

Human Rights And Environment

Anupama Yadav
Teaching Assistant

Abstract

In this paper, a summarization of the environmental issues and their concern to the human rights is explained. The main goal of this research work is to review the environmental laws present at national and international level and to rationalize those laws with respect to issues of environment. A safe and healthy environment is a pre-condition to the existence of basic human rights and solution to the environmental issues can be attainment of basic human rights. The clean and safe environment is not only an environmental goal but also a part of the basic human rights. For understanding the research topic well, the national and international aspects of this area, i.e., the conventions, treaties and present laws in respect to the topic have also been checked. Certain theories like Sustainable Development, Public Trust Doctrine, Polluter Pays Principle etc. have also been seen to show the legislative and collective movement against issues of environment degradation. By these new principles, the states can not only anticipate but also prevent and attack the plausible reasons behind global issues relating to environment so, it becomes important to give a hint of these theories when talking about environmental degradation. The paper addresses the problems and issues of environment in brief and draws a relation between the human rights and right to clean environment for attainment of common goals of both of them.

Keywords: Human Rights, Environment, Environmental Degradation, Right to Clean and Healthy Environment, Sustainable Development, Polluter Pays Principle, Intergenerational Equity, Public Trust Doctrine

Introduction

In today's world, society is becoming more and more conscious of the tremendous environmental damage caused to our planet. Every day we hear news about rainforest depletion, trees dying because of acid rain, bleaching of coral reefs, toxins present in our lakes & water and the continuous extermination of our wild life from the earth. Disasters, such as at the American multinational company "Union Carbide" in India, which ended 2,500 lives, not counting those who suffered injuries and displacement, the Exxon disaster, the Chernobyl nuclear plant disaster in the former Soviet Union, cause damages to our environment. All these incidences have cost a lot of lives, created diseases, atmospheric and water pollution, soil degradation, dying forests, and displacement of communities creating environmental refugees. All these environmental problems also cause issue of environmental refugees whereby the people have been displaced from their

traditional habitat due to natural calamities or other similar sudden reason. Such sudden displacement seriously affects the life and livelihood of people which on other hand causes non-material damage to the environment too.¹

Demands have been expressed that the international financial institutes which provide the financial means for projects of that kind attach conditions forensuring the humanitarian aspects, including environmental issues, to not get neglected in policy framework. Apart from attaching conditions to financial support, more and more national legislation is appearing in the field of environmental law. But there are many examples that provide evidence that the legal framework is inadequate to deal with ecological disasters and other environmental problems. Many environmentalists are therefore arguing that legislation is not enough, that true guarantees of environmental protection will only come when society extends the concept of 'rights' to the environment. Only when the personal entitlement to a clean environment is successfully placed in the category of 'rights', then it can be preserved from the day-to-day political process. In that way, the domestic political decisions will be significantly limited, this is very important for the preservation of the environment.²

Firstly, a safe and healthy environment is a pre-condition to existence to some of the basic human rights such as right to life, right to food, right to health, right to livelihood etc. So, environmental problems can be combated through the assertion of these basic human rights.

Secondly, intermediate position proposes a set of environmental rights based upon existing rights to information.

And thirdly, a specific right to clean environment could be formulated and added to the current catalogue of human rights for the overall development of the society.³

The above mentioned three positions suggest that the solution of the environmental issues can be attainment of basic human rights. However, some of the people argue that human beings are just one part of the ecosystem, and for handling the environmental issues, an overall development and protection of the nature, humans, animals, plants etc. is necessary. Precisely, we can say that the two words, i.e., human rights and environmental protection, are two different words but the goals of these broad terms are overlapping to each other in a way that ascertainment of one goal would automatically attain other goals. Environmental

¹Upadhyay, Sanjay, *Handbook on Environmental Law* 13 (LexisNexis-Butterworths, Delhi, Vol. 1, 2002)

²Doabia, Justice T S, *Environmental & Pollution Laws in India* (LexisNexis Butterworth, 3rdedn., 2017).

