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THE CONCEPT AND CONTENTS OF RIGHT TO ENVIRONMENT: AN INDIAN ANALYSIS¹

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Introduction:

The concept of enviro-human right has become one of the live issues in the first changing international scenario. The growing awareness on human rights is the outcome of two basic inter-related 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 industrialization, urbanization, 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 imbalances². The scope and ambit of right to life is so varied that the human right aspect of life has to mitigate the challenges involved in safeguarding human environment. Unwarranted deprivation of human beings from right to environment became the prime agenda in the modern techno-centric societies. Diversified techno-centric paradigm coupled with urbanization without proper planning, population growth with poor housing, political and bureaucratic idiosyncrasies and lack of distributive justice upset the equilibrium of development and environment³.

The focal agenda of today's socio-legal order should be ecology and environment. Environmentalism and eco-centrism should be the main endeavor 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

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² Z.M. Nomani, "Enviro-Constitutional Ethos in Right duty discourse: Towards the Creation of an Equitable and Sustainable Socio-legal Order" IJEL 60 2000.

³ See generally, Mohd. Shari Uddin and Z.M. Nomani, "Water Pollution and Law" Saloni Publication, New Delhi.

development, right to trade and business, right to livelihood, right to housing and other legal and constitutional right on the other hand and there is right to environment, on the one hand and thus there exist 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 programs 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 complementary 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.

Some Problems:

A significant question in this respect arises: is the 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 the right to environment? Whether limitations embodied in express words in art 19 (2) of the constitution are also applicable to the right to environment? Is it an independent right or a means of realising already established rights, such as right to liberty, right to help, 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 healthful environment? What is decent environment? What is ecological balance? Whether is it 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 environmental legislations? Whether these legislations are being properly implemented? Who are mainly responsible for implementation and non- implementation of these laws? What are 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 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.

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 sec 2 (a) of the Act is an inclusive definition which states only what does the term environment include. A universally accepted definition is not possible because of 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 need 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 determined 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 grater 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 vs. the State of West Bengal*⁴ 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 would be given preferences - development or environment? A nd on what basis? What is the parameter of judging the environment? How to find out the parameters to

⁴ AIR 1993 Cal 125.

draw a line demarcating the area of development and environment est 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 are living in slums, pavements, railway platforms through the length and breath 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 are 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 unhygienic environments. 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 numbers 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 care taker of the citizens, to provide shelter to them? Weather the evicted slum dweller’s right to shelter is guaranteed under Art 19 (1) (e). In the *Ahmedabad Corporation case*⁵ 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.

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 Laws. Question arises as to who are subjects 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 Nation Commission on Human Rights or the European Courts of Human Rights. Those agencies are certainly international and apply considerations of international law to

⁵ Maha Gujrat Hawker’s Vyapar Mahajjan etc. vs. Ahmedabad Municipal Corporation 1995 (Supp2) SCC 182.

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 these rights 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, undeveloped as well as developing countries? Will it be valid in peace time only or in condition of belligerency as well? In this study and humble attempt is made to seek a solution problem.

Fifthly, whether right to environment and sustainable development is available to the State or citizens? Thousands of irrigations canals and dams are being built over the country 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 droughts 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 right 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?

Indian Analysis:

Jurisprudentially speaking, there is 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. Right to shelter is a basic human right but slum dwellers in the cities are captive of unhygienic condition. Substandard housing, unsafe water, poor sanitation is the main cause of various water borne diseases. Question is that which will be given preference, either right to livelihood, housing 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 constitutions reveals three things- environmental legislation is a fundamental duty: sustainable development is the principle of governance: and delegation of power for environmental legislation. Article 48 (A)⁶ of the constitution lays down that the state shall endeavour to protect and improve the natural environment of the country. The mandate of Article 51 (A) (g)⁷ 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 creatures.

⁶ Article 48 (A) of the Constitution Reads, "the State shall endeavour to protect and improve the environment and to safeguard the forest and Wild Life of the Country."

⁷ Article 51 A (g) reads " It shall be the duty of every citizen of India to protect and improve the natural environment, including forest, lakes, rivers, wild life and to have compassion for living creature".

Art 253⁸ is a general legislation which has no special relationship with the field of environment. This art 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 decisions made at any international conference, association or any other body. Now question is which is the proper authority to legislate in the field of environment? Then the question is as to what law whether federal or provincial or municipal or administrative, will be more effective to save the environment. In the present work a humble attempt has been made to locate enviro- constitutional responsibility in a federal system like India.

Conclusion:

All these factors posed a complex problem before the society of understanding the true nature, scope, law, policy, justice, and achievement of environmental law. Some attempts have been made to identify the conflicting dimensions of both the rights in the past but these studies and available literature are not sufficient with regard to various aspect of environment. Still there is a need to evolve a comprehensive solution of the problem of identifying the scope and ambit of right to environment in India. Various landmark judgements of the Supreme Court and high courts in India may be studied to identify the judicial trend in the solution of the problem of environment and development in the present era of globalisation.

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 of India and high courts have also delivered a good number of judicial pronouncements in this regard. Still there is a need to analyse systematically the opinion of academicians available in journals and books to draw the concept of right to environment in India.

