result. The laws providing coercive punishment are not enforced regularly and certainly. The criminal activity tends to increase because the people feel that the threat has been removed. That is why environmental laws are more followed in their breach than in their observance.

Poor planning, maintenance of record, and vigilance also affected much the implementation of environmental laws. Pollution Control Boards issue consent orders without prescribing norms. In *Obayya*

26. *Jagannath Vs Union of India AIR 1997 SC 811* in which the CRZ notification under EPA was held to prevail over state legislations.

*poojari vs. Karnataka State Pollution Control Board*²⁷ the state pollution control board granted consent for stone crushing without examining environmental damages. The order was challenged on the ground of adverse impact on the health. The court ordered the Govt. to immediately formulate policy and plan of action to regulate the business and identify safer zone for stone crushing operation.

The provisions of imposing fine, despite increase in the amount, are treated as a part of the cost of running the business. Statutory fines are not of the magnitude which would act as deterrent. They pinch neither corporations nor shareholders. In fact it is not the financial deterrent but public approbation and stigma that are attached to the criminal sanctions which will be more effective. When the powerful corporations and their chiefs are involved in environmental violations, courts often give the benefit of poor legislative drafting to these corporate offenders. It is true that the courts find it difficult to deal efficiently with the issues of scientifically complex nature involved in the environmental laws but then the criminal courts have always marshaled scientific evidence in other criminal violations. What is required is a will on the part of the court to implement the true intention inherent in the environmental laws, and thereby reinforce the values contained in the constitution through the right of criminal stigmatisation.²⁸

There has been criticism against the penal provisions contained in the environmental legislations. Some scholars do not approve imposition of sentence of imprisonment at all while others suggest for more severity in penal provisions. Recent increase may not be justified because the earlier penal sanctions were not fully invoked by the law enforcers and the courts. But no criticism against criminal sanctions would be valid unless criminal sanctions are given a proper chance to deal effectively

27. See, M.K.Ramesh, "Joint Forest planning & Management : Law, Practice and Proposals"

28. AIR 1999 Kar 157.

with the environmental violators.²⁹ For example a person found guilty of an offence under sections 43 and 44 of the Water Act must automatically be sentenced to a minimum, of six months of imprisonment but the punishment may well hinder prosecution by the Board which may be reluctant to pursue the case if the offence is not very serious because of the mandatory imprisonment involved. It would be reasonable that the magistrate should be empowered to award punishment without any fixed minimum punishment and with a fine as an alternative.

The existing legal framework for environmental protection in India is sufficient to meet the challenges in the ecological imbalances and to protect the environment. But it failed to produce required results due to lack of enforcement. The environmental law enforcing authorities do not have any kind of commitment or interest in enforcing these laws. Above all lack of political will is responsible for non-implementation of environmental laws. Some scholars are of the opinion that there is a need to have effective supervisory machinery for the implementation of environmental laws.³⁰

Another great difficulty often raised by the environmental law enforcing authorities is lack of adequate fund which has prevented Boards from implementing various schemes for prevention of environmental pollution. There is also a problem that due to lack of fund adequate technical staff is not recruited and appointed staff deputed from other departments' do not pay much attention. In the field of codification of environmental laws India achieved a mark able position.

For effective implementation, people should become conscious of the problem of environment. In the minds of the people awareness should be created that a clean environment is the Fundamental Right of

29. H. C. Agrawal, "Pesticide pollution of water" in C.K. Varshney (ed) 'Water Pollution and Management thrust and challenges 1991 p 57.

30. M.A. Acheson, 'Water pollution control in India' in C.K. Varshney (Ed) Water Pollution and Management thrust and challenges 1991 p 57.

human beings. People must be convinced that by protecting the environment and controlling pollution the health of the people will be safeguarded. The right to clean environment is recognized as an integral part of Article 21 must be assured in practice. Public participation compels the decision making bodies to act in just and fair manner for realization of the right to environment. The 2006 Bill to amend the Wild Life (Protection) Act 1972, proposed setting up of National Tiger Conservation Authority. But the Tribals have been opposing the Bill arguing that it would prevent forest dwelling tribals of their right to land. 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.

But the great problem is that EIA requires different types of expertise and knowledge to find out in the first stage, whether a project causes significant adverse effect, and if not, assessment is not required. In the second stage, it is to be examined whether there are secondary effects of socio-economic nature such as shrinking of civic amenities or loss of job opportunities. The third stage is cumulative effect of a project i.e. in the beginning it may be harmless but over a period of years the effect can be totally different.