³*Ibid.*

problems are a great matter of concern in developing countries. The shortage of basic necessities, such as shelter and clean drinking water, disease, poverty, and the need to feed and employ growing numbers of people is considered by many developing countries as much more urgent than environmental problems, in particular pollution, is seen by many as evidence of industrial development. They therefore see efforts to control pollution as efforts to constrain development. Others, however, think that one might learn from the environmental mistakes of the industrialized world.⁴

A change of emphasis in recent years looked at the links between environment and development. With the concept of 'Sustainable Development', economic growth and environment are no longer seen as incompatible. There is now agreement that the aims of the two can be assimilated to create a sustainable society. Sustainable development can be defined as "development that occurs within the carrying capacity of the natural and human environment"⁵. The term is usually applied to developing and developed countries and ensures the economic and social development for improvement of living conditions of the people without damaging the natural resource base and environment.⁶

The International Recognition of the Right to Clean Environment

With the environmental problems mounting, the international community has become aware of the danger of the destruction of the planet, and thus started formulating rules and regulations on environmental protection. The environment is directly linked to some of the economic and social rights such as right to food, right to shelter, right to health etc. The economic rights are based upon economic activities and economic activities have a common and indivisible resource base on environment, air, water, soil, vegetation and the seas. With the advent of Sustainable Development, it becomes important to protect the environment through well managed plans and activities, so that the goals of development can be achieved along with protection of environment for present and future generation. Sustainable development ensures development of human beings by keeping protection of our planet. So, if states have ease to call for the right to development, then it is essential for them to safeguard the environment, conserve the natural resources and plan their utilization according to their availability, both nationally and internationally.⁷

In the United Nations Charter, the states have reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and are determined to

⁴*Supra note 2.*

⁵McCormick, John, *The Global Environmental Movement*, London 150 (LexisNexis Publications, 1989).

⁶*Ibid.*

⁷Orna Maria, *The Right to a Clean Environment: International Recognition of a Human Right to a Clean Environment*, available at: s://www.ingentaconnect.com (last visited on March 1, 2019).

promote social progress and better standards of life along with protecting the larger interest of the planet. Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966⁸ recognizes "the right of everyone to the enjoyment of the attainable standard of physical and mental health". The Article imposes on states some correlative duties including the obligation to take the necessary steps for the improvement of all aspects of the environmental hygiene. The International community and non-government organizations(NGOs) has made many efforts in recent years to promote the right to clean environment along with concept of sustainable development. The United Nations Conference on the Human Environment⁹ was the very first occasion when political, social and economic problems of the global environment were discussed at an international level. The Conference took place in Stockholm, Sweden, from 5 June to 16 June 1972, and was attended by the representatives of 113 countries, 19 intergovernmental agencies, and 400 other intergovernmental and non- governmental organizations. The conference is also called as 'Stockholm Conference' and can be termed as the mother legislation in this emergence of concept of sustainable development. The main objective of the Conference was to create a basis within the United Nations on which problems of the human environment could be comprehensively considered, and to draw the attention of governments and public opinion to the importance of the problem¹⁰. The Conference produced a Declaration, a list of Principles and an Action Plan. The Declaration was intended to outline broad goals and objectives. Although the declaration had no binding enforcement but it is mainly proclaimed that man is both creature and moulder of his environment. With the advent of rapid development, science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both development and environment are essential to well-being of human and human rights and no development can be achieved with neglecting the environment. Stockholm Declaration which states that: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an Environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".¹¹

The Stockholm Conference laid down 26 Principles, which were mainly concerned with five broad issues. They stated the undermentioned broad goals¹²:

(a) the natural resources and the environment should be safeguarded and conserved by all the states. On the same time, there should be efforts to manage and maintain the renewable and non-renewable resources of the earth.

⁸The International Covenant on Economic, Social and Cultural Rights (Resolution 2200A, XXI of 1976).

⁹The United Nations Conference on the Human Environment was held in Stockholm, Sweden from June 5-16, 1976.

¹⁰*Id* at Principle 2.

¹¹*Ibid*.

¹²*Supra* note 9.

(b) all the states should plan development activities with following the concept of sustainable development. Development and environmental concern should go together. Every state should make efforts to accomplish the goals of sustainable development. The less developed countries should be given every assistance and incentive to promote rational environmental management for an overall positive impact.

(c) all the countries should themselves establish and maintain some basic standards of environmental management and take steps to stop unnecessary exploitation of the natural resources. There should be international cooperation by all the states for improving the condition of the environment.