⁸ Article 253 reads, "Parliament has power to make any law for the whole or any part of the country of India for implementation of any treaty, agreement or convention, with any other country or countries or any decision made at any international conference, association or other body."

E-WASTE (MANAGEMENT) RULES, 2016: SOME REFLECTIONS

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In the past few years the problem of electronic waste is the fastest growing waste streams in the world with rapid development of technological innovation in electrical and electronic products both in developed and developing countries. They brought enormous changes in economies, industries, institutions and lives of human in societies. But at the same time these have led manifold problems including the problem of massive amount of hazardous wastes such as e-waste in modern times. At the global level, about 64.5 million tonnes of e-waste are generated annually of which, only around 40 per cent is processed properly. As far as India is concerned it ranked third in the world in e-waste generation per annum because it generates about eight lakh tones of e-waste annually. The problem of unregulated accumulation of e-waste may pose great threat to human health and environmental sustainability. The international legal regime under the *Basel Convention* on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, 1989 is the most comprehensive and pioneering global environmental treaty on hazardous and other wastes.

The national legal framework governing environmental issues focus on specific type of pollution and regulation of hazardous substances. To combat the ever growing e-waste problem, India needs to have strong rules and regulations. Over the years, the government has instituted a number of regulations for better management of hazardous waste in the country. Of late, only in 2006 in exercise of powers conferred under Sections 3, 6 and 25 of the *Environment (Protection) Act*, 1986 the MoEF has started to draft the *Waste Electronic and Electrical Equipment Rules* in 2006 as a corollary to the Hazardous Waste Management and Handling Rules, 1989. After that the *E-Waste (Management and Handling) Rule*, 2011 and it was again amended in 2015 and finally the *E-Waste (Management) Rules*, 2016 was passed by the government of India.

These rules are called the **E-Waste (Management) Rules, 2016** which are expected to come into force on the 1st day of October, 2016. This new rules have many new and effective provisions. They contain six Chapters and 24 Sections in total and four Schedules respectively. Wherein, Chapter 1 consists of 3 sections in which Section 1 talks about the short title and commencement of the rules. Section 2 talks about the application of the rules which says that these rules shall apply to every manufacturer, producer, consumer, bulk consumer, collection centres, dealers, e-retailer, refurbisher, dismantler and recycler involved in manufacture, sale, transfer, purchase, collection, storage and processing of e-waste. Section 3 is a definition clause where various terms like 'bulk consumer', 'Central Pollution Control Board', 'consumables', 'channelisation', 'dismantler', electrical and electronic equipment', 'e-waste', 'orphaned products', 'refurbisher' etc are defined. Section 4 describes the responsibilities of the manufacturer which is to collect e-waste generated during the manufacture of any electrical and electronic equipment and channelise it for recycling or disposal. Section 5 describes the responsibilities of the producer which says that the producer of electrical and electronic equipment shall be responsible for implementing the Extended Producers Responsibility. Section 6 talks about Responsibilities of collection centres-which are to collect e-waste on behalf of producer or dismantler or recycler or refurbisher including those arising from orphaned products. Section 7 talks about Responsibilities of dealers which is to collect the e waste by providing the consumer a box, bin or a demarcated area to deposit e waste, or through take back system and send the e-waste so collected to collection centre or dismantler or recycler as designated by producer. Section 8 describes the Responsibilities of the refurbisher which is to collect e-waste generated during the process of refurbishing and channelise the waste to authorised dismantler or recycler through its collection centre. Section 9 describes the Responsibilities of consumer or bulk consumer. Section 10 describes the Responsibilities of the dismantler which is to ensure that the facility and dismantling processes are in accordance with the standards or guidelines prescribed by Central Pollution Control Board from time to time. Section 11 describes the Responsibilities of the recycler. Section 12 describes the Responsibilities of State Government for environmentally sound management of E-waste which is to ensure earmarking or allocation of industrial space or shed for e-waste dismantling and recycling in the existing and upcoming industrial park, estate and industrial clusters.

Chapter III of the rules consists of the procedure for seeking and grant of authorisation for management of e-waste in section 13 and 14 respectively. Section 15 consists of Procedure for storage of e-waste which is sub- headed under Chapter IV. Section 16 under chapter V consists

of Reduction in the use of hazardous substances in the manufacture of electrical and electronic equipment and their components or consumables or parts or spares. Section 17 talks about the Duties of authorities which are Subject to other provisions of these rules, and duties shall be performed as specified in Schedule IV. Section 18 consists of the Annual Report which is submitted and prepared by Central Pollution Control Board and respective State Pollution Control Board. Section 19 consists of Transportation of e-waste. Section 20 talks about Accident reporting. Section 21 consists of Liability of manufacturer, producer, importer, transporter, refurbisher, dismantler and recycler for all damages caused to the environment or third party due to improper handling and management of the e-waste.

