



SUSTAINABLE DEVELOPMENT VIS-À-VIS ENVIRONMENTAL CRIME : AN INDIAN EXPERIENCE

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ABSTRACT

Environment is our surroundings of sphere. As per the Environment (Protection) Act, 1986 defines environment¹, it includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. The industries are the sources of hazardous emissions and effluents. The use of chemical insecticides and pesticides in agriculture also leaves dangerous residues. Transport, whether by land or water or air contaminate the environment and the Public health infrastructure like sewage, garbage and drainage? It has detrimental impact on our environment.² Environmental corrosion is big in terms of the size of the problems faced by human being. These are global warming, the destruction of the ozone layer, acid rain, deforestation, overpopulation and toxic waste are like as all global issues. There are in terms of the range of problems and issues- air pollution, water pollution, noise pollution, waste disposal, radioactivity, pesticides, and conservation of wildlife. In our day to day of modern life is that technology permits us to live in unprecedented comfort while remaining in unprecedented ignorance of the natural physical and biological environment that supports our lifestyle.³ By this research it would become a little clearer that why we humans are self harming ourselves or bringing ourselves close to human extinction on earth. This present paper discusses about how the environmental crime arises due to over activities created by human being in order to satisfy the highly economic a growth rate.

KEYWORDS : Environment, Crime, wildlife, sewage, pesticide, sewage, garbage, contaminate.

INTRODUCTION

The environment has been defined that outer physical and biological system in which man and other organisms live as a whole. This entire system is a complicated one as it has many interacting components. These components of the environment generally include: its rocks, minerals, soils and waters, its lands and their present and potential vegetation, its animal life and potential for livestock husbandry, and mainly its climate."⁴ There is a close and complicated interaction amongst all these various components which, tend to produce some kind of equilibrium in the scheme of nature what is usually termed as 'ecological balance. Changes in the ecological system occur continuously through natural process and man's activities but the system has to a certain extent remarkable tendency to rebalance itself. This entire system taken as a whole is useful to man and man is totally dependent on environment to satisfy their day to day life.

Today, we are concerned with a different kind of threat that lurks on our environment. This threat is the direct result of massive industrialisation, mechanisation, motorisation and chemicalisation of agriculture. These processes have resulted in poisoning the air, the rivers and the soil itself. Perhaps the limitless demands of the man and his consumption patterns have made him to forget the fact that human life is sustained by air, food and water. Today many of the world's cities are plagued with smoke or other kind of pollution. Air pollution which is usually associated with industrial growth and urbanization is filling the air with poisonous gases, smoke, smog, and radiation.

This not only endangers human beings and animal life but also seriously affects vegetation on earth. Major rivers and lakes in the world are so alarmingly polluted that these have rendered the quality of water unfit for human consumption and have also affected aquatic life. The excessive use of artificial fertilizers, poisonous sprays, insecticides, pesticides and weedicides have not only contaminated and spoiled the quality of soil but have robbed vegetables, fruits and grains of life sustaining minerals and vitamins.

We are indiscriminately cutting forests, denuding lands, destroying vegetation resulting changed weather condition, causing droughts, floods and extinction of rare species of plants, animals and birds. We are ruthlessly extracting

minerals and indiscriminately processing our ores-causing, apart from their depletion, air and water pollution. We are damaging even the 'Ozone layer which is a vital protective cover of our earth. Thus, the environmental degradation has reached a stage that threatens to destroy not only the environment but the mankind along with it.⁵ With our air unfit to breathe, our water unfit to drink, several hundreds of species of animals and birds threatened with extinction and hundred more species already destroyed, plant communities disrupted, forest cover shrinking, population exploding, environmental problems have assumed new dimensions.

Environmental degradation has added new problems more particularly, in the developing countries. India which is a developing country is facing environmental problems because of the negative effects of a developing economy and from conditions of poverty and under development. Development can take place at the cost of environment only until a point.

In fact, development without concern for environment can only be short-term development. In the long-run, it can only be anti-development and can go on only at the cost of enormous human suffering, increased poverty and oppression.

International Perspective:

In modern times concerted efforts on international level have been made for the protection of environment. The historic **Stockholm Conference, 1972, Rio Conference, 1992 & the Johannesburg Conference, 2002** are the milestones in generating awareness around the world about environmental protection. Large scale industrialization, deforestation and highly pollution growth taking into account all together are the perpetual sources of environmental degradation globally and indignantly. Therefore it is imperative to take remedial steps to protect the planet earth from all these onslaughts. This is emphasized by the fact that right to pollution free air and water is a fundamental right under **Art.21** of The Indian Constitution.⁶ But while protecting the environmental interests; we cannot ignore the legitimate developmental interests of the population as right to development is a cherished human right. The realities of modern world clearly show a wide gap between socio-economic conditions of developed countries and underdeveloped countries. There is a sharp contrast between standards of living of population of

developed and underdeveloped countries. In many countries the rate of unemployment has gone up alarmingly and in order to give employment to a number of unemployed persons, it is necessary to generate new jobs by setting up new industries.