(d) the countries should make proper mechanism for decreasing environmental pollution. The states should make efforts to clean the environment and lessen the pollution with proactive measures.

(e) Science, technology, education, and research should all be used to promote environmental protection. There should be an Action Plan to provide recommendations for internationally coordinated activities aiming increasing knowledge about environmental issues, and safety measures for the same.

One of the major achievement of the Stockholm Conference was that it forced the developed and developing states for a compromise to find a balance approach between environmental management priorities and the aims of economic development. The Conference strongly levied the importance and need of sustainable development for an overall well-being of different countries. The creation of United Nations Environment Programme¹³ (UNEP) can also be said as the biggest achievement of the Conference. The UNEP was introduced to provide a mechanism so that the goals of the environmental protection can be turned into policies and active programmes of all the states. Although the Programme was not obligatory, but, despite its handicaps, no executive power, limited funding and immensity of task, the UNEP has helped to raise the general level of environmental awareness with regard to both national and global environmental problems up to a great level.

The African Charter on Human and Peoples Rights¹⁴, which was ratified in 1986 by the majority of states from the Organization of African Unity and certain non-governmental organizations (NGOs) also called for the right to a clean environment. **Article 24** of the African Charter states that, "all people shall have the right to a general satisfactory environment favourable to their development"¹⁵. The environment pollution and conservation is a central issue in Africa as most of the African states are developing and they are mostly dependant upon the natural resources which in turn led to issues of excess exploitation of natural resources. Alike to Africa, the ASEAN States have also made attempts to recognise the environmental

¹³The United Nations Environment Programme, an agency of the United Nations, coordinates the organization's environmental activities and assists developing countries in implementing environmentally sound policies and practices.

¹⁴The African Charter on Human and Peoples Rights, 1986.

¹⁵ African Charter on Human and Peoples' Rights

rights. In the ASEAN Agreement on Conservation of Nature and Natural Resources¹⁶, **Article 16** states that the contracting parties are required to circulate, as wide as possible, information on conservative measures to ensure sustainable development objectives. The contracting parties have a duty to make attempts to encourage public participation for the planning and conservation of the natural resources which is one of the most fundamental aspect for environmental protection. Article 11 of the **Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights of 1988** states that, "everyone shall have the right to live in a healthy environment". The Article imposes correlative duty on state to protect and safeguard the environment. According to the Article, the state parties shall promote the protection, preservation, and improvement of the environment. The **1989 Hague Declaration**¹⁷ on the Environment provides that the right to live in dignity in a viable global environment is a basic human right and the states should make attempts to preserve the environment. It also calls for the preservation of the world economy. The Declaration accepts the principle of collective economic sanction and concept of fair compensation controlled by the International Court of Justice on global level. Another important event in the sphere of environmental movement, was the conference of the United Nations called as United Nations Conference on Environment and Development¹⁸ (UNCED), which took place in Rio de Janeiro, Brazil, in June 1992. The Conference is also called the 'Rio Declaration' which brought together different heads of states and governments all over the world for the protection and conversation of the environment. The main aim of the Conference was to find out a common action plan to protect the earth and all the inhabitants on the basis of sustainable development, precautionary principle and intergeneration equity. The Conference levied three non-binding and non-obligatory international instruments, namely, the Rio Declaration on Environment and Development, a non-legally binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests, and the Agenda 21. However, the Conference also had two binding international agreements, namely, The Convention on Biological Diversity and the UN Framework Convention on Climate Change. Principles 3 and 4 of the Rio Declaration constitute a compromise between developmental and environmental needs by affirming the right to development (Principle 3) and, at the same time, providing for environmental protection to achieve sustainable development (Principle 4). The conference also made a significant contribution to the development of international law by adding Principle 27 which added a new chapter by referring to sustainable development in the field of International Law. All of these declarations and movements reflect the emerging need of clean and safe environment along with international cooperation in this regard. The right to a clean environment has been internationally recognized, which is the first step towards achieving the goals of environmental protectionism, in that, by recognizing the right to a clean environment, limitations are put on domestic political decisions of individual states. The right to a

¹⁶The ASEAN Agreement on the Conservation of Nature and Natural Resources, 1985.

¹⁷The Hague Declaration on the Environment, 1989.