According to Section 22 any person aggrieved by an order of suspension or cancellation or refusal of authorisation or its renewal passed by the Central Pollution Control Board or State Pollution Control Board may, within a period of thirty days from the date on which the order is communicated to him, prefer a appeal in Form 7 to the Appellate Authority comprising of the Environment Secretary of the State. As per Section 23 the collection, storage, transportation, segregation, refurbishment, dismantling, recycling and disposal of e-waste shall be in accordance with the procedures prescribed in the guidelines published by the Central Pollution Control Board from time to time. Under section 24 Urban Local Bodies (Municipal Committee or Council or Corporation) shall ensure that e-waste pertaining to orphan products is collected and channelised to authorised dismantler or recycler.

Later part of these rules contains schedules wherein under Schedule I categories of electrical and electronic equipment are enlisted. Under schedule II applications which are exempted from the requirements of sub-rule (1) of rule 16 are entertained. Schedule III consists of targets for extended producer responsibility – authorisation. Schedule III contains the list of authorities and corresponding duties.

From the above analysis, it is very much clear that there has been significant progress in legislating rules related to e-waste problem very frequently in last one decade but still implementation of rule is big challenge before the law and policy makers. In conclusion you can say that mere enactment of law is not enough unless and until it is enforced in reality.

EFFECT OF WORLDWIDE ENVIRONMENTALISM ON LEGAL VERDICTS

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INTRODUCTION AND MEANING

The Worldwide or Global “Environmentalism” means that “Worldwide or Global environmentalism is the awareness of, actions and help to solve, global environmental, problems. Worldwide Environmental problems have extended environmentalism so our consideration has moved from preservation of specific landscapes or averting contamination of a particular watershed or air shed to agonizing over the life support systems of the entire planet.”

Human development generally has been over the years depending on the environment because there is fundamental interdependence between environment and its various components such as the physical, biological and social surroundings and their interactions with each other that sustain all life forms. At the point when the uprightness of the planet's environments endures there results a lopsidedness which expands human frailty.

Man's environment comprises of characteristic assets like area, water, air, plants and creatures. With the development of man and general public they need to associate with their surroundings and in this way they deteriorate the nature. In this way it results in as ecological contamination, which can't be replenished by nature's self acting procedure i.e., carbon cycle, nitrogen cycle or water cycle and so on. Thus these unfavourable conditions made by man created the issues of ecological contamination.

It is just when the Disaster of the size and effect like the Bhopal calamity occurs it is only then as a result happens that social laborers and the overall population and government organizations gets awoken up to and become conscious towards the disasters occurred towards the mother

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earth. Alongside with constant rehabilitative measures they also started to take into consideration the new ways and method for avoiding such tragedies.

This procedure has prompted the authoritative and managerial activism in the general public. Modern mishaps including ecological dangers has resulted various legal worries. In India the Rule of Absolute obligation/liability for the mischief created by industry occupied with unsafe substances and risky exercises including harmful materials are recently detailed regulation free from the exemptions to the strict liabilities principle in Britain. The Indian scenario was developed in *M.C. Mehta v. Union of India (Oleum Gas Leak case)*². It was a Public Interest Litigation under Article 32 of the Indian Constitution recorded by the very well known legal counselor looking for the judgment over the occupied land using dangerous and hazardous substances/items nearby residential premises. While the case was pending Oleum gas spilling out from the industrial facility influenced a few persons living close-by the plant .Several persons living in the region bites the dust. Applications were instantly petitioned for recompense of pay to the casualties of the occurrence. The Supreme Court could have made a choice on their applications by asking the appropriate parties to approach to subordinate court suits for the compensation to the affected persons in the accident. Rather the Court continued to the case towards itself so that to depose the particular case as early as possible so as to award the compensation to the affected victims. The court also provided with various guidelines towards the factories engaged in the harmful activities/nature and also lays down the general concept of liabilities were also laid down by the honorable court into the particular case.

Bhopal litigation case, The Bhopal incident is the one of the most exceedingly terrible modern industrial accident in mankind's history ever happened which took place around nearly two years after when the Apex court has given its verdict over the Oleum Gas Leakage case and has successfully evolved the concept of absolute liability. Under any condition it is impossible for the court to settle quickly as the interest of people were large. As the matter involved was regarding a lot of the people and even the loss of damage suffered by the victims was varying from one person to another. So thus evaluation of the quantum of compensation to be paid and of the misfortune mental agony, sufferings and the demise is a gigantic work which had ought to be done and thus cannot be done instantly by the apex court as was done in the Former case of Oleum gas Leakage Case. The nature of the Bhopal Gas Tragedy and its repercussions revealed the brutal consequences of substances of the developed countries. To tackle the issue

² (1987) 1 SCC 395

the Supreme Court took after a few technique which has made it as a benchmark case prevalently known as the Union Carbide Corporation v. Union of India³.

