RIGHT TO CLEAN ENVIRONMENT : CONSTITUTIONAL PERSPECTIVE

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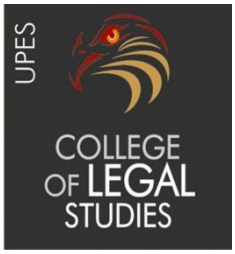

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CERTIFICATE

This is to certify that the research work entitled **"RIGHT TO CLEAN ENVIRONMENT CONSTITUTIONAL PERSPECTIVE"** is the work done by ADITI GUPTA under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Signature & Name of Supervisor

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DECLARATION

I declare that the dissertation entitled **"RIGHT TO CLEAN ENVIRONMENT CONSTITUTIONAL PERSPECTIVE"** is the outcome of my own work conducted under the supervision of Dr./Prof. A.B. Pathan, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises of my original work and due acknowledgement has been made in the text to all other material used.

Signature & Name of Student

Date

Contents

LIST OF ABBREVATIONS

A.I.R	**:**	**All India Reporters**
CPCB	**:**	**Central Pollution Control Board**
CrPC	**:**	**Code of Criminal Procedure**
CSR	**:**	**Corporate Social Responsibility**
DP's	**:**	**Directive Principles of State Policy**
EPA	**:**	**Environment Protection Act**
EIA	**:**	**Environment Impact Assessment**
GEF	**:**	**Global Environmental Facility**
GNP	**:**	**Gross National Product**
ICJ	**:**	**International Court of Justice**
IPC	**:**	**Indian Penal Code**
MoEF	**:**	**Ministry of Environment & Forest**
NGO	**:**	**Non – Government Organisation**
NCEPC	**:**	**National Committee on Environment Planning & Commission**
PIL	**:**	**Public Interest Litigation**
PPP	**:**	**Public – Private Partnership**
RTI	**:**	**Right to Information**
SCC	**:**	**Supreme Court Cases**
UNCED	**:**	**United Nation Conference on Environment & Development**
UNFCCC	**:**	**United Nations Framework Convention on Climate Change**

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Chapter – I

1. Introduction

The necessity of human rights as a rule emerged after the Second World War, but the right to a clean environment as one of those human rights, was never a need. Today, the necessity of including this right with other and making it a part of human right was greatly felt when this topic is being hotly debated in human rights arena. A clean environment is a vital part of the right to life as decided by the Supreme court in various cases for not only for people as well as for different creatures including the animals on the earth. Infringement, hence, of the right to healthy and the clean environment is conceivably an infringement of the fundamental right to life.

Environmental degradation could in the long run imperil life of present and future eras. Along these lines, the right to life has been utilized as a part of an expanded way in India. It includes, inter alia, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. In India, this has been explicitly perceived as a constitutional right. Art. 21 of the Indian Constitution expresses: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme Court extended this negative right in two ways. Firstly, any law influencing individual freedom ought to be sensible, reasonable, fair and just. Also, the Court perceived a few unsaid freedoms that were suggested by article 21. It is by this second strategy that the Supreme Court translated the right to life and personal liberty to incorporate the right to a clean environment.

Although the real need in India of including this right in Right to life as guaranteed in Art. 21 came to be felt only after the Bhopal gas tragedy in 1984, yet it began focusing on the problem of pollution soon after the Stockholm conference. India parliament passed many statutes to protect and improve the environment viz. Wildlife (protection) Act, 1972; Water (prevention and control of pollution) Act, 1974; the forest (conservation) Act, 1989; the air (prevention and control of pollution) Act,1981 and above all the Environment (protection) Act, 1986. Further after this Stockholm Conference there were

Amendments made in the Constitution and specifically the constitutional (forty-second Amendment) Act, 1976 incorporated two significant articles viz. Article 48-A and 51A (g) thereby making the Indian Constitution the first in the world conferring constitutional status to the environment protection, before this amendment there were no specific provisions in the Indian constitution talking particularly about the environment.

Underlined the need for an international conference on environmental education from childhood should start right, which should focus on the environmental awareness, research and called for a huge list of programs for education, both formal and informal observation highlights the need, which was held in New Delhi by the government and non-government organizations and awareness towards preserving the environment by special institutions for education and training, to come forward.

The Indian Penal Code too at that time contained provisions making pollution a crime.

- Section 268 talks about public nuisance where under noise pollution can inter alia be controlled. It states: "A person is guilty of public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to person who may have occasions to use any public right.

Failure to comply with the final order of the court passed under section 268 of the IPC within the specified time will attract the penalty provided by section 188 of the IPC for disobedience of an order of a public servant.

Another Committee, designated as the Tiwari Committee came to be set up in 1980 (also referred to as the committee for environmental protection). Its main focus was not only restricted to considering the laws which protect the environment but it also focused on the 200 other laws which in their functioning didn't effectively protect the environment. In its review it noted the following major short comings:-

- Most of such laws had become outdated.

- The laws lacked the statements of explicit policy objectives.
- The laws lacked adequate provisions for helping the machinery for their implementation.
- The laws were mutually inconsistent.
- There was no procedure for reviewing the efficiency of those laws.