¹⁸The United Nations Conference on the Environment and Development, 1992.

clean environment must also be reflected in the constitutions and laws of individual states to restrain the exercise of power and establish agreed norms of public conduct.

The Right to a Clean Environment under the Indian Constitution

India is the seventh largest nation in the world, and the second most populous state with a population of about 1.25 billion people. India has large agricultural regions and is widely endowed with natural resources, such as forests, minerals and energy resources. Being a member of the United Nations and having ratified the Universal Declaration of Human Rights¹⁹, India took the human rights concept into consideration when drafting its Constitution during the years 1946-1949. The Preamble of the Constitution, which was adopted and enacted on 26 November 1949 along with the Constitution, enshrines the principles of social, economic and political justice along with some basic human rights under the Constitution. The Constitution of India has provisions for some fundamental rights which levy freedom of speech and expression, equality of status and opportunity, right to life and personal liberty etc.²⁰ Article 253 of the Indian Constitution empowers the parliament to make laws for implementing any international treaty, agreement or convention made with any other country at international level. **Article 51(c)** obliges the Indian government to foster respect for international law and treaty obligations. India, honouring its international obligations on environmental issue, amended its Constitution in 1976²¹, where new concept of Fundamental duties was introduced to the people of India. There is an obligatory duty of the state and every citizen to protect and improve the environment under the Constitution of India. The right to clean environment and protection of environment are the concepts which can be seen in the Part III and Part IV of the Constitution as Fundamental Rights and Directive Principles of State Policy respectively. The state is duty bound to protect the environment and on the same note, the citizens also are duty bound to protect and improve the environment.²²

In the case of *Francis Coralie Mullen v Union of India*²³, the Supreme Court has said that right to life and personal liberty under Article 21 also includes the right to live with dignity and enjoy the basic necessities of life. Any form of environmental pollution and degradation could be regarded as violations of Article 21 of the Constitution. The Supreme Court has explicitly ruled that Article 21 can be interpreted to include the right to a wholesome environment. This right is enforceable through writ petitions under Article 32 before the Supreme Court and Article 226 before the High Court. Under these Articles the citizens have the right to petition the court to enforce their right. Part IV of the Constitution specifies the Directive Principles of State

¹⁹The Universal Declaration of Human Rights, 1948.

²⁰Pathak, R.S., *Human Rights and the Development of the Environment Law in India* 1175 (Commonwealth Law Bulletin, Vol. 14, 1988).

²¹The Constitution of India (Amendment), 1976.

²²*Supra* note 20.

²³1981 AIR SC 746.

Policy of India. Article 39 requires the state to direct its policy towards "securing the right to adequate means of livelihood for its citizens . . . distribution of ownership and control of the national resources of the community so as best to sub serve the common good, protection against abuse of health and strength of workers..., and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity". Article 47 of the Constitution provides for the improvement of public health as one of the primary duties of the state. Article 48 A provides that "the state shall endeavour to protect and improve the environment and to safeguard forest and wildlife of the country". Article 51A(g) in Part IV of the Constitution deals with the fundamental rights and duties of the Indian people with regard to the environment. The Article provides that " It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures".

Despite all these constitutional provisions with regard to the right to a clean environment, India's pollution control system is weak because industry remained either reluctant to control pollution or it is beyond the reach of law. The most drastic illustration of this failure was the escape of methylisocyanate gas from a Union Carbide pesticide plant in Bhopal in December 1984. The disaster cost about 2,500 lives with other people dying from the effects several years later. This incident showed that the regulations on pollution standards and chemical safety were inadequate as well as the government's disaster response system, and the system which allows people to live so close to industrial plants. It also showed that multinational corporations could operate plants at standards of safety below those in more developed countries. Apart from the inadequacies of laws, the inefficiency of legislation may be explained in part by the tension between Union and State authority, enforcement problems, the slow pace of the legislative process, as well as the lack of a private right of action and the inadequate representation of the interests of citizens in the legislative process compared to the industrial interests.²⁴

The emergence of 'Public Interest Litigation' in India relaxed the rules of standing to allow concerned individuals or groups sufficient grounds to address the court. Article 32 of the Constitution gives the right to move to the Supreme Court to enforce the fundamental rights. The Article also empowers an individual to approach to the Supreme Court for protection of Public Interest whereby any responsible citizen can file a public interest litigation for the sake of NY public matter including environmental matters.²⁵

In another known case **Rural Litigation and Entitlement Kendra v State of Uttar Pradesh**²⁶ also named as 'Dehradun Quarrying case', whereby two writ petitions were brought before the Supreme Court under

²⁴Upadhyay, Sanjay, *Handbook on Environmental Law* 13 (LexisNexis-Butterworths, Delhi, Vol. 1, 2002)

²⁵*Ibid.*

²⁶ AIR 1985 SC 652.

