

Human Rights and Right To Pollution Free Environment: Sustainable Development

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Abstract

Sustainable human development (SHD) is development that places people at the center of all development activities. Sustainable human development is directed towards the promotion of human dignity and the realization of all human rights, economic, social, cultural, civil and political. Environmental and climate policies and plans increasingly respect, protect and fulfill human rights, guaranteeing those affected access to information, decision-making, public participation and remedies.

This Paper focuses on the interrelationships between human rights, environment and development. Development can serve as a key vehicle for promoting realization of human rights and protecting the environment. However, all too often, unsustainable development practices are themselves proving to be a main source of human rights violations and environmental degradation.

In present age is an age of scientific and economic progress and development when we think of the future of the world we come across with the ideals that technological explosion is bound to come along with regular industrialization deteriorating the relationship between man, nature and natural life. In fact, environment is a very complex phenomenon. It embodies every aspect of the society whether it is living or non-living, that is to say animate or either wise. Thus on the basis of basic structure, the environment may be divided into two basic types: (i) physical or abiotic environment and (ii) biotic environment. Physical environment is again subdivided into three main categories viz: solid, liquid and gas, which constitute the lithosphere (solid earth), the hydrosphere (water component) and the atmosphere respectively. Legislative connotation of environment

The term 'Environment' has been defined in the Environment Protection Act, 1986. The term environment is defined in section 2(a) holding that it covers air, water and land. It also take into account the inter relationship between them impacting human beings plants and other organism⁶.

"Environmental pollution" as a phenomenon cannot exhaustively be explained. Broadly it could be understood as altering, changing, impairing, affecting character or properties- natural, physical, biological or bacteriological- of the matter and thereby making them unsuitable for use or enjoyment.

It is very difficult to provide a precise definition of the word pollution, which has been derived from the Latin word "polluere", which means defiled. A.L. Springer has rightly pointed out that diversity of opinion and uncertain principles of international law have created confusion with regard to pollution.⁷The learned author has written that, Environment Pollution is a "Deliberate or accidental contamination of the environment with man's waste."⁸

M.W. Holgate says that it is a "Matter in the wrong place at wrong time and in wrong quantity"⁹. R.A. Malviya defines it as "Anything released into environment which impairs or degrades it"¹⁰.

According to B.R. Chauhan environmental pollution is a contamination of air, water and other substance by human use or misuse rendering them unfit for an intended use.¹¹

The sixth five year plan says that pollution refers essentially to a process by which a resource (natural or man-made) is rendered unfit for some financial use due to physical, chemical or biological factors.

The kinds of pollution are: Air pollution, Land pollution, Food pollution, Radio- active pollution, Greenhouse effect and global warming, Noise pollution, etc. Thus deforestation, technological development, use of pesticides in agricultural production, population growth, industrial development, planned urbanization, coal burned thermal power, poverty, industrial disaster, building material industries, chemical industries, mining, vehicular pollution, aqua farming and other such areas are the strong sources of environmental pollution.



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Objective of the Study Human Rights and Right To Pollution Free Environment: Sustainable Development.

National And International Aspects

U N conference on human environment and development popularly known as Stockholm conference, 1972 held at Stockholm from June 05 to 16 in 1972 drew full attention of the world community for the first time towards environment protection and sustainable development. Next landmark in this field was Earth Summit held in Rio de Janeiro, Brazil in 1992. A comprehensive blue print for global action to meet the challenges of environment pollution was prepared and prescribed in the Earth Summit, although the rigid stand taken by the America and other developed countries, it could not bring desired consensus. The Polluter Pays Principle, Precautionary Principles and Agenda 21 which was a comprehensive blue print for global action achievements of this summit. Another big step at global level was Johannesburg Summit, 2002. It reviewed the progress made since Earth Summit 1992 and also adopted a broad plan to maintain balance and harmony between environment and development. Global efforts undertaken, so far, make it clear that although world community has realized that there is urgent need to maintain a balance between development and environment, the attitude of developed countries is not sympathetic on some major issues viz depletion of ozone layer, global warming, disposal of hazardous waste and preservation of biodiversity of developing nations.