After the Stockholm conference the real need for the protection of environment and the sustainable use of resources keeping in mind the use of those resources by the future generation which would otherwise convert the resources into non – renewable was felt by the legislators, which would otherwise result in damage for the future generation. With this realization they enacted various laws talking particularly about the protection of the environment for example Water Act, Air Act, Environment protection Act and also enacted various rules and regulations which were mandatorily to be followed by the industries dealing with chemicals or any other hazardous substances which could result in the environment degradation. After the incidents like Bhopal Gas tragedy, oleum gas leak case[1] and the tragedy of Ryland vs. Fletcher[2] cases the legislators enacted regulations particularly for the industries dealing with the hazardous processes which imposed huge penalty on the industry having hazardous processes act negligently and cause damage to others. Till the incident of the Ryland vs. Fletcher the rule of Strict Liability was only applicable which had exception in few cases where in those cases the industrialist could escape from their liability of paying compensation to the victims against the injury caused to them by that incident. But when the same was observed by the courts dealing in the environmental cases that the parties are trying to escape from their liabilities and are trying to prove that they fall under one of the exceptions given under the Strict Liability rule then the court came out with the rule of the Absolute liability stating that the party or the individual whoever brings any hazardous substance at their place for carrying out any processes and meanwhile performing such process if that particular hazardous substance collapse then the person who bought in that particular hazardous substance at that place will be held liable to pay for the damage caused to others irrespective of the fact that the

[1] AIR 1987 S.C. 965

[2] 1868 (3) HL 330

damage was caused not because of his negligence but rather because of natural calamity or because of any other unforeseeable act in the eyes of a reasonable man. There are no exceptions to this rule of absolute liability as it was there in Strict liability therefore there are no chances of any person escaping from his liability to pay compensation to the persons suffered from the wrong caused by the collapse of that hazardous substance.

Till the enactment of the National Green Tribunal Act, 2010 which resulted into the establishment of the environmental court constituting of the member who are having special knowledge in that field or headed by the retired judge of the Supreme Court there were no proper courts in India dealing specifically with the environmental cases. Although before the enactment of the NGT act there were National Environment Tribunal Act 1995 and National Environment Appellate Authority Act 1997 but they were not functioning properly the members of the Authority were not experts in the field of the environment, nor they were experienced in the same field, these authorities were although established by the government but existed only on the papers not in practical. The need to decentralize the environmental courts was felt by the Supreme Court in the case of M.C Mehta vs. Union of India[3]. The need for such specialized courts was expressed in the Indian Council for Enviro-Legal Action vs. Union of India[4] and A.P Pollution Control Board vs. M.V Nayudu[5]. Following these judgements the Law Commission was asked to submit its report on the same subject matter. Wherein, in the 186th Law Commission report in September 2003. In response to the report submitted by the commission which recommended the setting up of the environmental courts, the central government passed the National Green Tribunal Act 2010. As mandated by the act the National Green Tribunal was established on 18th October 2010. The act was enacted with the objective:

"effective and expeditious disposal of cases relating to environmental protection and the conservation of the forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for the damages to the persons and property and for matters connected therewith and incidental thereto."

[3] 1986 (2) S.C.C. 176

[4] 1996 (3) S.C.C. 212

[5] 2001 (2) S.C.C. 62

1.1.Factors affecting the Environment

Environment Degradation takes a place when possibly a renewable resource one of the biotic or abiotic factors which the human being needs for their utilization, for example, soil, field, forests, or wildlife is detached at a rate quicker than the resources that can be replaced, and therefore gets to be exhausted. On the off chance that the rate of utilization of the resources stays high, the environmental resources can become nonrenewable on a human time scale or even get to be nonexistent.

For example, topsoil is important for the farmers because the crops are grown in topsoil. It can generally take as many as 200 years to form 1 centimeter (0.40 inches) of topsoil with the help of natural processes. Topsoil can also be lost through various reasons. One of the main causes of topsoil loss is the erosion. Erosion can take place when water washes soil downhill or when wind blows unprotected soil away. Worldwide, topsoil is being lost to erosion much more quickly than it is being replaced.

If topsoil loss will be allowed to continue unchecked, the land in such cases can be rendered permanently infertile through a process known as desertification. Many areas in the world suffer from desertification. Grasslands do not receive much rain. If the soil cover is removed with the help of overgrazing or by using poor farming practices, then the topsoil can be rapidly removed by wind erosion. This happened in parts of Texas and Oklahoma during the 1930s, leading to dust-bowl conditions. Although drought contributed to the dust-bowl formation, the main causes were overgrazing and poor farming practices.

Environmental degradation is to be seen in today's world is one of the biggest threats. UN International Strategy for Disaster Reduction, social and environmental areas, and to meet the needs of most of the Earth is described as reducing environmental degradation. Ecological degradation may be of different ways. Conditions are destroyed or common resources are exhausted, right when, nature is thought to be ruined and hurt. Including insurance and general security efforts ecological asset to the various specific strategies that are being used.