Article 32 and 51A(g) of the Constitution under public interest. The petition was filed to abate the pollution caused by the limestone quarrying activities in the Mussoorie Hills of the Himalayas. The Court appointed inspecting committee to look into the causes and effects of the quarrying activities and, based on their reports, ordered the closing down of several mines in the area. The Court followed the principles of preservation of environment and maintained ecological balance by closing down the mining activities in the impugned area. The Court also pointed out that there is impound duty of state as well as the citizens to protect and safeguard the environment. This was the first time when the right to clean environment found its expression in the Indian justice system.

In the case of **Abilash Textile v Rajkot Municipal Corporation**²⁷, the Corporation issued a notice to Abilash Textile to desist in using the premises to discharge effluent onto the public road within a certain time of the factory would have to be closed. Abilash Textile put forward an argument that because it conducts business in the local community and gives employment to the people, the closing of the factory would affect their livelihood. Further, they argued that the notice which was issued to them did not afford them the opportunity to be heard which amounted to a violation of natural justice. But the question was whether there is a right to carry on business or trade in an unregulated manner causing nuisance to the public and which is hazardous to the health of the society. health hazard to the society at large. Article 19(6) states that everyone has the right to carry on business or trade, but the right is subject to reasonable restriction and based upon the restrictions, when the place of the business is not regulated in the interest of the public then the rights can be taken away by the state. On the other hand, every citizen of the country is also duty bound to protect and improve the environment as a Fundamental Duty under Article 51A(g) of the Constitution. There is no way that the textile factory owner would be protecting the natural environment as his fundamental duty by discharging effluents from the factory to the public road and public drainage. Article 51A(g) of the Constitution puts clear restriction on the fundamental right to carry on trade or business if that is detrimental to the environment. One could also argue that if Article 21 talks about the right to livelihood, then the closure of the textile factory will affect the standard of living of the workers. The Supreme Court also took this issue and clarified that reasonable restrictions can be placed on the fundamental right to carry on trade or business under Article 19 on the interest of public interest and nobody can claim absolute right to carry on business without complying with the restrictions placed on this behalf.

In the case of **Damodhar Rao**²⁸, the Andhra Pradesh High Court prohibited the government from constructing residential houses on a piece of land which was previously allocated for a recreational park.

²⁷Abilash Textile v Rajkot Municipal Corporation, AIR 1988 Guj 525.

²⁸T. Damodar Rao v. Special Officer, Municipal Corporation, Hyderabad, AIR 1987 AP 171.

The Court emphasised the need to develop environmental law by emphasising that right to clean and safe environment is implicit under Article 21 of the Constitution as part of right to life and personal liberty.

In the case of **Janki Nathubhai Chhara**²⁹, a public interest litigation was filed in the High Court questioning the poor and unhygienic condition of the community and environment. The area became submerged during the monsoon season, and epidemics were spread in the whole area. The Court, in its judgement, directed the concerned municipality and the State government to provide a separate area with proper sewage and drainage system.