National level the process of legislation relating to environment protection and removal of pollutants dates back to the British rule in India. It began with the enactment of Indian penal code, 1860. As per sections 268, 277, 278, 288, 290 and 425 of the IPC, pollution of water has been made an offence. Another criminal legislation, Criminal Procedure Code, 1889 (amended in 1973) contains provisions (section 133 and 144) for abating public nuisance caused by environment pollution. Other main pre-independence legislations in this context are: Indians ports Act, 1908; Indian Boilers Act, 1923; Indians Forest Act, 1927; Poisons Act, 1919; Indian fisheries Act, 1897; Indian Explosives Act, 1884; Indian Easement Act, 1882; Shore nuisance Act, 1853; Oriental Gas Company Act, 1857; Police Act, 1861; Northern Indian Canal and Drainage Act, 1873; East India Irrigation and Canals Act, 1859; The Cattle Trespass Act, 1871 and the Destructive Insects and Pests Act, 1914 etc. The wrongs of environmental pollution also fall under the domain of law of torts and come in the category of nuisance. This random survey of laws enacted during the British era, makes it clear that consistent efforts were made by the British rulers to control environmental pollution at various levels. Some of the Acts deal with environmental pollution incidentally while others are exclusively concerned with them. The laws relating to environmental pollution during the British regime were mostly punitive in nature and developed as a part of penal laws.

The term "sustainable development" was come in contrast during the "Cocoyoc Declaration" on Environment and Development in the early 1970. The term "sustainable development" was first coined by the International Union for the Conservation of Nature (IUCN) in 1980.

The expression "Sustainable Development" was used for the first time in Rio Declaration on Environment and Development, a programme for action known as "Agenda 21", and it gives connotation to it and holds that in the name of preventing environment pollution of created by present industrial scenario, the policy must not lose sight of the interests and requirements of "future generation". Thus keeping the balance between present and future industrialization is known as "sustainable development".

"Sustainable development" as propounded at Rio contains within its two key Concepts.

1. The theory of "needs", in particular the essential requirements of the worlds' poor to which set aside the priority which should be given.
2. The idea of limitation imposed by the state of technology and social organization on the environments' ability to meet present and future needs.

3. Sustainable Development: A Fundamental Right

In N.D. Jayal V. Union of India, the Supreme Court rejected the plea against the dam and advised to complete it as a symbol of developmental process, it held in the right to the sustainable development is a Fundamental Right.

EIA Notification 2006:

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The EIA 1994 gave way to a notification in 2006.¹³ Both the Central and the state agencies are given power to make impact study for projects of separate types with threshold limits. Ministry of Environment and Forests and the State Environment Assessment Authority (SEAC) are the regulatory authorities to render clearance at the Centre and the states respectively.

(A) Environmental Clearance Processes for New Projects

After identifying the prospective site but before commencing any construction activities or preparing land at the site, the project exponent makes the application for prior environmental clearance. This process consists of : (1) Screening, (2) Scoping, (3) Public Consultation, and (4) Appraisal

The National Environment Policy

It is acknowledged that the maintaining a healthy environment is not only the state's responsibility, but also of every citizen. A capability of partnership should be realized throughout the spectrum of environmental management.

The National Green Tribunal Act, 2010

As a consequence a significant statute, namely, the National Green Tribunal Act has been legislated in 2010 to provide expertise the justice, efficiency, and speedy justice in the process of Environmental Disputes settlement mechanism.

Thus deforestation, technological development, use of pesticides in Agricultural production, population growth, Industrial development, unplanned urbanization, coal burned thermal power, poverty, industrial disaster, building material industries, chemical industries, mining, watercrress, vehicular pollution, aqua farming and other such areas are the strong sources of environmental pollution. Till now many attempts have been made to undo the bad effects of environmental pollutions.

The Environment (Protection) Act, 1986 is a complete Act in this field. Though there were many laws before 1986.¹⁴

In the development of environment jurisprudence of Indian shade, our judiciary made significant contribution. The judiciary handed down several cases wherein some salient doctrines emerged like- "precautionary measure" and "polluter pay" is also in vogue, yet each and every source of environment is being polluted daily. Thus the other effective way of controlling the environmental pollution becomes essential.