1.2.Deforestation

Deforestation is one of the major issue of the environment degradation in the third world countries or the developing countries including India, as much of the global forest cover is in these countries only and without immediate conservation the entire countries will be negatively affected. Out of so many factors resulting in Environment degradation Deforestation is one of them. Deforestation can be resulted through various reasons such as clearing for farming, clearing for grazing pastures, slash and burn agriculture, harvest for fuel wood, logging, and making space for inhabitants as the population of the countries are increasing at a very fast speed

One of the primary causes for deforestation is the expanding populace, particularly in country like ours where most of the people depend on agriculture for their living, they need more land for agricultural purposes for growing crops for themselves as well as others. With this percentage of expanding population and absence of any kind of arrangements by governments, individuals are looking forward for the area to develop crops. A significant part of the cleared area is utilized by business agriculturists, yet numerous people partake in this practice too. As the population of these developing nations will keep on expanding exponentially, the individual interest for fuel wood for cooking and warming will likewise keep on increasing as there are large number of people even today depending on forests for cooking their day to day meals especially in villages where either the supply of gas is still not there or the families staying in those villages are poor or cannot afford to avail the facility of cooking gas. With individuals scrounging their nearby territories in rivalry for getting the wood they must keep on going further into the woods to supply their families with fuel. The further they go into the forest for getting wood the impact of that on these forest will be negatively affected as the forest cover will be reduced to minimum. The wealth of these forests as a resource is being slowly depleted due to the increase in the population of the nations. Another global impact of decreasing forest is the release of the stored back carbon dioxide in the environment as we all know that the forest or the trees take large amount of carbon dioxide which we all know plays an everlasting role in the global warming. Hence the

cutting down of these forest will result in the global warming as the carbon dioxide which was earlier stored or consumed by these forests will now be released in the environment hence degrading the environment causing damage not only to the environment but also affecting the health of all the living as well as the non-living being on the earth.

1.3.Water Pollution

Out of the numerous issues resulting to environment degradation in third world urban areas, water contamination or water pollution can be said to be as one of the best issues. In the creating scene, a huge amount of the population is influenced by this issue. An incredible concern is that billions of individuals as on today even don't have entry to clean water needed for the daily purposes for carrying out their day to day activities, for example, drinking, cleaning, cooking, and cultivating. Pollutants from municipal, industrial or agriculturist area contaminate various sources where the water is used. On the off chance that the issue of water contamination is not determined, its impacts on the population and the environment will keep on worsening. The water gets polluted large from the effluents released by the industries in the river without treating that water and without removing hazardous chemicals from that water and making it same. Many industries release their contaminated water in the agricultural land nearby or around their area which is then absorbed by the crops hence polluting the vegetation grown in those fields and making it unfit for the people consuming those crops resulting in many diseases and if the industrial sector will not be held accountable for their actions then often in that cases the surrounding bodies of the water will be contaminated. In many places the sanitation may be of the very low quality or of non – existence.

1.4.**Global Warming**

Global warming is the result of natural increase in the level of greenhouse gases, mainly for example, oil, gas and coal for specialty, highly blazing fossil powers created by mankind. Coal, the most dangerous mercury and carbon dioxide (Boston Globe) generated both. Strong waste, fossil fuels, and timber are copied when the carbon dioxide in the air is discharged. 1.7 billion cubic meters of wood barometer levels of carbon dioxide each year, enough to say that the smoke goes. Regularly, wood and biomass burning various levels of carbon would leave constantly in light of the fact that the earth will not unsafe. This is an issue because the plantings that do not meet the burn is on the ground. Biomass smoldering pulverizing Similar chlorine ozone layer which adds a remarkable fountain of methyl chloride. Methane production and transportation of fossil spreads between powers, metropolitan strong waste landfills squanders the natural decay, and the establishment of pets. Nitrous oxide between gardening and mechanical exercises, and an unnatural causes of climate change, which is transmitted between strong waste and burning of fossil fuels.

1.5.Poverty

Poverty is said to be both the cause and the effect of environmental degradation. The close connection between poverty and environment is an extremely complex phenomenon. Variation may foster unsustainability because the poor, who rely on natural resources more than the rich, deplete natural resources by using resources at a faster as they have no real prospects of gaining access to other types of resources. Moreover, degraded environment can accelerate the process of hardship, again because the poor depend directly on natural resources. Although there has been a significant decrease in the poverty ratio in the country from 55 percent in 1973 to 36 percent in 1993-94, the absolute numbers of the poor have, however, remained constant at around 320 million over the years. An acceleration in poverty alleviation is imperative to break this link between poverty and the environment.

1.6.Urbanisation

Absence of chances for productive livelihood in towns and the environmental anxieties is prompting a perpetually expanding development of poor families to towns. Mega cities are emerging and urban slums are extending. There has been an eightfold increment in urban populace more than 1901-1991. Amid the previous two many years of 1971-91, India's urban populace has multiplied from 109 million to 218 million and is assessed to achieve 300 million by 2000 AD. Such quick and spontaneous extension of urban areas has brought about debasement of urban environment. It has extended the crevice in the middle of interest and supply of infrastructural administrations, for example, vitality, lodging, transport, correspondence, instruction, water supply and sewerage and recreational enhancements, hence draining the valuable ecological asset base of the urban communities. The outcome is the developing pattern in crumbling of air and water quality, era of squanders, the expansion of slums and undesirable area utilization changes, all of which add to urban poverty.