JUDICIAL PERSPECTIVES OF INDIAN SUPREME COURT

The fast developing countries and financial improvement is a main to various major ecological issues in India in light of the uncontrolled development of urbanization and industrialization all through, development and huge escalation of farming, and the decimation of forest lands have additionally contributed in some degree as well. Major ecological issues are clearing Forest land for increasing agricultural area to cater the needs of growing population, Resource consumption, for example, (water, minerals, backwoods, sands, rocks and others) Environmental corruptions, General Health, Loss of Biodiversity over time, Loss of versatility in biological community, Livelihood Security for the Poor and so on. There are several cases over the years which had adequately dealt by the judiciary to cater to and to protect the environment such as:-

M.C.Mehta v. Kamal Nath⁴, In the concerned case there were an attempt which was made to divert flow of a river for catering the day to day needs of facilities at the hotel, Thus it was held that State and its instrumentalities are standing as a trustees and have a duty owed to the general public at large as in order to protect and preserve the natural resources.

MI Builders Pvt. Ltd. v. Radhey Shyam Sahu⁵ - In this case it was held that a city development authority was asked to stop its operations and dismantle an underground market which was built beneath a garden which was holding a historical importance.

There are several Cases over the years which had come to the scene and into the knowledge of the judiciary to cater to and to protect the environment and have also laid down Precautionary Principles in them such as -

Vellore Citizens Welfare Forum v. Union of India⁶ - In the particular case there was a particular principle which was adopted to check pollution of underground water bodies which had caused by tanneries in the State of Tamil Nadu.

³AIR 1992 SC 248

⁴AIR1996 1 SCC 38

⁵AIR 1996 SC 2468

⁶AIR 1996 SC 2718

Narmada Bachao Andolan v. Union of India⁷ - In the particular case the Supreme Court had held that the above said precautionary principle could not be applied to the decision for building of a dam whose profits and losses were predictable and certain.

There are several Cases over the years which had come to the scene and into the knowledge of the judiciary to cater to and to protect the environment and have also laid down Sustainable Development in them such as -

M.C. Mehta v. Union of India⁸ (Taj Trapezium Case), In this particular case it was held that while taking into considerations of the disastrous effects of the emissions from the Mathura Oil Refinery had on the Taj Mahal, Thus the Supreme Court applied the principle of sustainable development to the case, and apart from passing various directions, stepped in to execute and supervise the resultant actions.

State of Himachal Pradesh v. Ganesh Wood Products⁹ In the particular case the Supreme Court invalidated the forest based industry, thus recognizing the principle of inter-generational equity and sustainable development.

In Enkay Plastics Pvt. Ltd. v. Union of India and Others¹⁰ In the particular case the High Court had upheld the order of the Delhi Pollution Control Committee for the closure of certain polluting industries nearby, and also held that the direction of close down of the industries which were creating air pollution in the residential areas.

In the case of Vimal Bhai v. Union of India & Ors.¹¹ The Union of India and all its concerned functionaries were directed to take requisite steps for clearing the proposals related to the appointment of the Chairman of the Appellate Authority and other Technical Members and reconstitute the Authority within 45 days, under the National Environment Appellate Authority Act, 1997.

CONCLUSION

⁷AIR 2000 SC 375

⁸AIR 1997 SC 734

⁹AIR 1996 SC 149

¹⁰2000(56) DRJ828

¹¹W.P. (C) 17682/2005, W.P. (C) 17683/2005, W.P. (C) 17684/2005 decided on 29 September, 2005)

There is a critical advancement in giving lawful assurance to environment yet there are a few escape clauses in it. In spite of the fact that under Indian administrative environmentalism there are numerous authorizations, for example, Water Act, 1974, Air Act, 1981, the Forest preservation and the late far reaching Environment (Protection) Act, 1986, they are lacking to manage present possibilities as the losses are enormous. Thus India desperately needs another strict enactment for this 21st century.

The Supreme Court (Apex Court of India) has changed the course of ecological law by making environmental commitments binding on the state by deciphering that the right to a clean environment is indispensable to the right to life. This jurisprudence of fundamental rights and adopting a right-based approach towards the environment of planet Earth has engaged the residents to look for implementation of natural rights.

I researcher submits that there exist slips in ecological security laws. There is disappointment with respect to legislative apparatus. It is submitted that violence on environment should be denuded. There is a need to investigate into the working of pollution control boards. It has likewise been an acknowledged truth that Indian laws for contamination control are loaded with blemishes. There is no adaptability in the models as they are more prescriptive and characterize uniform benchmarks without considering, the sort or size of the business or the expense of contamination reduction. Legitimate activity to ensure and save the earth is not up to the imprint in India because of the poor authorization of natural assurance laws.

The following are the suggestions of the researcher intended as a contribution for the protection of Worldwide Global environmentalism.

1. The existing legal provisions are inadequate to control the enormous and problems of environmental pollution of various types in the country. Therefore, the judiciary has to play a more active and constructive role. New jurisprudential techniques have to be devised to deal adequately with the problems of pollution control and protection of environment.
2. Legal provisions granting a perspective right to pollute air and water should be constructing restrictively by the courts.
3. Legal provisions intended to prevent or control pollution should be interpreted in such a way that even the subtle invasions of the antipollution laws are covered.
4. Government must initiate the programmes to create public awareness with regard to relation between human rights and environmental protection and also related laws.

