



Problems and Perspectives in Sustainable Environment in the World: A Legal Study

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ABSTRACT

The Environmental Justice, is a part of Socio Economic Development of the society and is also the global challenge to judiciary for dispensation of environmental issues in present scenario. The earth's atmosphere is a common heritage. The environmental issues, take into account the human being, and not the State as a unit. It is a global issue. The Stockholm Declaration recognized that man is the part of nature and life depends on it. U. Thant, the then Secretary General, United Nations, in Stockholm Conference appealed: "Like or not we are travelling together on a common planet and we have no national alternative but to work together, to make an environment in which we and our children can live a full and peaceful life". Only the Judicial system of all nations can implement the above appeal of the then Secretary General with collaboration of Legislative as well as Executive Authorities. The Superior judiciary has made tremendous progress in its elaboration and exploring environmental justice. The order passed by the Superior Court had provided healing touch to many & even those who are residing in remote places in hills, coastal area & forests etc. The courts however, are not the forum to solve all environmental related challenges in the country. Judiciary has to be equipped with certain additional capacities to deal with the whole gamut to environment related issues, only the trained & motivated judges can take correctional measures trained & help in distributing environmental justice with human element, fairness & compassion. To that extent every court in the countries should be turned into environmental court, for environmental actions. We must get the whole system – Executive, Legislative, Judiciary, Domestic, National as well as International to overcome inertia and move in the right directions, and we can do it, Let us start today! great poet William Wordsworth's quote is fitted on global environmental context "What man has made of man, little do we see in nature that is ours"

Keywords: Environmental justice, Socio-economic development, environmental issue

"Environment Justice is the movement to ensure that no community suffers disproportionate burdens or goes without enjoying fair environmental benefits".

–Van Johnes

INTRODUCTION:

The earth's atmosphere is a common heritage. The environmental issues take into account the human being and not the State as a unit. It is a global issue. It will not be out of point to say "for thousands of years the human race has survived countless catastrophes, epidemics, floods, draught, famines, earthquakes & fires, but following the onslaughts of all out chemicals & bacteriological &

nuclear warfare & atmospheric poisoning air, soil & water pollution & deafening sound pollution over population may eradicate humanity for good". Law and its awareness may save the humanity from evil effects of environmental issues.

Environmental Justice:

Environmental injustice occurs when members of disadvantaged ethnic minority or other groups suffer

disproportionately at the local, regional (subnational) or national levels developed or developing countries from environmental risks or hazards or from violations of fundamental human rights as a result of environmental issues. While ENVIRONMENTAL JUSTICE is the fair treatment and meaningful involvement of all people regardless race, color, national, origin or income with respect of the development, implementation and enforcement of environmental laws, regulations & policies. Great Scientist Albert Einstein quotes on this court is very clear to understanding the meaning of Environmental Justice: “In matters of truth and justice, there is no difference between large & shall problem, for issues concerning the treatment of people are all the same”.

International Scenario:

The declaration in the United Nations Conference, on human environment from 5 to 16 June, 1972 at Stockholm considered the need for a common outlook for common principles to inspire & guide the people of the world in the preservation and enhancement of human environment. The long & tortuous evolution of the human race was not possible without rapid acceleration of science & technology. The man has achieved the ability to transform his environment in countless ways & on unprecedented scale. This power if used wisely can bring benefits of development and opportunity to enhance the quality of life. The wrong application on the other hand can do incalculable harm to human beings & human environment. The members of the declaration felt that millions continue to live far below the minimum level required for a decent human existence, deprived of adequate food and clothing, shelter, education, health and sanitation. The Industrialist countries pose gigantic environmental problems. The natural growth of population on preservation of environment with the people as the most precious commodity in the world & their progress, social wealth with development, science & technology continue to transform human environment. The members felt that a point has reached when we must shape our actions with a more product care for environmental consequences for achieving for ourselves and our posterity, a better life, in an environment, more in keeping with human needs. What is needed is an enthusiastic but calm state of mind. The freedom should not be misused for manipulating environment.

“The Stockholm declaration proceed to declare the principle”: State of common conviction that the man has fundamental rights to freedom, equity and adequate conditions on life permitting life of dignity and wellbeing and bears solemn responsibility to protect and improve the environment to present & future generations. The natural resources are common to all and must be safeguarded

for the benefit of present and future generations. The capacity of the earth to produce vital renewable resources must be maintained and wherever practicable restored & improved. The discharge of toxic substances & the release of heat in the quantities and the concentration should not exceed the capacity of the environment to tender them harmful. The state should take positive steps to prevent pollution of the seas by hazardous substances to human health, living resources & marine life. The economic & social development is essential. It should however be such that would not adversely affect the present & future development potential nor should hamper attainment of better living condition for all. The resources must be made available to preserve and improve the environment. A rational management of resources should be ensured to make development compatible with a need to protect and improve the human environment for the benefit of the population. The planning should be rational, to avoid adverse effect on environment & obtaining maximum social, economic and environmental benefits, science, technology and education should be applied for identification, avoidance and control of environmental risks.