1.7.Conclusion

Although we made an effort to specialize a few forms of environmental degradation is evident that it’s impossible to do so. Deforestation, air pollution, water pollution, and urbanization all cause global warming, degrade the environment and, most importantly, can be controlled by us. We are all citizens of one world and should therefore treat our environment as such. Disposing of hazardous waste across the border is just geography. It doesn’t eliminate the problem, it simply relocates it. The same air and rain will eventually carry those harmful gases all around the world.

It doesn’t matter if you live in the U.S. or in the poorest regions of Africa, the environment doesn’t recognize borders and social status. Not only will we suffer selfish decisions, with regard to the environment, but so will many generations to come. The kind of damage we are causing and can cause is much more complex than what we are aware of. Education is an important tool in establishing respect for our environment, responsibility for our actions, and consideration for future generations that shouldn’t be

forced to pay the price for our selfish shortsightedness. John Collee described our situation quite accurately when he wrote, "By 2050, the predicted global temperature rise will be an average of two to three degrees. The world itself will have a fever…Having said all that, I know these kinds of dire Malthusian predictions have little effect. This is partly because we have become used to the fact that in any global catastrophe the brunt of it will be borne by someone else – namely the eighty percent of the world inhabitants who don't live in the developed world, a malaise already so prevalent that we have ceased to regard it as abnormal."

Chapter – II

2. The Nature of International Environmental Regimes

2.1. Theoretical Background

Amid the past half-century, worldwide procedures for supervising assurance and preservation of the worldwide environment were ordered through the declaration of multilateral administrations. These environmental administrations are extraordinarily planned and intentionally executed through techniques of interstate transaction and selection. Governments face a circumstance in which complex transnational issues emerge (or may emerge) that a solitary state or little gathering of states can't resolve all alone. A more extensive, more broad web of worldwide commitments is regarded essential. Worldwide affiliations are then made through lawful commitment to produce sets of principles and measures went for creating sought conditions or results that individual governments are unequipped for accomplishing all alone. This universal natural administration gives specific ways and intends to regularize the behavior amongst their members, typically legislatures of states. Put briskly, a universal administration accommodates commonly reliant arrangements of standards, principles, standards, qualities, and strategy making methodology that legislature of states come to concur upon and comply with in dealing with a specific issue - territory influencing world issues, for this situation, the nature of the Earth's surroundings.

Two rationales stand out for creating regimes to manage the international environment. First, some goals may be better attained if sought broadly through cooperation among several governments. Second, the purposeful coordination of intergovernmental activities can be facilitated through obligatory normative institutions. Regimes can be viewed as social creatures that generate normative guidelines for their member governments. That is to say, universal administrations speak to endeavors to make more predictable and controllable the exercises of states and their nationals in influencing territories of the worldwide. Securing more noteworthy worldwide conviction permits natural

administrations to upgrade soundness and advance request among states. It appears to be sensible to expect that more prominent consistency for state activities emerges seeing someone among governments that connect all the more habitually with one another. A natural administration can impact government members through socialization and part order. Governments learn imparted qualities and standards, which are then sustained through arrangement activities by capable individuals from the administration.

2.2.Brief of the United Nations Conference on Environment and Development

We do not inherit the earth from our fathers, we borrow it from our children. (Inuit saying)

We cannot betray future generations. They will judge us harshly if we fail at this critical moment. (Gro Harlem Brundtland, Prime Minister of Norway, UNCED, 1992)

...we can waste the planets resources for a few decades more...we must realize that one day the storm will break on the heads of future generations. For them it will be too late. (UN Secretary General Boutros-Ghali, UNCED, 1992)

Construction of international environmental regimes was stimulated over the past four decades through intensive international conference diplomacy. Starting in 1972 with the Stockholm Conference on the Human Environment, a progression of major United Nations-supported global meetings met to examine issues discriminatingly and figure activity arrangements to cure essential environmental issues. Of these, the Stockholm Conference that gathered from 5.–16 June 1972 was the most discriminating, since it served to focus overall distinguishment of the need to address issues influencing the soundness of the environment.

An important aspect of the Stockholm Declaration was a strategy to draft an action plan for the development of human environment. Moreover, the declaration stated that economic and social development were necessary for ensuring a healthy environment for man. This, in turn, has been called the Magna Carta on environment from which two important conclusions can be reached:

“Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being; and Man bears a solemn responsibility to protect and improve the environment for present and future generation.”

In 1972, Stockholm, Sweden, facilitated the initially United Nations Conference on the Human Environment, which was gone to by 113 delegates and two heads of state (Olaf Palme of Sweden and Indira Gandhi of India). This conference raised a generation's awareness of an issue hitherto little talked about, the global environment. The Stockholm meeting secured a changeless spot for nature on the world's plan and prompted the foundation of the United Nations Environment Program (UNEP). The conference and its aftermath made known the international nature of the environment and introduced the idea of the relationship between development and the environment. It has been said that the best way to unite the nations of the world is for them to face a typical adversary; maybe ecological degradation will be that enemy.