In the case of **M. C. Mehta v Union of India**³⁰, a public interest litigation was brought to the court by the petitioner under Article 32 of the Constitution on the issue of pollution in the River Ganga. The petitioner contended that despite statutory provisions to prevent the pollution, the enforcement mechanism is of no value. The continued discharge of effluents or toxic substances into the river was causing nuisance and water pollution to the river. The petitioners were activists who were concerned about the health and the livelihood of those living in the area around the Ganges. The reasoning in that case linked the petitioners claim to Article 21 of the Constitution vis à vis with Article 48A and Article 51A which give effect to the enforcement of environmental protection. The petitioner contended that the pollution of the river is detrimental to the inhabitants and the river also. The Court, while evaluating the provisions of Constitution in respect to Article 21, 48A and 51(A)(g), laid down some strict restrictions to control the activities of those factories engaged in the hazardous production of toxic substances on the area adjacent to the river. The court has followed the principle of absolute liability and directed the concerned government to strictly enforce the present laws for the protection of the environment. The Supreme Court also asserted the importance of Article 48A and 51A(g) of the Constitution for the protection and improvement of the environment. The Court also pointed out that, apart from supplying water, the Ganga river is also of immense religious importance to a religion of people living in that area. The PIL not only protects their right to safe and clean environment but also protects their right to religion which is guaranteed to them under Article 25 of the Constitution. The Court has linked Article 48 and 51(A)(g) along with Article 25(1) in this case to establish the claims of public interest litigation.

In **Mukti Sangharsh Movement v State of Maharashtra**³¹, the petitioners complained about an indiscriminate commercial extraction of sand from the Yerla river bed leading to the desertification of about thirty-eight thousand hectares of land in the valley destroying the ecological balance of the area. This case was brought to court by a social action group who were interested in environmental protection and

²⁹AIR 1986 Guj. 49.

³⁰AIR 1988 SC 1037.

³¹1990 SC AIR 2060.

safeguarding the local ecology. The court stopped the commercial extraction of the sand from the river while following the Constitutional provisions in this regard.

Sustainable Development

The concept of 'Sustainable Development' was firstly introduced in the 'Earth Summit' held in Rio in 1992. The concept was introduced for tackling conflicting issues of development and environment. Sustainable Development can be said as a solution for some of the major environmental challenges. It is a means through which emphasis is on taking care of environment with view of needs of the present and future generations. The development activities should not be detrimental to the environment because the resources are less and not meant to human only. The theory of Sustainable Development presses the need to protect the earth and environment along with development activities not only for present generation but also for future generations. It lays down duty on states to take care of the environment and its resources for present and future generations. The "Earth Summit" held in Rio in 1992, endeavoured to focus by defining an ambitious programme of action, Agenda 21, clarified by a Declaration of 27 principles solemnly adopted by the participating states. We can also refer to the content of the Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, which clearly recognizes that "Economic development must be environmentally sound and sustainable."³²

The concept of Sustainable Development is dependent upon three basic principles, i.e., the Precautionary Principle, the Polluter Pays Principle (PPP) and Intergenerational Equity. 'Precautionary Principle' means that the States must anticipate, prevent and attack the apparent and plausible causes of environmental degradation.³³ The Rio Declaration affirms the principle by stating that where ever "there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."³⁴

In India, the new era of environment concern was started in 1990s where the courts taken with definition of above said principle. In Vellore Citizen case³⁵, the Supreme Court reiterated the principle of Sustainable Development in the country and directed the state government to take steps to anticipate, prevent and attack the causes of environmental problems. Following the same definition provided in the Earth Summit, the Court stated that where there are threats of serious and irreversible damage to the environment, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The Supreme Court has reiterated and applied the principle of Precautionary Principle in

³²Leelakrishnan, P., *Law and Environment* 87 (Eastern Book Company, Lucknow, 2ndedn., 2004).

³³Vellore Citizen's Welfare Forum v. Union of India, 5 SCC 647 (1996).

³⁴Principle 15, The Rio Declaration on Environment and Development (1992).

³⁵*Supra* note 32.

several other cases too. In another case known as Taj Trapezium case³⁶, the court has again applied the Precautionary Principle and ordered the pollutant industries to relocate their factories and take abatement measures in order to protect the Taj Mahal from further damage and deterioration. The court has also directed the state to relocate all the active industries causing pollution within a certain radius area of the Taj.