Right To Life And Judicial Activism

The context to Right to life and environmental protection, PIL encompasses a very wide range of issues covering compassion for animals, protection of ecosystems, forests, eco-tourism, and land use patterns, protection of rights of tribal people, fishermen, farmers, consumers and vindication of the environmental entitlements. The cause of environment is being agitated through PIL by nongovernmental organizations, lawyers association of lawyers, environmentalists social activists, welfare forums, registered societies, consumer research centers, citizens of housing colonies etc by filing petitions, or by highlighting the environmental issues by writing letters to the courts or through media. To accord the highest recognition to these stakeholders the judiciary has held that public spirited citizens having faith in the rule of law cannot be ignored on technical and conservative yardsticks of locus standi. The Supreme Court has further widened the dimensions of right to healthy and wholesome environment not only to include in its ambit an environment- free from air, vehicular, radiation, water and noise pollution, industrial hazards, haphazard urban planning and defiled urban landscape, but also the quality of the environment by the attractive enumeration of justifiable entitlements such as clean rivers and lakes, coastal resources, green covers, wild life, ecological balance, inter-generational equity and environmental safety.

Human Rights And Environmental Jurisprudence

Public Interest litigation is one of the multi dimensions of strategies evolved by the court to protect the human right of the poor and socially ignored persons. Thus justice Bhagwati observed: "Only way for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and reorganize the social and economic order so that they are capable to realize the economic, social and cultural rights

The Constitution of India

Right to Life: Article 21 of the Indian Constitution guarantees right to life and personal liberty.⁹⁸ It is not directly related to right healthy environment. But various judicial proclamation on various occasions have extend the right to life and personal

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sovereignty to include this right by recognizing various 'unarticulated liberties as recognized undeclared by Article 21. It is explicitly clear that the "expression life" is contained in this Article covers the right to livelihood, better standards of life, hygienic conditions in workplace and leisure⁹⁹ meaning there by human life with dignity, and the quality of life as understood in its richness¹⁰⁰ and fullness by the ambit of the Constitution. Thus, this includes the right to have a healthy environment. Any activity which is hazardous to the environment is violative to right to have healthy environment guaranteed by Article 21.

Directive Principles Of State Policy

Chapters IV (Article 36 to Article 51) are related with the Directive Principles of State Policy. Some of them deal with the various facets of human health and environment. There are some Directive Principles which are related to environment.¹⁰⁰

Fundamental Duties of Citizens

Along with the right to have clean environment, the constitution also imposed duties on citizens to keep environment free from pollution under Article 51A (g). Apex Court in S. Sachidanand Pandey v. State of W.B. made it clear that the Court must enforce this fundamental duty, and should not depend only on the policy makers. It is clear that preservation of ecology, environment and forests is a function not only of the State but of every individual as it aims to achieve social and economic justice. These duties have been particularly invoked and made basis of decisions.

Indian Penal Code

The Indian Penal Code and environment protection

The Indian Penal Code, 1860, which tends to cause interference with the health, safety, comfort, convenience of the public at large will be considered as public nuisance under section 268. All types of pollutions are public nuisance.

There are some sections relating to environment protection. These provisions are as follows:

Section 269 -Negligence act likely to spread inflammation of disease dangerous to life.

Section 270 -Malignant act likely to spread inflammation of disease dangerous to life.

Section 277 - Polluting water contained in springs and reservoir to be used by public.

Section 278 -An act making atmosphere noxious causing danger to public health.

Section 284- Negligent conduct with respect to poisonous substance.

Section 285- Handling the fire work and combustible substance without reasonable care.

Section 286- Negligent attempt to deal with "explosive substance".

Sections 425- include various types of mischief including mischief by killing or maiming animals, cattle.

The National Environment Policy

"The National Environment Policy is based on our national commitment to a clean environment according to our Constitution under Articles 48-A and 51-A (g) strengthened by judicial interpretation of Article 21.