Since the 1972 meeting, there have been numerous universal ecological understandings, various which have been approved by Canada. These incorporate the 1978 Great Lakes Water Quality Agreement; the 1979 Geneva Convention on Long-extend Transboundary Air Pollution; the 1985 Helsinki Agreement (a 21-country responsibility to diminish sulfur dioxide emanations); the 1988 Montreal Protocol on Substances That Deplete the Ozone Layer; and the 1989 Basel Convention on Transboundary Movements of Hazardous Wastes. It was this sort of global collaboration that the 1992 Rio meeting looked for, yet on a bigger scale.

The main objective of the Stockholm Declaration was to focus on the environment protection throughout the world and it was the result of the Stockholm Declaration that the principle of the Sustainable Development came into picture which states that the resources of the earth must be used in such a manner so as to preserve them for the future generation as well rather them using in a way which convert the renewable resources into non-renewable. Because we are not the owners of the resources they belong to our future generation as well they have the equal rights on those resources. They also have to make

use of these resources in such a way to keep in mind about their next generation. If they have a right on the use of these resources then on the other hand they have the liability to protect the environment from getting degraded, hence apart from the principle of the Sustainable Development there exist few other principles which are also to be considered keeping while using the resources and those principle are polluter pays principle, precautionary principle and the principle of public trust doctrine. Wherein the polluter pays principle states that the individual or the industries which are responsible for degrading the environment must be held liable for paying compensation for its restoration and bringing it back to the same position where the environment was when they started using the resources of the earth for their own use or for the benefit of others but with their own free will.

In 1983, the UN General Assembly set up the World Commission on Environment and Development, known as the Brundtland Commission after its executive, Norwegian Prime Minister Gro Harlem Brundtland. Its aim was to link environmental issues to the findings of the 1980 Brandt report on North-South relations. The Brundtland report, distributed in 1987 as Our Common Future, announced that the time had desired a marriage between nature and the economy and utilized the expression "sustainsable development" as the best approach to guarantee that monetary advancement would not imperil the capacity of future eras to appreciate the products of the earth.

On the twentieth anniversary of the Stockholm Conference on the Human Environment, the delegates from around 178 countries, also from the non-government organisation (NGOs) and other interested individuals (pretty nearly 30,000 altogether including individuals from the media), met in Rio de Janeiro to examine worldwide ecological issues that would become central to policy implementation. The gathering looked for concession to solid measures to accommodate monetary exercises with security of the planet to guarantee an economical future for all individuals. This first UN Conference on Environment and Development - UNCED for short, however otherwise called the "Earth Summit" after its last three days - was the zenith of two and one half years of overall conference that shows the best intentions of the human race to live responsibly.

After the Rio conference the outcome of the conference resulted into the convention of biodiversity and the other was the climate change agreement and the agenda 21. These agreement were entered into with a view to protect the environment from getting degraded as a whole. And through these agreements the relations between the north south countries were tried to improve and helpful to each other.

After 10 years of the Rio conference, the World Summit on the Sustainable Development took place at the Johannesburg, where the purpose behind the summit was to reaffirm the principle of the sustainable development and the most important element of the International agenda and to take a global action to fight poverty and to protect the environment. The summit plan in total was a 71 page document which is intended to set the world's environmental agenda for the next ten years and is expected to be a model for the future international agreements. The objective of the summit was to make a committee to undertake actions and measures at all levels to implement Rio principle and the Agenda 21.

Chapter – III

3. Environmental policy in India

3.1. History of Environmental Protection in Ancient India

An appraisal of the historical background to environmental protection in India would indicate that forests & wildlife were considered as vital ingredients of the global system. Here, the entire scheme of environmental preservation was essentially duty-based. In this sense, the ancient Indian society accepted the protection of the environment as its duty to do so. Respect for nature is part of the Indian psyche. Arthashastra written in 321 - 300 B.C. contains references to environmental management. The author of this treatise, Kautilya, was the Prime Minister of the Magadh Empire during the reign of Chandragupta Maurya. After the advent of British rule in India, the environmental and forest policies were shaped as per the directions of the British administration in India. In fact, policy on the general aspects of the environment was not laid down in British India, as environmental problems were not serious enough to warrant a policy of this nature. Therefore policy was confined to forests only.

3.2. Constitutional provisions and the environment

The Constitution of India initially received, did not contain any immediate and particular procurement with respect to the assurance of environment. Maybe, the composers of the Indian Constitution, around then, considered it as an immaterial issue. That is likely why it didn't even contain the declaration environment. Be that as it may, actually it contained just a couple of Directives to the State on a few viewpoints identifying with general wellbeing, farming and creature cultivation. These Directives were are still not judicially enforceable. Later on, on a cautious investigation of different procurements preceding the 42nd Constitutional Amendment, uncovers that a percentage of the Directive Principles of State Policy demonstrated a slight slant towards natural security. It can be deduced from Art 39(b), Art 47, Art 48 and Art 49. These mandate standards separately and by

and large force an obligation on the State to make conditions to enhance the general wellbeing level in the nation and to secure and enhance the regular habitat.