In order to improve the living standards; infrastructural facilities like electricity projects, dams, transport and communication facilities ought to be provided. It represents conflicting environmental and developmental interests, on one hand we need a clean and unpolluted environment and on the other hand we need development in various sectors like housing, industries, transport and communication, etc. These conflicting interests need to be harmonized in a manner beneficial to the mankind. But to achieve such a harmony is a delicate task. In order to resolve these conflicting interests, the concept of Sustainable Development was mooted for the first time in the **Maltese proposal of 1967** presented in the United Nations General Assembly. Sustainable Development revolves around moderate exploitation of natural resources by present generation for the benefit of future generations. Accordingly the natural resources are exploited only after due consideration of rights of future generations. The concept of sustainable development was prominently incorporated in the Stockholm declaration, which provided that the natural resources of the earth including air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management as appropriate.⁷ Another principle states that rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.⁸ The term Sustainable development again appeared prominently in the **Brundtland Commission Report of 1987**, which is titled '**Our Common future**'. In this report the term sustainable development is defined in following manner:

Sustainable development is development that meets the needs of the present generation without compromising the ability of future generation to meet their own needs'. The salient features of sustainable development as stated in Rio Declaration are as follows:

- (a) Intergenerational equity
- (b) Use and conservation of natural resources
- (c) Environmental Protection
- (d) The precautionary Principle
- (e) The Polluter Pays Principle
- (f) Obligation to assist and co-operate
- (g) Eradication of Poverty
- (h) Financial assistance to the developing countries

Out of these features, Intergenerational equity, precautionary principle and the polluter pays principle are the core features of sustainable development.

Intergenerational Equity: It is an important attribute of sustainable development. This principle talks about the right of every generation to get benefit from the natural resources.⁹ In some jurisdiction the principle of Intergenerational equity has been enforced by the courts, but in others due to lack of legislative initiative, it has not been enforced properly in India.

Intergenerational equity imposes a moral obligation on the present generation to manage the earth in a manner that will not jeopardize the aesthetic and economic welfare of the generations that follow.¹⁰ Intergenerational equity believes in conservation of natural resources by the present generation for their children and grand children. It means that our children and grand children should not suffer.

In India, in *State of Himachal Pradesh vs. Ganesh wood*

Products, the Supreme Court recognized the significance of Intergenerational equity and held government department's approval to establish forest based industry to be invalid because it is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and consideration of sustainable growth and Intergenerational equity. The present generation has no right to deplete all the existing forests and leave nothing for the next and future generations.

The principle of Intergenerational equity was also asserted by Calcutta High court in *People United for Better living in Calcutta vs. State of West Bengal*.¹¹ Therein the Calcutta High court pointed out that the present day society has a responsibility towards the posterity for their proper growth and development so as to allow the posterity to breathe normally and live in a cleaner environment and have consequent fuller development. In *S. Jagannath vs. U.O.I* which is popularly known as **shrimp Culture case**, while emphasizing mandatory environmental impact assessment in respect of shrimp cultivation in fragile coastal area, the court also gave the importance to Intergenerational equity.

Polluter Pays Principle: In Rio declaration an appeal was made to the signatory states to develop their national law for fixing compensation to be paid to victim of pollution by the polluter. The Indian Judiciary is quite receptive to Rio Principle even though they give rise to soft law. The award of compensation to victims of environmental pollution, the Supreme Court of India in *Vellore Citizens 'welfare Forum vs. U.O.I.*¹² held that polluter pays principle is a part of international customary law and that the polluter is liable to pay the cost to the individual who suffers as well as the cost of resaving damaged ecology. The Supreme Court has adhered to absolute liability principle while awarding compensation for environmental damage.

Precautionary Principle : It is also an essential attribute of sustainable development. In India, in number of cases this principle of International environmental law has been applied by the courts. In *M.C. Mehta vs. U.O.I. & others* concerning Badkal and Surajkund lakes the Supreme Court applied precautionary principle to prevent construction within one kilometre of two lakes in Delhi and the principle was applied as a part of the law of the land. In *Suo Moto* proceeding in *Re Delhi Transport Department* while dealing with the serious problem of air pollution in Delhi the Supreme Court categorically stated that the *Precautionary Principle* which is a part of concept of sustainable development has to be followed by State government in controlling pollution.