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 which 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 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 has 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.

When an enactment is passed prohibiting certain types of activities, then it is important to ensure its effective implementation, otherwise it would lead to a lawless society. Violation of pollution control laws adversely effect the existing quality of life, ecological balance and the environment which will cause sufferings to the future generation. In India there are more than 200 Central and State legislations which have a bearing on environment, if properly implemented, then India would be one of the least polluted countries of the world. Enforcement of law is an executive function which it is bound to discharge. The courts are ill-equipped and it is not the function of the court to see day to day enforcement of the laws. In Public Interest Litigations relating to implementation and enforcement of environmental laws, the court is to see whether the executive authorities take steps for implementation or not. As such, the courts have to pass orders and give directions for the protection of the fundamental rights of the people. Passing appropriate orders for implementation does not mean taking of executive or legislative function. The orders and directions are passed in discharge of judicial function. If there is any complain by any person regarding violation of any legal right, due to inaction or wrong action of the State then such inaction should be prevented.

Environmental law making in India has not followed any consistent and logical path of serious deliberations both at the stage of drafting and consideration on the floor of legislatures, before becoming the law of the land. Even chance remarks or an expression of displeasure over an undesirable environmental situation by charismatic political leaders have often led to the making of laws. The circulars and guidelines as to joint forest management and notification as to Coastal Regulation Zone apparently are illustrations of this. Lack of vision in foreseeing environmental problems, not evolving appropriate policies plans and programmes, non-dynamic and non-reactive laws appear to

be the judicial activism.

Some scholars observed that India's high concentration of pollution is not due to a lack of effort in building a sound environmental legal regime, but rather to a lack of enforcement at the local level. Efforts are currently underway to change this as new specifications are being adopted for auto emissions, which currently account for approximately 70% of air pollution. In the absence of coordinated government efforts, including stricter enforcement, this figure is likely to rise in the coming years due to the sheer increase in vehicle ownership.

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 Raois* 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 environmental degradation 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.

BIBLIOGRAPHY

I. Acts, Statutes, And Notifications

The Constitution of India, 1950.

Universal Declaration of Human Right, 1948.

The Environment Act, 1986.

The Air Act, 1981.

The Water (Prevention and Control of Pollution) Act, 1974.

The Water (Prevention and Control of Pollution) Cess Act 1977.

The National Environmental Tribunal Act, 1995.

Indian Penal Code, 1860 Criminal Procedure Code, 1973.

Wildlife Protection Act, 1972.

Indian Forest Act, 1927.

Prevention of Cruelty to Animal Act, 1960.

Forest Conservation, Act, 1980.

Criminal Procedure Code 1973.

Code of Civil Procedure 1908.

Biological Diversity Act 2002.

Environment impact Notification 1994.

Right to Information Act 2004.

Noise (Regulation and Control) Rules 2000.

Motor Vehicles Act 1988.

II. Books

Armin Rozencranz, "Environmental Law and Policy in India" Bombay 1992.

Ateequr Rahman, "Household Environment and Health" B. R. Publisher, New Delhi. 1998.

A. Markendiya, "Cleaning up the Gangagas" O.U. Publisher, 2000.

Aftab Alam, "Human Rights in India- Issues and Challenges" Raj Publication, Delhi, 2000.

Bayan Randolph and Ruth, S (Ed) "Negotiating Water Rights" Vistas Publication.

B. P. SinghSehgal, "Human Rights in India-Problems and Prospective" Deep & Deep, 1995 New Delhi.

Farooqi A. Khan, "WaterResource Management: Thrust and Challenges" Anmol Publication, New Delhi. 1997.

Lal's "Commentaries on Air, Water, Pollution & Environment" 3rd Edition, Delhi Law House. 1998.

Peter R "Water for Food and Rural Development" Sage Publications. 2000.

R. Kumar, "Environmental Pollution and Health Hazards in India" New Delhi, 1997.

R. Swaroop, "Encyclopedia of Ecology, Environment and Pollution Control: Environmental Water Pollution and its control, Mittal Publications. 1992.

Md. Sharif Uddin & Z. M. Nomani "Water Pollution and Law" Saloni Publishing House, New Delhi 2004.