More than 100 constitutions throughout the world guarantee rights to a clean and healthy environment impose a duty on the state to prevent environmental harm, or mention the protection of the environment or natural resources. Over half of these constitutions explicitly recognize the right to a clean and healthy environment, including nearly all constitutions adopted since 1992. Ninety-two constitutions impose a duty on the government to prevent harm to the environment. The constitutional rights granted are increasingly being enforced by courts. In India, for example, a series of judgments between 1996 and 2000 responded to health concerns caused by industrial pollution in Delhi. In some instances, the courts issued orders to cease operations. The Indian Supreme Court has based the closure orders on the principle that health is of primary importance and that residents are suffering health problems due to pollution.

The Forty- Second Amendment Act: Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty- Second Amendment) Act of 1976. Article 48A was added to the Directive Principles of State Policy. It declares: 'The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.' Article 51A (g) in a new chapter entitled 'Fundamental Duties', imposes a similar responsibility on every citizen 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement and lay the foundation for a jurisprudence of environmental protection.

3.2.1. ARTICLE 14

RIGHT TO EQUALITY

Article 14 of the Constitution which states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India," guarantees the right to equality. This article is the principle instrument to strike at the

arbitrariness of an action should it involve a negation of the right to equality. The right to equality as enshrined in Article 14 of the Constitution may be infringed by government decisions which may have impact on the environment, particularly in cases, where permissions are arbitrary granted, for instance, for construction, that are in contradistinction of development regulations or for mining without adequate appreciation of environmentally damaging consequences. Environmentally conscious groups have resorted to take legal proceedings under Article 14 to challenge the constitutional validity of the arbitrary official sanctions in such matters. Thus, we find that Article 14 can be used as a potent weapon against governmental decisions threatening the environment. The Indian Constitution is perhaps one of the rare Constitution of the world which reflects the Human Rights approach to environment protection through various constitutional mandates. In India the concern for environment protection has not only been raised to the status of fundamental law of the land, but it is also wedded with the human right of every individual to live in pollution free environment with full human dignity. The Constitution of India obligates the "State" as well as "citizens" to "protect" and "improve" the environment.

3.2.2. ARTICLE 19

RIGHT TO INFORMATION

The right plays a very important role in environmental matters. Thus government plans of construction of a dam or information of the proposed location of a hazardous industries and thermal and nuclear power plants which directly affect the life and health of people in that area must be publicised. The same has been decided in L.K. Koolwal vs. State[6]. Citizen's also have a right to know and access to information regarding town planning and a right to take part in process of development as was held in Reliance Petrochemicals Ltd. vs. Proprietors, Indian Express Newspapers, Bombay (P.) Ltd.,[7]

[6] AIR 1988 Raj 2

[7] AIR 1989 SC 190

3.2.3. ARTICLE 21

RIGHT TO LIFE

Right to life includes right to enjoy environment

Article 21 of the constitution of India lies down that no person shall be deprived of his life or personal liberty except according to the procedure established by law. It is this Article which has been interpreted to mean that right to life includes the right of enjoyment of environment and the bounties of the nature. The expression "life" assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, and hygienic conditions in the workplace and leisure.

Every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to take recourse to article 32 of the Constitution.

Under Article 21 of the Constitution people have the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life[8].

Article 21 guarantees a right to a decent environment

Article 21 of the Constitution of India guarantees a right to a decent environment. What should be the parameters would essentially be legislative policy. Undoubtedly, different criteria may be laid down to achieve different purposes. When the discretionary power under the statute is arbitrarily exercised, evidently the court will not tolerate the same and strike it down. Development Control Regulations, however, *ex facie* do not impair sustainable development of a town. An endeavour should be made in giving effect to the intention of the legislature. For the said purpose, it is necessary to ascertain the object

[8] Subhash Kumar vs. State of Bihar AIR 1991 S.C. 420

which the legislature seeks to achieve. It may also be necessary to address questions as regards to the nature of the Statute. Does the statute *ex facie* point out degradation of the environment. Would by change of user envisaged by the legislature, the existing open space can be decreased? Would it be necessary in view of the legislative scheme to invoke the precautionary principles? Answers to the above questions it was said have to be rendered in the negative. The main purpose of the legislation is revival of industry *inter alia* by modernization and shifting of industries.

Disturbance of Environment violates Article 21

The disturbance of environment and pollution of water, air and environment by reason of quarrying operation definitely affects the quality of life and thus involves the violation of right to life and personal liberty under Article 21 of the Constitution of India. For the protection of this right to life, the Supreme Court of India has entertained petitions under Article 32 of the Constitution. In M.C. Mehta v. Union of India[9] (popularly known as oleum gas leakage case), the Supreme court of India impliedly treated the right to live in pollution free environment as a part of fundamental right to life falling under Article 21 of the Constitution.

The Andhra Pradesh High Court in a case reported as T. Damodhar Rao v. SOMC Hyderabad[10] observed that "it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of natures's giift without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violation of Article 21 of the Constitution. The right to live in a healthy environment was specifically declared to be an apart of Article 21 of the Constitution."

Industries have no right to throw effluents in sources of water in Rajiv Ranjan Singh v. State of Bihar[11] , the Patna High Court expressed the opinion "that the failure to protect the inhabitants of the locality from the poisonous and highly injurious effects of the

[9] AIR 1987 S.C. 1086

[10] AIR 1987 A.P. 171

[11] AIR 1992 Pat. 86

distilleries effluents and obnoxious fumes amounted to an infringement of the inhabitants' rights guaranteed under Article 14, 21 read with Articles 47 and 48A of the Constitution of India. The court directed that in case it comes to light that any person has contacted any ailment the cause of which can be directly related to the effluent discharged by the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim can also be considered."