5. Coordinating efforts globally between all states and locally among governments centre and states, private groups, organizations, operational and financial institutions and people at large in appropriate aspects of their respective activities through Exchange of information, sharing of expertise knowledge, developing arrangements for technical cooperation is needed.
6. The sentencing policy should place emphasis on abetment of pollution of environment rather than imposition of fines or traditional penalties.
7. Public interest litigation for protection of the natural environment should be permitted In view of the wider social interests affected by environmental pollution.
8. Promoting programmes to sensitize decision makers, including public officials, legislators and members of the judiciary, as to the need to develop a sense of commitment to the protection of human and environmental rights and to adopt more holistic approaches to integrating the requirements of sustainable development in the interpretation and application of national and international norms for the protection of those rights and sustainable development concepts
9. The Magistrate and the Courts must invoke the provisions of Section 133¹² for achieving the social justice by ordering the abetment of public nuisance caused by pollution to the environment.

This is a very small step when what are needed are giant strides in and eco friendly direction. The crying need of the hour is to educate the public and make them aware of their rights as citizens of this country to a clean environment, to clean water, clean air and clean surroundings. They must act together to fight corruption in governance and ruthless exploitation by the captains of industry. A strategy for environmental protection could be adopted. There is still hope for us. We can, to a certain degree, reverse the process of degradation of our surroundings, for Mother Earth is forgiving and able to heal her wounds if we do not inflict more grievous ones on her. **As Paul Bigelow Sears¹³ said, “How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves.”**

¹²Code of Criminal Procedure, 1973

¹³American ecologist and Writer (December 17, 1891 – April 30, 1990)

ASSESSMENT OF ENVIRONMENT LAWS (AMENDMENT) ACT, 2015

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The Ministry of State for Environment, Forests and Climate Change headed by Prakash Javadekar decided to amend the Environmental (Protection) Act, 1986 and National Green Tribunal Act, 2010. The Environment (Protection) Act, 1986 was enacted under Article 253 of Constitution which empowers the Parliament to make laws in the country to implement any treaty, agreement or convention or any decision made at any international conference, association or other body. The act was passed to implement the decisions of United Nations Conference on the Human Environment held in Sweden. Government of India actively participated in the Conference and raised concerns over the unhealthy state of environment. Numerous changes were made in the environmental policies to improve the deteriorating state of environment both before and after the conference but India needed a general legislation to strongly implement the decisions of the conference which stressed the need to enact this statute. However one of the main reasons to enact the statute was that the government came into lot of pressure as a result of Bhopal Gas Tragedy to come up with a comprehensive legislation to curb discharge of hazardous and toxic components into the environment.

UNVEILING STRINGENT PUNITIVE MEASURES

Monetary Penalties and fines are the most important addition to the existing act to ensure compliance from industrialists and strengthen the environmental laws in India. Damages have been sorted into three major categories namely “substantial damages”, “minor violations” and “non-substantial damages” to determine the extent of penalty. S.2 (e) (b) and S.2 (e) (c) are inserted to define “minor violations” and “non-substantial” damages respectively. A minor violation is any act of non-compliance of any provisions made in the act which may cause damage to the environment. A non-substantial damage means any damage which is neither “minor violation” nor a “substantial damage” as per the act. The definition creates an ambiguity regarding the true nature of damage and might land the adjudicating authority into a dilemma while choosing the type of damage inflicted. As per S.2 (f) “Substantial Damage” is defined as mishandling or release of any hazardous environment pollutant which have the capacity to adversely affect the environment. The damage can be either due to violation of environmental

norms or any omission on the part of occupier. The bill introduces a fine of not less than Rs five crores which may extend up to Rs ten crores on anyone causing substantial damage to environment within an area not exceeding 5 kilometres radial distance from the project's outer boundary. Additional penalty of fifty lakh rupees is imposed if the damage continues. Penalty increases with the increase in area being polluted e.g. the penalty can reach up to a massive amount of twenty crores if environment beyond the area of ten kilometres is polluted. Before the amendment the law breakers found more convenient to pay a small fine of Rs 1 lakh along with Rs 5000 for every additional day in case pollution continues rather than resorting to expensive measures to meet the norms set by the act. A "minor violation" carries a minimum penalty of 1 thousand rupees which could extend up to ten thousand rupees and a "non-substantial damage" imposes a harsher monetary penalty of minimum 1 lakh extendable up to 5 crore. A person failing to pay penalty for "substantial damages" within specified time will be punished with imprisonment for a maximum term of 3 years and a fine of 5 crore. The proposed amendment aims at levying fee for examination of manufacturing processes and substances, inspection of any plant, machinery or premise to prevent pollution, collection of report on matters related to environmental pollution and various other measures falling under clause (viii) to (xiv) of sub-section (2) of section 3.