Rio Declaration:

The club of Rome & the historic Rio Declaration in the Earth Summit in 1992 on 6 June, which is celebrated as “World Environment Day” every year, recognized that the States should co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of earths eco-system. The summit recognized the principles of “Sustainable Development” as a balancing concept of development and ecology. It was found that human desire to progress cannot be restricted but has to be controlled by preserving the biosphere. The “Precautionary Principle”, reversing the ‘burden of proof’, The polluter pays: Putting the burden of cost of compensation as well as restore the injury to environment, on the polluter and the “Public Trust Doctrine” declaring that nature’s resources are common to all, are the essential features of sustainable development.

Indian Scenario:

Kautilya, the Prime Minister of Magadh during the regime of Chandra Gupta Maurya, 300 B.C. in his “Arthshastra” exhaustibly dealt with the question of environment protection. He laid down the rules for protection and upgradation of environment minutely, meticulously and with great details. Maurya King Ashok depicted exemplary compassion for wild life & prohibited killing of certain species of creatures:

We find preaching of compassion towards nature in all religions “Don’t make mischief in the earth” says Holy Quran. Gautam Buddha’s religion was based on

experience and logic. He believed in evolution of man. In the contemporary period Sikhism & Vedas teaches that the life is made of five basic elements i.e. earth, air, water, fire & sky. The colonial rulers, however, disregarded ancient prudence, cultivated ruthless intelligence to exploit environment for their material gain. The legacy of imperialism and colonialism concealing a sense of ownership over environment propagated its consumption for wealth, growth of industrialization and lack of awareness to handle the fast pace of development has brought into focus many environmental issues and in its response environmental legislations.

1. **Constitution:** Article 21 of the constitution of India guarantees protection of life and personal liberty. Article 47, 48A & 51A(g) of the constitution are as under:

A47:Duty of the State to raise the level of nutrition and the standard of living and to improve public health the state shall regard the raising of the level of its people & the improvement of public health as among its primary duties and in particular, the state shall endeavour to bring about prohibition of the consumption except for medicine purposes of intoxicating drinks and of drugs which are injurious to health.

A48:Protection & improvement of environment and safeguarding of forests and wild life: the state shall endeavour to protect and improve the environment and to safeguard the forests & wild life of the country.

A51A(g):To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

2. **Act:** The wild life (Protection) Act 1972, The water (prevention & control of Pollution) Act 1974, The Forest (Conservation) Act, 1980, The Air (Prevention & Control of Pollution) Act, 1981, The Environment (Protection) Act 1986. The National Environment Tribunals Act, 1995, The National Environmental Appellant Authority Act, 1997, The Biodiversity Act, 2002, The Hazardous substances Act etc; along with the Rules, Regulations & Notifications under these Acts have provided regulatory measures “The Hard laws” mostly in response to the treaties and conventions, ‘the soft laws’ signed by India. These special acts have supplemented the provisions of Indian Penal Code 1860 in Chapter XIV (Section 268 to 291) of offences affecting the public health safety,

convenience, decency & morals. The Criminal Procedure Code 1973 (Section 133), The law of Torts. The Easement Act, The Civil Procedure Code and other such antiquated legislations, Public Interest Litigations. The recognition & growth of Public Interest Litigations has become a catalyst for environmental justice. In Rural Litigation and Entitlement Kendra, Dehradun, AIR 1985, Supreme Court recognized imbalance of ecology and hazard to healthy environment due to working of lime-stone quarries. In Sachidanand Pandey AIR 1987, the court recognized society’s interaction with nature and the environmental question affecting the humanity, the Supreme Court observed “Industrialization urbanization, explosion of population, over exploitation of resources, depletion of traditional sources of energy and raw materials, the disruption of natural ecological balances, the destruction of multitude of animal, plants & species for economic reasons and sometimes for no good reasons at all, are factors which have contributed to environmental deterioration while the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oceans, he is also leaving behind deserts in the place of oases. In India, as in the world uncontrolled growth and consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problematic issue.