Citizens entitled to better conditions of life and hygienic conditions.

The word "life" as used in Article 21 has a broad meaning. The expression "life" assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, and hygienic conditions in the work place and leisure. Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 46 directs the State to protect the poor from social injustice and all form of exploitation. Article 39(e) charges that the policy of the State shall be to secure "the health and strength of the workers". Article 42 mandates that the State shall make provision, statutory or executive to secure just and humane conditions of work. Article 43 directs that the State shall endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers. Article 48A the State to protect and improve the environment. As human resources are valuable national assets for peace, industrial or material production, national wealth, progress, social stability; decent standard of life of a worker is an input.

A huge area of concern is small and medium sized industry which cannot amalgamate into itself the mainstream environment friendly technology due to their small size and lack of finance. Thus the government should create a new structure of emission standards for these industries which will successfully allow them to comply with specific standards set for them. At the same time such industries should also provide training and capacity

building to its employees. The local community around these industries must also participate in the development and monitoring of such industries and subsequent environmental programs. Self-reporting mechanism must be strengthened along with good incentives given to industries for compliance. When such compliance are met voluntarily, green rating must be given along with incentives and public assessment of their compliance. Voluntary initiatives must be similarly rewarded and such good practices publicised. Public-Private Partnership must be improved to disseminate information especially when information relates to zoning and planning activities, and oversight of local environmental program. In this regard giving more power to the local self-governing groups in the grass root level will help tremendously. This gives mandate to the 73rd and 74th Amendments to the Constitution. The Government must also coordinate the development of a strategic framework for using global environmental financing instrument. It must also review and recommend measures. It also must review and recommend measures to improve the forestry clearance process.

With the given situation the government need not only to protect natural resources like air and water from industrial damage and remove conditions which threaten flora and fauna but also create infrastructure for waste treatment and disposal and environmentally-sound management of industrial activities. These will necessitate investment which the private sector alone cannot cough up. In this situation, the government must consider separate budgetary allocation for environment restoration and protection either through existing resources or levying environmental cess on the industry and citizens. The government should encourage tax benefits for the environment conscious initiatives and endeavors. Taking help from these incentives the industries should incorporate sustainable solution to industrial issues as a part of their corporate social responsibility.

Through the concept of CSR corporates initiatives for the benefit of the society and environment. To illustrate GAIL's CSR policy provides for the structure for carrying out CSR activities and budgetary allocation of funds for CSR:

"To enhance value creation in the society and in community in which it operates and to promote sustained growth for the society and community and to fulfill its role as a socially responsible corporate with environmental concern. Be the leading company in

natural gas and beyond, with the global focus, committed to customer care, value creation for also stakeholders and environmental responsibility."

India to protect environment many legislative measures and policy instruments are undertaken. But administration and implementation is the main problem faced in India. Though poverty and underdevelopment are main impediments to environment protection measures in India, the rigidity in the existing structure is the another impediment. The gaps in policy implementation indicate the weakness in enforcement of policies. Ministry of Environment and Forest (MoEF) is still perceived as a new comer with in the government administration. Despite of MoEFs claim that India has introduced plethora of environmental law and mechanism but they were noticed working unsatisfactorily

To control pollution it requires substantial expenditure to adopt appropriate technology, due to lack of technical and administrative and sufficient economic resources resulting in inadequate enforcement. The absence of public participation is a great impediment. Environment impact assessment are not fully equipped in the hands of the MoEF. Effluents control system are not sufficient. The infrastructural institutional capacity is highly inadequate. Cost of compliance is greater than cost of Defiance i.e. there is a lack of administrative rationality. Corruption is the most important hurdle in every sphere in India. The lengthy legal process and backlog of cases is another impediment. Though there are many impediments still India is striving to be successful in protecting environment.

Chapter – IV

4. Role of Judiciary

The judiciary, to fulfill its constitutional obligations was and is always prepared to issue appropriate orders, directions and writs against those persons who cause environmental pollution and ecological imbalance. This is evident from a plethora of cases decided by starting from the Ratlam Municipality Case. This case provoked the consciousness of the judiciary to a problem which had not attracted much attention earlier. The Supreme Court responded with equal anxiety and raised the issue to come within the mandate of the Constitution.

4.1. Judgments of the Supreme Court:

The Supreme Court of India has made immense contribution to environmental jurisprudence of our country. It has entertained quite a lot of genuine public interest litigation (PIL) cases or class-action cases under Art. 32 of the Constitution. So have the High Courts under Art. 226 of the Constitution. These Courts have issued various directions on a number of issues concerning environment as part of their overall writ jurisdiction and in that context they have developed a vast environmental jurisprudence. They have used Art. 21 of the Constitution of India and expanded the meaning of the word 'life' in that Article as including a "right to a healthy environment".

We shall refer to some of the important decisions of the Supreme Court of India.