The next very important component of the doctrine of sustainable development is known as the principle of Polluter Pays Principle (PPP) under which an obligatory duty is imposed upon the polluter to not only make good the loss but also to bear the cost of rehabilitation activities to restore the environment to its original position.³⁷The principle is normally applied along with Precautionary Principle.³⁸

The next component of the theory of Sustainable Development is the Intergeneration Equity. A Native American proverb states that “*we do not inherit the planet from our ancestors but borrow it from our children*”. The Brundtland Commission³⁹ defined sustainable development as development ‘*which meets the needs of the present without compromising the ability of the future generations to meet their own needs.*’ The principle of intergeneration equity says that the present generations should take steps to conserve and protect the natural resources so that the natural resources will be available to the future generations also in the same proportion as enjoyed by the previous generations. This is also called “conservation of options” for future generations. The principle says that each generation should make efforts to maintain the ecological balance and quality of the environment so that it is retained for future generations in no worse condition than that in which it was enjoyed by the present generation. should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of “conservation of quality.” The Intergeneration and Intrageneration Equity are two main components of theory of sustainable development. By Intergeneration Equity, we mean equity of resources for present and future generations and by Intrageneration Equity, we mean that in the present generation, each member of the society should get the resources equally with same equitable rights of access. This is called the principle of “conservation of access.”⁴⁰

Another important theory which was introduced in the Earth Summit was the ‘Public Trust Doctrine’. The theory is based upon two purposes, i.e., affirmative state action for effective management of resources and empowering of citizens to question ineffective management of natural resources. Public Trust Doctrine is related to theory of Sustainable Development and mandates that need of precautionary principle and bio - diversity protection on the state and the citizens. The theory is based upon the Roman philosophy which

³⁶M.C. Mehta v. Union of India, (1997) 2 SCC 353.

³⁷Indian Council for Enviro-Legal Action v. Union of India (H-Acid Case), (1996) 3 SCC 212.

³⁸Supra note 32.

³⁹Our Common Future: Report of the World Commission on Environment and Development by Brundtland, 1987.

⁴⁰Weiss, Edith B., *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations University, 1989).

says that there are certain things like natural resources which are available for all and nobody can restrict their enjoyment to anyone. The theory also reiterated the principle of intergeneration equity and imposes the duty on the polluter to restore the eco-biological balance in its original place.⁴¹

In India, the theory of Public Trust Doctrine was first time applied by the Supreme Court in *M.C. Mehta v. Kamal Nath and Others*,⁴² whereby the Court said that the theory of Public Trust Doctrine is not only an international concept but also a well established principle in our domestic system too. The Supreme Court has applied the Public Trust Doctrine and directed the pollutant to not only estop the impugned activities but also to pay the cost for the restoration of the environment. In this case, the court also added that “it would be equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of ways for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required.”

CONCLUSION

Right to clean and safe environment is one of the basic human rights. The incorporation of human right principles under heading of 'environment' demands non-discrimination rules and active social participation for the advancement of vulnerable groups. Indeed, the scope and domain of human rights is strengthened by the incorporation of environmental rights within it. In past years, a vast change can be seen in approach of the international community towards the environmental concerns. The introduction of new principles like Sustainable development, Public trust doctrine etc. are evident to look the seriousness of international community towards the environmental concerns. With the expansion of the human rights protection, the victims of the environmental degradation can also see possibility to social justice and equity.

It can be fairly concluded that the environment upliftment and human rights are two overlapping areas. Without safe and clean environment, there cannot be significance of other human rights. A clean and safe environment is the very basic human right which should be made available to all creations present on this earth. A degraded environment has very serious impact on the health and well-being of the living persons. So, it becomes important for us to make and enforce the policies and strategies to protect human rights and human dignity by taking care of social, economic and cultural context. The policies should be made and enforced in such way that they could facilitate those who are already working for the protection and conservation of the environment. A merger of present and future new policies would eventually result in a more concrete and integrated way to deal with the social and economic environmental problems. The encouragement of sustainable development for the preservation of natural resources is beneficial for both present and future generations as there cannot be any development at the cost of future of upcoming

⁴¹*Ibid.*

⁴²(1997) 1 SCC 388.

generations. Sustainable Development is certainly the way through which there can be peaceful enjoyment of biological resources by both present and future generations.

A number of countries have explicitly included right to healthy environment in their respective legislations. Despite the irresistible trend of inclusion of this right in most of the countries, the UN has so far failed to take necessary steps towards recognition of right to healthy environment as a human right. The absence of global recognition of this right weakens the entire human rights arena. Healthy environment is a prerequisite for the enjoyment of most of the basic human rights so, it is high time now for the International community to recognise the right to healthy environment as a basic human right to emphasise down the importance of the clean environment in the life of living creatures.⁴³

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