P. Leelkrishna, "Environmental law in India" 2nd edition, Butterworth.

Ashwin N. Karia, "Human Rights" C. Jamnadas & Company, Mumbai.

Indian Law Institute, "Customary Law and justice in the Tribal Areas of Meghalaya"

Dr. Ashish Kothari, "Understanding Bio-diversity, Life, Sustainability and equity" (1997) Orient Longman Ltd. New Delhi

Joshomayee Devi, "Industries and Tribal Social Ecology" 1988 Mittal Publication, Delhi India.

Dr. Manjushree Pathak, "Tribal Custom Law and Justice." 2nd Ed. 2005 Mittal Publication Delhi.

III. Articles

Sharma, Vinod Shankar, "*Emerging right to compensation in Indian Environmental Law*" 28(4) Indian Bar Review, 2001, 61.

Nomani, Zafar Mehfooz, "*Human Right to Environment in India: From Legality to Reality*" in Aftab Alam (Ed) Human Right in India- Issues and Challenges, 2000, 245.

Anand, Justice A. S, "*Protection of Human Rights- Judicial Obligation or Judicial Activism*" (1997), 7 SCC (j) 11.

Pattanayak, Pradip Ranjan, "*Human Rights - A Protein Perspectives*" 28(1) 2001, Indian Bar Review, 51

Krishna, Gopal "*Environment and Development: Global Dimension*" Vol: (2) 1995, Lucknow Law Journal, 163.

Rajyalakshmi, Dr. V. "*Right to Housing*" Vol-(1) 2000. Indian Journal of Environmental Law.

Sing, Nagendra, "*Right to Environment and Sustainable Development as a Principle of Environmental Law*" 29(3) Journal of Indian Law Institute, 1987.

Singh, Surendra, "*Towards Environmentally Sound and Sustainable Development*" Vol: 2 1995, Lucknow University Law Journal.

Chokroborthy, Dr. N. K. "*Right to livelihood and Environmental Protection*" 23 (3&4) 1996 Indian Bar Review.

Mishra, Dr. Srikant, "*Need for restructuring Environmental Jurisprudence - A Neglected Human Right*" 22(1) Indian Bar Review.

Nomani, Zafar Mahfooz, "*Enviro-Constitutional Ethos in Right Duty Discourse: Towards the Creation of an Equitable and Sustainable Legal Orded*" Vol: 1 2000, Indian Journal of Environmfntal Law 60.

Singh, Chatrapati, "*Water Right in India*" Vol:10, 1990 Aligarh Law Journal 22.

Nomani, Zafar Mehfooz, "*Environment, Poverty and Law: The Symbiotic Relationship*" 47 (2), 1997 the Caratis India Quarterly. 24.

Jha Dr. R.C. "*Anti-Terrorist Laws Vis-a-Vis Human Rights*" 21(1), 1994, Indian Bar Review.

Dr. Padam, "*Environmental Pollution and Disability- its dimension*" 27

(2&4) Indian Bar Review 217.

Prof. Siddiqi, Md. Zakaria, *'Environmental Law and Limits of Criminal Sanctions'* 21(4), 1994 Indian Bar Review.

Mishra , Srikant, *"Human Right: A Fundamental Issue"*

Nomani, Zafar Mahfooz, *"Water Pollution and Conservation: Existing Legal Framework and Strategy for Reforms"* in F.A.Khan (Ed) *Water Resource Management: Thrust and Challenges*. 1997. 213.

Nomani, Zafar Mahfooz, *"Legal and Judicial Policy for control of Air Pollution in India : Problems and prospects"* 27 (3&4) 2000 Indian Bar Review. 93.

Pathak, Justice R.S. *"National Commission on Human Right - A Constitutional Institution"* 20 (1) 1993 Indian Bar Review 105.

Dhairyasheel, Patil, *"Human Rights Commission - Basic issues"* 20 (1) 1993 Indian Bar Review. 55.

Chitkara, M.G. *"Bureaucracy And Human Rights"* 20(1) 1993 Indian Bar Review.

Sharma, Brahma Nanda, *"Human Rights Commission in Asia and India"* 20 (1) Indian Bar Review. 79.

Nomani, Z.M. *"Water Pollution Control and Public Participation: Legal Dimension"* 23 (1) 1996 Indian Bar Review. 119.

Nomani, Z.M. *"Federalism Under Indian Constitution: A Study of Environmental Law"* 24 (1&2) 1997 Indian Bar Review, 215.