The National Green Tribunal Act 2010

The National Green Tribunal was established to provide expertise, efficiency, and speedy justice in the process of Environmental Disputes settlement mechanism. The speedy justice at the cheapest cost is the main aim of the establishment of the National Green Tribunal. The coming into existence of the Tribunal is the proof of the reformed approach of the Government to Environmental Governance

Right To A Wholesome Environment

Judicial recognition of environmental jurisprudence, in the backdrop of industrialization, reached its peak with the pronouncement of the Supreme Court that right to wholesome environment is a part of Article 21 of the Constitution. Various Judicial interpretations have made right to live in healthy environment as the spectrum of human rights.'The Supreme Court in Subhash kumar 323 case stated that right to have a pollution free environment is enumerated in Article 21 of the Constitution of India and Article 32 is designed to protect fundamental rights like Article 21.

The same approach was followed in case MC Mehta v. Union of India³²⁴(Oleum Gas Leak case).

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The Court put emphasis on public interest litigation for enforcement of fundamental rights.

Principles of Common Law

In 1980, the Supreme Court held that neat and clean civic life is the privileged of the inhabitants who lives inside the municipal area. In *Ratlam Municipality v. Vardhichand*, importance of Article 47 was realized and the state was directed to take to perform its primary duties and take steps for the improvement of the public health. The municipalities will also the part of state cannot take plea of low budget and will use the savings on sanitation and public health.

Public Trust Doctrine

This doctrine has its roots in Roman law which holds that rivers, air and sea shore are natural resources are important to the people and the society and, it would be improper to make them subject to public ownership. This principle was adopted by The Supreme Court in *M.C. Mehta v Kamal Nath and Others*. The facts in short are there, was a club had been built by a private company, Span Motel Pvt. Ltd., at the bank of the River Beas by encroaching land, including substantial forest land, to which the family of Kamal Nath (a former Minister for Environment and Forest) was directly linked, and which was later regularized and leased out to the company during the tenure of Kamal Nath. The primary allegation made by environmentalist M.C. Mehta was that, efforts had been made on the part of the Span Motel Company to create new channels by diverting the River flow, to save it from future floods. The Supreme Court took serious notice of the act of environmental degradation on the part of the Span Motel Company. It put forward the view that the Himachal Pradesh Government had committed patent breach of the public trust doctrine by leasing the ecologically fragile land to the private owners. In the instant case, the court discussed the facets of this doctrine.

The Supreme Court observed that the state, as a trustee of its natural resources, is under the legal obligation to protect the legal obligation to protect the natural resources. The adoption of public trust doctrine within the municipal legal order further strengthened the environmental jurisprudence of this country. In way, it recognized the collective right of individual citizens in preservation of natural resources, and the aesthetic beauty of the nature. Very recently the Supreme Court opined that the public trust doctrine is an integral part of doctrine of "sustainable development".

Doctrine of Absolute Liability

This principle is an enlarged format of strict liability which has been recognized by the apex court in deciding the case of *M. C. Mehta*³²⁹ expressing the view that the common law rule of *Rylands v Fletcher*, had lost its potentiality in the context of present environmental jurisprudence, which was based on strict liability. Therefore, emphasized upon a new principle-Absolute Liability. It could suit the present economic conditions and could face the new challenges of the present industrialized society.

Sustainable Development

Paramount development of the society depends upon industrial growth along with the nominal or minimum loss of natural resources. It means that industrial growth should keep pace with preservation of environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a county.

Conclusion

Environmental Pollution" as a phenomenon cannot exhaustively be explained. Broadly it could be understood as altering, changing, impairing, affecting character or properties-natural, physical, biological or bacteriological-of the matter and thereby making them unsuitable for use or enjoyment.Environment is concerned for the balance of nature and for the renewal of natural resources.The dictionary meaning of the word 'environment' is a surrounding; external conditions influencing development or growth of people, animals or plants'; living or working conditions, etc.

The "Environment" is the aggregate of all those things and set of conditions, which directly or indirectly influence not only the development or growth and quality of life individual organism but also the communities at a particular place and time, with the march of time and advancement of society man extended his environment through his social, economic and political functions.In Environment matter the Court has to take a balanced view between the conflicting claims of protection of Environment and process of development. The Instrument of Public Interest Litigation has helped the Court in taking the right and balanced decisions.

Sometimes genuine litigants are scolded and fined by the Court for filing public interest litigation , but they should not be fined and discouraged, especially in environmental matters as it will defeat the very propose of the public interest litigation.

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