- In MC Mehta V union of India, AIR 1988, the reckless discharge of untreated sewage in river Ganga by a riparian owner was sought to be checked with several directions issued to clean the river. The Bhopal Gas leak disaster case woke up the entire country to the threats of environmental degradation & loss of life. The right to compensation to the victims invoking “Parens Patriae” doctrine was invoked. The State was directed to assume the role of a parent protecting the rights of the victims and then claiming compensation from the negligent corporation.
- The Vellore Citizens Welfare Forum, AIR 1996 is a land mark decision of Supreme Court recognizing “Sustainable Development” as an answer to balance development with ecology. The Supreme Court accepted the

concept which came down for the first time in Stockholm Declaration of 1972 & then in 1987 by the world commission on environment and development in its report called “our common future”. The commission chaired by the then Prime Minister of Norway Ms. G.H. Brundtland came out with a document called “caring for the earth” a strategy in June 1992, deliberating and chalking out a blue print for survival of the planet signed by 153 nations. In Vellore citizens case monitored by the Supreme Court for five years the pollution caused by Tanneries in the state of Tamil Nadu discharging untreated effluent into agricultural fields roadsides, water ways & open lands was confirmed through various reports and National Environment Engineering Research Institute, Nagpur (NEERI) accepting the principles, “The precautionary principle have been accepted by SC, as part of the law of the land” therefore preventive measure & equipment desired for establishment of project or company should be enlisted at primary level than the permission should be given to start the company.

The growth of environmental justice process in India was slow but steady. Very First of these leading cases, which still the Magna Carta of the environmental jurisprudence for recognition of public rights to decent living was also treated in Municipal Council.

There is acute shortage of judges in the country & millions cases are pending in Superior as well as in Subordinate Courts. About 15000 vacancies of judges in different courts are pending and with ratio of 10.5 judges per ten lacs peoples as against 50 in developed countries, the judiciary is extremely hard pressed to respond to the people of the country due to the faith & trust in judiciary, the expansion of rights with little emphasis on duties, there is increase in legal actions making it increasingly difficult for the courts to deliver justice timely. The achievement of environmental justice through the existing judicial system has become a mirage. The Superior Courts may have led the path by adopting of techniques of investigation, enquiries, directions & remedial actions through public interest litigations, the local courts still feel helpless in providing remedies to the common citizens due to lack of jurisdiction power in greenery issues & too old laws such Crpc, IPC, CPC, Torts etc.

Importance of Environmental Justice:

Environmental justice is an important part of the struggle

to improve and maintain a clear and healthful environment globally especially for those who have traditionally lived worked and played closest to the source of pollution.... The right of access to justice is characterized as the most fundamental of all the fundamental rights. The Universal Declaration of Human Rights mandates in Art 10 that “everyone is entitled in full equity to a fair and public hearing by an independent and impartial Tribunals in the determination of his rights and obligations and any criminal charges against him”. The more clearly we can focus on attention on the wonders & realities of the Universe, the less taste we shall have for distruction because we have got some very problems confronting us and let us not make any mistake about it, human history in the future is fraught with tragedies, so the environmental justice may be delivered by the way of judiciary as well as socially, universally, morally nationally, Internationally etc.

Top ten environmental conflicts such as land grabbing, renewable energy conflict, mega mining, unburnable fuels, trash economy, sand mafias, Fighting for fish, China rising up, nuclear night mares, pesticide popularity & Industrialization without any control are the fine examples of deliberation of environmental justice globally.

CONCLUSION:

The Environmental Justice, is a part of socio economic development of the society and is also the global challenge to judiciary for dispensation of environmental issues in present scenario. The Stockholm Declaration recognized that man is the part of nature and life depends on it. U. Thant, the then Secretary General, United Nations, in Stockholm Conference appealed: “Like or not we are travelling together on a common planet and we have no national alternative but to work together, to make an environment in which we and our children can live a full and peaceful life”. Only the Judicial system of all nations can implement the above appeal of the then Secretary General with collaboration of Legislative as well as Executive Authorities. The Superior judiciary has made tremendous progress in its elaboration and exploring environmental justice. The order passed by the Superior Court had provided healing touch to many & even those who are residing in remote places in hills, coastal area & forests etc. The courts however, are not the forum to solve all environmental related challenges in the countries. Judiciary has to be equipped with certain additional capacities to deal with the whole gamut to environment related issues, experts in environmental issues only the trained & motivated judges can take correctional measures & help in distributing environmental justice with human element, fairness & compassion. To that extent every court in the countries should be turned into environmental

court, or green courts comprising scientist, social worker, environment experts etc. for environmental actions. We must get the whole system – Executive, Legislative, Judiciary, Domestic, National as well as International to overcome inertia and move in the right directions, and we can do it, Let us start today! great poet William Wordsworth's quote is fitted on global environmental context "What man has made of man, little do we see in nature that is ours". Sum up with great scientist Albert Einstein Quote "In matters of truth & justice, there is no difference between large & small problems, for issues concerning the treatment of people are all the same". Therefore law & its awareness, dispensation of Environmental Justice may save the humanity & ecology from the evil effects of global environmental issues.

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