As per the draft sums realised by way of penalties collected for environment damage shall be utilised for the purpose of protection, management of environment and mitigate the polluted areas. Whereas the fees collected within the ambit of S.20 shall be paid into public account of India in Reserve Bank of India

SETTING UP ADJUDICATING AUTHORITY

The non-ending legal battles for violation of any pollution norm continued without any demur from Ministry as long as fines are paid. Hence imposition of hefty fines acts as a deterrent for consistent law breaker to adhere to pollution norms. Amendment of S. 14 (D) empowers the central government to appoint an adjudicating authority consisting of two persons on the recommendation of selection committee for the purpose of holding an enquiry and determine the quantum of penalty after giving reasonable opportunity of being heard to the default parties. The adjudicating authority will make the final ruling whether the damage is "minor violation" or a "substantial" one and fines will be decreed accordingly. The Industries can raise objections against the orders of adjudicating authority before National Green Tribunal but only after paying 75% of the penalty amount. The draft provides guidelines to adjudicating authority for

determining quantum of compensation. Several factors such as amount of damage caused, recurring nature of damage, extent of injury caused to public and living beings such as plants, animals and micro-organisms, deterioration of public health and unfair gains made by the defaulter decides the quantum of compensation. In cases where the defaulter is guilty of an offence under any rules or provisions of this act as well as any other relevant act then the offender shall be punished under the act which imposes higher punishment.

CONCLUSION

The Environmental Laws (Amendment) Bill, 2015 dissuades regular offenders of environment norms by introducing rigid monetary penalties through single umbrella legislation. Regular inspection and effective pollution control is necessary for the efficacy of these laws and encourage compliance. The bill is drafted in such a manner to fence relentless violations of environmental laws but it does not put an end to all the causes responsible for environmental damage. Like the proposed amendment ignores wildlife protection and depletion of water resources in the country. Various others causes like tobacco farming that not only results in decline of biodiversity in the nearby forests but also contributes to green house effect are not taken care of through the act. India being the third largest producer of tobacco in the world producing 800 million kg tobacco each year needs trenchant laws to scrutinize tobacco farming and mitigate losses caused to environment. The Bill fails to make any provisions to penalize noise pollution. Public do not take stringent steps to prevent noise pollution due to inadequate general awareness towards the hazardous effects of noise pollution. Although there are various legislation which penalizes creation of noise pollution but they fail to provide effective remedy to the general public. Therefore the draft should contain stringent policies to regulate noise pollution in urban areas to provide some relief to public from industrial, construction and various other sources of noise pollution. The proposed draft includes offences categorized into certain ambiguous terminologies such as minor violation, substantial damage and non-substantial damage. But the draft fails to provide clear demarcation for scaling the damages and there is no objective approach as to what degree of damage will precisely ascertain them. Though the draft bill has its own drawbacks but the positive measures can be seen as a big step towards bringing the debilitated state of environment into a better shape.

References:

- C. M. Abraham, “Environmental Jurisprudence in India”, Kluwer Law International
- “What are the proposed changes under Environment Laws (Amendment) Bill, 2015?” available at: <http://blog.ipleaders.in/changes-under-environment-laws-amendment-bill-2015/> (last seen on 14-05-2016)
- The Environment (Protection) Act, 1986, Available at: <http://envfor.nic.in/legis/env/env1.html> (last seen on 15-05-2016)
- Draft Environment Laws (Amendment) Bill 2015, Available at <http://envfor.nic.in/sites/default/files/ScanJobInvitation%20of%20comments%20Draft%20Environment%20Law.pdf> (last seen on 16-05-2016)
- Noise Pollution: Sources, Effects and Control, Available at <http://www.legalserviceindia.com/articles/noip.htm> (last seen on 14-05-2016)

ENVIRONMENTAL ASSURANCE & ADVANCEMENT

IN VIEW OF APEX COURT OF INDIA

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INTRODUCTION

Environment protection is the nation where it occurs but at the global level in general. All public institutions, including the judiciary, need to make collective effort to fight against this universal problem. Human activities sometimes tend to submerge concepts such as respect for nature, Respect of earth resources and community interests in common, present in the traditions of numerous creating nations. These traditions can be a rich source of inspiration for the environmental law of the future, where relevant attention is drawn towards them and as well as for their protection.

Man's surroundings comprises of regular assets like area, water, air, plants and creatures. With the progress of civilized man and his society they have to interact with their surroundings and thus disturb the nature. Thus this leads to environmental contamination, which cannot be controlled by nature's self acting process that is carbon cycle, nitrogen cycle or water cycle and etc. These unfavorable conditions made by man produced the issues of natural debacles and clutters and contamination. Ecological obliterations from both common and manmade cause such regular debacles, for example, seismic tremors, typhoons and atomic blasts, mechanical mishaps and so on; have expanded the risk for the human life. Each factor contributing to environmental decline serves in varying increase the economic problem/disruption, social tension and political antagonism. Therefore, the study necessarily bring into light the environmental insecurity and its direct effect on people, physical, social, economical, emotional and spiritual wellbeing and the very existence of life itself.

The environmental degradation has become the one of the most important subject of global concern and it possesses a challenge to the present and the future generation of mankind. As such

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the environmental protection should be a priority of all for the sustainable development and thus which in turn leads to high social visibility item for the very existence of life and for the protection of right to life. One must not forget that it is the responsibility of present generation only which has the opportunity to tackle environmental problems because the next generation will not be there if the present situation is allowed to continue in such a way. The environmental challenges provide a much more formidable and permanent target because a healthy environment is a necessary prerequisite and basic need of Right to life. The environmental agenda is no longer one of ethical or social sentiment; it has now become question of human survival for all.