Environmental Crime

The term crime may be understood to mean those acts which people in society consider worthy of serious condemnation. Crime is said to be an act which is both forbidden by law and against the moral sentiments of the society. Environmental crime is considered to be a socio-economic offence. Although the definition of "environmental crime" is not universally agreed, it is often understood as a collective term to describe illegal activities harming the environment and aimed at benefitting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources, including serious crimes and transnational organized crime. Environmental crime also include corporate crime in the forestry sector, illegal exploitation and sale of gold and minerals, illegal fisheries/fishing, trafficking in hazardous waste and chemicals and threat finance using wealth generated illegally from natural resources to support non-state armed groups and terrorism.¹⁴

Environmental crime is responsible for a great deal of harm to the environment and human health. Environmental crime is a

serious and growing international problem, and one which takes many different forms. It is not restricted by borders, and can affect a nation's economy, security and even its existence. A significant proportion of both wildlife and pollution crime is carried out by organized criminal networks, drawn by the low risk and high profit nature of these types of crime. The same routes used to smuggle wildlife across countries and continents are often used to smuggle weapons, drugs and people. Indeed, environmental crime often occurs hand in hand with other offences such as passport fraud, corruption, money laundering and murder.

Constitutional Provisions

The Constitution of India originally did not contain direct provisions regarding the protection of natural environment. After Stockholm conference of 1972 Government of India brought out an amendment to the Constitution and added Article 48A to the Directive Principle of State Policy. Article 51A (g), a Fundamental Duty to the citizens to protect and improve natural environment. Also Article 21, Article 252 and Article 253 provide for parliament to make laws and legislative powers are given to both centre and state.

Some of the Articles, which have direct implication on environment pollution, are as follows:

Article 21 - "Right to Life and Personal Liberty" includes right to the "clean air and water" pollution cases like Ganga Pollution cases.

Article 48A - The Directive Principles of State Policy, which declares that, "The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country".

Article 51A (g) - A fundamental duty of citizen which says that "Every citizen shall have the duty to protect and improve and natural environment including forest, lakes, rivers, and the wild life and to have compassion for living creatures."

Article 252 - It provided "Power to Parliament to legislative for two or more states by consent and adoption of such legislation by any other states."

Article 253 - It Provides power to make Legislation for giving effect to International Agreements. Under this Article Parliament has power to make any law for the whole or any part of the territory of India.

Legislative Provisions:

Our legal systems have provided number of sources to fight against the environmental pollution. We have no. of legislations dealing with the various aspects of environmental protection. In Indian sub-continent, there have earlier legislation to meet the environmental pollution. After Industrial Era and consequently stock declaration, India Govt. enacted some specific legislation dealing with environmental problem.

The important legislations that have been enacted law contacting environmental pollution as follows:-

1. The Maharashtra prevention of Environmental pollution Act, 1969,
2. The public Nuisance under the Criminal procedure Code, 1973,
3. The environment (prevention and Control of pollution) Act, 1974,
4. The environment (prevention and Control of pollution) Rules, 1975,
5. The environment Cess (prevention and Control of pollution) Act, 1977,
6. The environment (prevention and Control of pollution) cess Rules, 1978,
7. Central Board for prevention and control of environment pollution (procedure for transaction of business) Rules, 1975,

8. The Environment (protection) Act, 1986,
9. The public Liability Insurance Act, 1991,
10. The National Environment Tribunal Act, 1995,
11. The National Environment Appellate Authority Act, 1997,
12. Municipal solid wastes (management and handling) Rules, 2000,
13. The National Green Tribunal Act, 2010

Judicial Trends

Judiciary is one of the balancing pillars of Indian democracy. It has played pivotal role in among three pillars of society. The eliminate role played by the judiciary in the protection of environment is no less than that of the legislature and executive. Its role is more prominent in the implementation of the environmental laws and related different government initiative policies in our country.

In spite of provisions for environmental protection laws and laws enshrined in the constitution of India, the degradation of the environment continues unabated till today. The plethora of enactments, policies, administrative infrastructure and expertise, all failed to conserve and protect the environment. As a result, the people, communities and organisations approached the judiciary, particularly to the Supreme Court and to the High Courts, and NGT for the protection of environment.

The ability to invoke the original jurisdiction of the Supreme Court and the High Court's under Articles 32 and 226 of the Constitution, respectively, is a remarkable step forward in providing protection for the environment. The courts have issued directions, orders and writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari. When executive fails to perform its functions, then the judiciary steps in to discharge its constitutional responsibility. The courts have come out with judicious decisions balancing the environmental and economic needs of the country.