Khan, K. A. *"Management of Ecological Problem"* in F.A.Khan (Ed) *Water*

Pollution and Management: Thrust and Challenges 1992, 72.

Kathpalia, G.K. "*Water Budgeting and Planning*" in C.K. Varshney (Ed) *Water Pollution and management: Thrust and Challenges*.

Singh, S. B., Dutta, K. K. & Singh, K.B. "*Nature and Causes of Water Resource Degradation in North-Eastern Hill Region of India*" 28 (2&3) *Journal of North- Eastern Council*.

"*Inadequacies of Hohfeld's Scheme: Towards A More Fundamental Analysis*" 27 (1) 1985, *Journal Of Indian Law Institute*,

Mishra, Binod Shankar, "*Emerging Right To Compensation in Indian Environmental Law*" 28 (4) 2001 *Indian Bar Review*.

Choudhury, Nilay "*Water Resource Management: Qualitative Aspect*" in C.K.Varshney (Ed) *Water Pollution & Management: Thrust and Challenges* (1992) 209

Nomani, Z. M. "*Health, Environment And Industrial Relations*" 20: 12 (2) 1996 *The Academic Law Review*.

Acheson, M. A. "*Water Pollution Control In India*" in C.K.Varshney (Ed) *Water Pollution and Management: Thrust & Challenges*. 1992 192.

Ramesh, M. K. "*wild Life Protection Act 1972 An Agenda for Reforms*" *Reading Materials on Environmental Law, XXth National Legal Workshop 2002 , Guwahati*.

Medhi, Ali, "*Right Clean Environment: a Judicial Vindication*" Vol- 1 issue 2 *Indian Journal of Environmental Law* 89.

Ramesh, M. K. "*Elements of Good Environmental Governance*" *Reading*

Materials on Environmental Law, XXth National Legal Workshop 2002, Guwahati.

Agarwal, V.K., 'Sustainable Development and Environmental Protection: Some Reflections' (1998) All India Reporter Journal Section, 1-9.

Anderson, M.R. and Ahmed, A., 'Assessing Environmental Damage under Indian Law', (1996) RECIEL, Vol. 5:4, 335-341.

Jariwala, C.M., 'A Judicial Approach in the Fire Works' Noise Pollution: A Critical Overview' (1999) All India Reporter Journal Section 72-74.

Razzaque, J., 'Country/Region Report: South Asia: Bangladesh' (1998) Yearbook of International Environmental Law, Vol. 9, 459-469.

Cohen S. and Weinstein N, "Non-auditory effect of noise on Behavior and Health", Journal of Social Issues, 371 1981.

IV. Journals and Periodicals

Indian Bar Review, Various Issues.

Indian journals of Environmental Laws, Various issues.

Aligarh Law Journals, Various Issues.

Academic Law Review, Various Issues.

Lucknow Law Journal, Various Issues.

The Caratis India Quarterly.

Journal of Indian Law Institute, Various Issues.

Kashmir Law University Law Review, Various Issues.

Journals of the North-Eastern Council, Various Issues.

Journals of Environmental Law.

Indian Journal of Environmental Protection.

Indian Journal of Forestry.

All India Reporters.(Journal)

Supreme Court Cases.

Gauhati Law Reporters.

Gauhati Law Times.

Criminal Law Journal.

Legal News and Views

Cochin University Law Review.

Journal of Social Issues

Supreme Court Journal

University news and views.

Journal of Indian Law Institute

Reports

Government of India, Ministry of Environment and Forest Policy 1988.

Government of India, Ministry of environment and Forest National Water Policy 1987.

The Law Commission of India 186th report 'Proposal to Constitute Environmental Courts.

World Commission on Environment and Development, 'our Common Future' 1987.

AIR Manual vol 25 5th ed. 1989.

Armin Rosencranz et al (Ed), 'Environmental Law and Policy in India'
1991 Tripati Bombay.

P. M. Bakshi, Environmental (Protection) Act 1986, (1986) ILI New Delhi.

ILI, Environmental Protection Act: An Agenda for implementation 1987
Tripati, Bombay.

Conventions:-

Stockholm Declaration on Human Environment 1972.

Rio Declaration on Environment and Development 1992.

United Nations Convention on Biological Diversity 1992.

United Nations Declaration on the Right to Development 1986.

Universal Declaration of Human Right, 1948.

World Heritage Convention 1972.