Environment for sustainable development would appear to be the one and only means by which an acceptable quality of life could be secured for both present and future generations in a harmony. The worldwide danger of influencing nature demands immediate solution. Technological process has brought a various number of chemicals into ones daily life. They have brought immense convenience in the living, such as better standards of living, but they also brought new dangers for the environment in the long run, largely through the chemical wastes. Growth of population, increased urbanization, poverty, exploitation of resources, uncontrolled expansion of science and technology are some basic causes, responsible for environmental disorders, posing significant problem and threat for living beings. These problems can only be addressed through education and awareness.

ENVIRONMENT- MEANING

Section 2 (a)² defines “Environment as follows: “Environment 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”. While disposing the case **M.C. Mehta vs. Union of India**³, the Apex Court explained the environment as follows:

“A point has been reached in history where To defend and improve the human environment for present and future generations has become an imperative goal for mankind – a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development”.

² Environment (Protection) Act, 1986

³ AIR 1987 2 SCC 165

GLOBAL AND INTERNATIONAL SCENARIO

The natural issues is an essential change in human view of life on earth, caused or influenced by human activity at large, creating ill-effects on the environment, such problems commonly regarded as local issues, regional and national and may have international or global issues which need political actions. The concepts of Globalization have brought the whole world in close proximity and transform the whole world into a global village. In spite of the fact that earth is topographically differentiated, Man with his logical and specialized may couldn't outline indigenous habitat and is basic to whole universe on the loose. The principles of International law are generally intended to regulate the conduct of the state towards safeguarding its environment, peace and freedom of the international communities. The function of international law is to promote create a peaceful and harmonious world order.

India being a developing nation has obligations under numerous international treaties and agreements that relates to an environmental issues. India supported faithfully all the international decisions on safeguarding the environment. India has cut out its national enactments on the issue to a substantial degree from global ecological strategy rules encircled by the two pioneers that are UNO⁴ and UNEP⁵. International environmental policies are in the form of treaties, and multilateral agreements, conventions and conferences. The treaty shall have force in international law, and if it is ratified by requisite number of countries at large. India is a signatory to a number of multilateral agreements, treaties and conventions related to the environment. An overview of some of the major multilateral agreements, treaties and conventions on environment and India's obligations and contributions are following, International Conventions relating to Environment -

VIENNA CONVENTION FOR THE PROTECTION OF OZONE LAYER, 1985

The main objective of the convention was to provide to the States an international legal framework for working together to protect the stratospheric ozone layer. The convention defines ozone layer

⁴ United Nations Organisation

⁵ United Nations Environment Programme

under Article 1 of its constitution which provides that Ozone layer means the layer of atmospheric Ozone above the planetary boundary layer.

THE RIO EARTH SUMMIT, 1992

It is termed as Rio-Declaration, Rio Conference was a major United Nations conference held in Rio de Janeiro from 3 to 14 June 1992 and attended by over 150 countries at large. Hence, it is also very well known as —Earth Summit. It discussed all global and environmental problems widely. It was the one of the biggest International Conference in the history of International relations. As the developed countries have exploited all of the natural resources abundantly and mercilessly, but did not come to assist the environment to replenish its resources and the reserve of developing countries by rendering their technology and finance to achieve the goal of sustainable development.

JOHANNESBURG DECLARATION ON SUSTAINABLE DEVELOPMENT, 2002

Yet, another Earth Summit was held at Johannesburg, In South Africa, from 26th August to 4th September 2002. It was the consequential follow up the actions of the decision of the Earth Summit 1992. Johannesburg conference confirmed that significant progress has been made towards achieving a global consensus and partnership amongst all the people of our world in order for the protection of the environment. Over 4000 delegates from about various countries participated in the Declaration.

GLOBAL WARMING AND OZONE DEPLETION

The more dangerous effect on the environment is warming of the earth and depletion of Ozone layering the atmosphere due to increase in the emission of the dangerous fumes in the environment. Increased urbanization and Industrialization has increased the pollution level in the air, water and soil. Pollution emissions consist of carbon dioxide, nitrous oxide, Ozone, methane etc and various other gasses called Greenhouse gases omitted from factories, Vehicles and other sources of pollution. These gases act like an insulating blanket, accumulated in the atmosphere and trap the heat radiated from the surface of the earth thus increasing the temperature of the earth. Such an effect is called green house effect and thus results in an increase in the temperature of earth`s

surface thus it is called as global warming. Ozone layer present in stratosphere is the most important and vital to us for our survival, it traps the harmful ultraviolet radiation from emitted by the sun which reaches the earth's surface, thus results in harming the various life forms and causes diseases to human. The other form of Ozone is formed in troposphere due to fossil fuel combustion, industrial activities which causes various respiratory and eye diseases in humans. Ozone is the diatomic form of oxygen which is a versatile gas and the unstable third atom try to react with other chemicals particularly organic compounds especially chlorofluoro carbons are unwanted organic compounds being light gases easily react with the third atom of ozone and destroy the ozone layer prevailing in the atmosphere. To protect earth from this dangerous effect and to protect Ozone layer in 1985 Vienna convention for protection of Ozone layer was adopted.