In order to protect and preserve the environment for the present as well as for the future generations and also to ensure the quality of life through a healthy and hygienic environment contending in present the legislature has enacted several laws including the incorporation of several statutory provisions. The judiciary in order to implement those laws and provisions into action has played a pivotal role in interpreting those laws in such a manner that not only it hoped the protection of the environment but also addressed the common problems of the citizens relating to environment, the adverse effect of which has to be borne by the future generation.

Calcutta Tajmahal hotel case:-¹⁵

In this case a group of citizens challenged the location of five star hotels on the ground that it will hamper the zoo garden which is nearby the proposed hotel and also would interfere with the flight path of migratory birds. Taking into consideration the facts and circumstances of the case the court held that it could not be concluded that the construction of the hotel would interfere with the animals in the zoo and the birds arriving at the zoo or other.

Dahanu Taluka Environment protection Group & another v. Bombay suburban Electricity Supply Company Limited & others:-¹⁶

In this case the petitioner challenged the location of a thermal power station in the horticulture-rich Dahanu region on the coast of Maharashtra. The proposed thermal power station which has received the clearance from the State of Maharashtra and Union of India as per the proposal given by the Bombay suburban Electricity supply Company Limited (BSES) falls within an ecologically sensitive area. However, the supreme Court declined to interfere in this case observing that the courts role was restricted to examining whether the

government had taken into account all relevant aspects and was not influenced by extraneous materials in reaching its final decision. Holding that the clearance was granted by the Central Government after fully considering all the relevant aspects and in particular, on aspects or environmental pollution.

Society for protection of silent Valley v. Union of India and others:-¹⁷

In this case a writ petition was filed before the Kerala High Court seeking to prevent the State Government from constructing a hydro electric project in silent valley in the district of palghat which contained as per the petition one of India's largest tropical evergreen forests and is the only vestige of virgin forest of the western Ghats. It is estimated to have a continuous record of not less than 50 Million years of evolutionary history with diverse and complex flora and fauna. It is a unique vegetable food resource which contains mammals and birds in the valley.

Goa Foundation vs. the Konkan Railway Corporation:-¹⁸

This case is also known as the Konkan Railways case; a writ petition was filed in the Bombay High Court by a society asking the court to compel the Railway Corporation to procure environmental clearance from Ministry of Environment and Forests under the Environment (Protection) Act, 1986 for the part of the alignment passing through Goa.

The grievance of the petitioners was that the proposed alignment was planned and undertaken without an adequate Environmental Impact Assessment and Environment Management Plan. In this writ petition filed under Article 32 of the Constitution, the Supreme Court while dealing with the matter relating to environmental protection extensively dealt with the principle of sustainable development and opined that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development." In the process the court declared that sustainable development is a means to achieve the object and purpose of Environment (Protection) Act as well as protection of "life" envisaged under Article 21.¹⁹

CONCLUSION

The judiciary has played a crucial role in protecting the humanity from the threats of environmental pollution. Through a spate of cases covering various aspects of pollution the apex Court and the High Court's stood as saviour of millions of people. Environmental pollution is not of recent origin, it took a serious form in the recent past particularly in the era of industrial growth. Rapid industrialization coupled with urbanization and population explosion severely damaged our ecology. Our Constitution through Article 48A directs the States to endeavour to protect and improve the environment.

Article 51A (g) cast a duty to protect the natural environment. Besides there are specific legislations to combat the environmental pollution. Despite all these provisions, we still continue to suffer from pollution hazards. So the courts from time to time attempting to fight against this and are thriving heavily to provide the citizens a clean and pollution free environment. The courts also gave a new meaning to the concept of right to life as enshrined in Article 21 of the Constitution and by widening the horizon the judiciary declared that the right to life also includes the right to have a clean and hygienic environment. Development and the protection of the environment are not enemies to each other. If without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activity, applying the principles of sustainable development.

Sustainable development will not be easy task for any nations, specially developing nation like India. Illiteracy, poverty and mind set of the Indian citizen are the main cause of environmental pollution. A comprehensive accountability is required to attainable with better planning, stronger policy and effective execution. It entitles everyone to participate in making efforts to achieve sustainable development goal.

The courts in India have emphasised for adopting the regulatory measures so as to maintain a proper balance between the conservation of natural resources and the protection of the ecological environment on one hand, the need for development and of the industrial growth of the country on the other. The Courts have entertained petitions under Article 32 and 226 of the Constitution of India filed by voluntary organisations and the public spirited persons interested in protection of environment. Thus, it is clear that 'Indian Judiciary' has played a very important role in protection of environment as well as to maintain sustainable development. There should be open awareness and public cooperation which ought to be guaranteed through various government and NGOs.

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