MODERN PERIOD

Environment has been defined as the aggregate of all the external conditions and influence affecting the life and development of an organism living in its habitat. Planet Earth is vital with diverse life forms living in harmony with each other. Everything in the environment is an interconnected network which depends on one another for its prevalent. Environment is a broad term and there has never been a more appropriate time to consider environmental law than now. Globalization and technological innovations have changed the industrial composition typically from the resources and agricultural based industries to a heavy industries, high-tech manufacturing industries etc., which has precipitated a massive environmental changes in the environment.

At the Earth Summit in 1992 we saw United Nations Conference on Environment and Development, emphasizing the significance of "Sustainable Development", describing it as "a one of a dynamic program". With the passing of each day, the need to disseminate information and initiate a dialogue on Environmental law increases, its enforcement and the evolution of the concept of Sustainable Development, is increasing manifold. In the modern India, Environmental Jurisprudence has gone a long way up in acquiring a very seminal importance in leaving behind the orthodox. The damages caused to environment by poisonous gases and emissions, by the industrial effluents, urban sewage, garbage, plastic waste, chemicals, exploitation of characteristic assets like soil timberlands water supplemented by other similarly imperative elements like destitution developing populace wellbeing risks, degeneration and deteriorated the life of the people living in the contaminated environment and have gained disturbing extents which sob for another ecological ethic request and equity in. Thankfully in India, the initial phase of judicial

response to the problems of the environment has been very effective as well as very active towards the various Ecological issues prevailing in the society at large.

PERSPECTIVE OF THE INDIAN APEX COURT – SUPREME COURT OF INDIA

The Supreme Court is the one of the final interpreter and guardian of the Constitution. In addition to the above function of maintaining the supremacy of the Constitution the Supreme Court is also the guardian of the Fundamental Rights of the people conferred on them by the virtue of the Constitution of India. It is the great tribunal which has to draw the line between individual liberties and social control. It is also one of the highest and final interpreters of the general law of the country.

APEX COURT ON ENVIRONMENTAL ISSUES AND ECOLOGICAL ADVANCEMENT

It is only when an accident of the magnitude and impact like the Bhopal catastrophe takes place that environmentalists social workers and the general public and government institutions wake up to a new awareness regarding the environment. Along with launching rehabilitative measures they start thinking about new ways and means of preventing similar tragedies in the future so that they can prevent the an inevitable loss of life and environment once again in the future.

This procedure prompts authoritative and managerial activism in the general public. Mechanical mischance's including ecological risks offer ascent to legal worry on the loose. In India the Guideline of Supreme risk for the damage brought about by industry occupied with perilous substances and characteristically risky exercises including unsafe materials are recently detailed regulation free from the special cases to the strict obligation standard in Britain. The Indian rule was evolved in **M.C. Mehta v. Union of India & Others**⁶ which was popularly known and called as the **Oleum gas leak**⁷. The Supreme Court proceeded to formulate the general principle of liability of industries engaged in hazardous and inherently dangerous activity. In other case the **Bhopal disaster**⁸ the worst industrial disaster in human history ever happened about two years before the Supreme Court evolved the rule of absolute liability in the Oleum gas leakage case. Under any condition it is not possible for a court to make quick decisions relating to compensation

⁶ AIR 1987 SCR (1) 819

⁷ Shriram Food and Fertilizers Ltd. complex at Delhi 4th December, 1985 & 6th December, 1985

⁸ Bhopal Gas Tragedy, 2 December 1984 – 3 December 1984

to the victims of an accident like as those of Bhopal gas incident. The interests of the peoples affected are very large: even the intensity of damage and suffering varies from one victim to another. Assessment of the quantum of compensation of the loss mental agony, sufferings and the death is a huge task. The nature of the Bhopal disaster and its aftermath disclosed the harsh/stark realities of a developing nation and threw a challenge to the Indian legal system. To solve the problem the Supreme Court followed several methods which has made it as a benchmark case popularly known as the **Union Carbide Corporation (UCC) V. Union of India (UOI)**⁹.

CONCLUSION

Within the sight of incalculable ecological laws and endless authoritative endeavors to secure environment, the Indian Legal possessed an extraordinary spot in the advancement of natural laws in India. The dedication of the Indian legal to the constitutionalism has driven it to secure enviro-justice in India.

On the premise of the study made the accompanying proposals are given for the further improvement of environment. The legal has helped number to remember times the governing body for the required revisions in law and to official for appropriate execution of these laws. In Nutshell it can be recommended that the useful and monetary autonomy ought to be given to the contamination control sheets in India. The exploration in the field of environment ought to be advanced. The legal has performed its assignment. The extension ought to be given to assembly and official to demonstrate their activism. The equalization of forces of three columns is required for the majority rule government to maintain for long time. At exactly that point the enviro-equity would reach to the basic men of India.

⁹ A.I.R. 1992 S.C. 248