The first case of considerable importance is the one in Ratlam Municipality vs. Vardhichand[12] where the Supreme Court gave directions for removal of open drains and prevention of public excretion by the nearby slum dwellers. The matter came up by way of a criminal appeal. The Court relied upon Art 47 which is in the Part IV of the Constitution relating to the Directive Principles. That Article refers to 'improvement of public health'. In that judgment, the Supreme Court gave several directions to the Ratlam

[12] AIR 1980 S.C. 1622

Municipality for maintenance of 'public health'. That judgment was followed in B.L. Wadhera vs. Union of India[13] and directions were issued to the Municipal Corporation of old Delhi and New Delhi, for removal of garbage etc.

The Court referred to the ancient civilization of our nation in Rural Litigation & Entitlement Kendra vs. State of UP[14] . There the abuse of limestone from the Himalayas and its unfavorable impact on the nature and environment came up for thought. The Supreme Court expressed: "Over a large number of years, man had been effectively abusing the biological framework for his sustenance however with the development of population, the interest for area has expanded and forest development has been and is being chopped down and man has begun infringing upon Nature and its assets. Scientific developments have made it conceivable and helpful for man to approach the spots which were up to this point past his ken. The results of such obstruction with environment and environment have now come to be figured it out. It is essential that the Himalayas and the forest development on the mountain extent ought to be left uninterfered with so that there may be sufficient amount of rain. The top soil may be safeguarded without being disintegrated and the characteristic setting of the zone may stay in place. … tapping of (natural) resources must be finished with imperative consideration and consideration, so that nature and environment may not be influenced in any genuine route, (and) there may not be any exhaustion of the water assets and long haul arranging must be attempted to keep up the national riches. It has dependably to be recollected that these are changeless resources of humanity and are not planned to be depleted in one era… . Safeguarding of the earth and keeping the biological offset unaffected is an undertaking which Governments as well as every resident must embrace. It is a social commitment and let us remind each Indian resident that it is his Fundamental Duty as cherished in Art. 51A(g) of the Constitution." The Supreme Court then referred to the Stockholm Declaration of 1972.

[13] AIR 1996 S.C. 2969

[14] AIR 1987 S.C. 359

Indian scriptures were quoted again in the case of Rural Litigation & Entitlement Kendra vs. State of UP[15] AIR 1988 SC 2187. While stopping mining in the forest area in Doon Valley, the Supreme Court quoted from the Atharva Veda (5.30.6) to the following effect:

"Man's paradise is on earth; This living world is the beloved place of all; It has the blessings of Nature's bounties; Live in a lovely spirit."

It was brought up that it was in these forests in the Himalayas that a thousands years back, our holy people did retribution and lived. In old times, the trees were loved as divine beings and petitions to God for the upkeep of timberlands were offered to the Divine. With the advancements in science and upheaval of populace, the deforestation of forests began. The world's hull was washed away and spots like Cherapunji in Assam which used to get a normal precipitation of 500 inches in one year began confronting dry season incidentally. In the wake of alluding to the commitment of forests for precipitation, pureair, great wellbeing and to the heartbreaking cutting of woods which was in charge of the washing ceaselessly each year, of almost 6000 million tones of soil, the Supreme Court alluded to the Amendment of the Constitution in 1976 when Art. 48A and 51A(g) were embedded and "forests" were moved from Entry 19 of List II to the List III. The Court likewise alluded to the constitution of the National Committee of Environment and Planning and Coordination by the Government of India in 1972, and to the passing of the Forest (Conservation) Act, 1980.

"In 1987, the Court set down standards of strict liability in the matter of damage because of utilization of hazardous substances. Under the guideline in Rylands vs. Fletcher[16], case the principle of absolute liability could be imposed on the parties for the negligence of the parties only for the 'foreseeable damages and for making use of the land in the way by using it for non-natural purposes. However the exceptions laid down by the court in the strict liability are no longer available in case of the injuries on account of the use of the hazardous substances. Hazardous industries which produced gases injuring the health

[15] AIR 1988 S.C. 2187

[16] (1868) LR 3 HL 330

of the population got destroyed in M.C. Mehta vs. Union of India[17] (the Oleum gas break case) where the guideline in Rylands vs. Fletcher was altered, holding that the industries which are occupied with a risky or innately perilous industry which represents a potential danger to the wellbeing and security of persons working in the manufacturing plant and living in the encompassing zones, owes an outright and non-delegable obligation to the group to guarantee that no damage results to anybody because of dangerous or intrinsically unsafe nature of the movement which it has embraced… the venture must be completely subject to make up for such mischief and it ought to be no response to the endeavor to say that it had taken all sensible consideration and that the mischief happened with no carelessness on its part… The bigger and more prosperous the undertaking, more noteworthy must be the measure of remuneration payable for the mischief brought about by virtue of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

Till the enactment of the National Green Tribunal Act, 2010 which resulted into the establishment of the environmental court constituting of the member who are having special knowledge in that field or headed by the retired judge of the Supreme Court there were no proper courts in India dealing specifically with the environmental cases. Although before the enactment of the NGT act there were National Environment Tribunal Act 1995 and National Environment Appellate Authority Act 1997 but they were not functioning properly the members of the Authority were not experts in the field of the environment, nor they were experienced in the same field, these authorities were although established by the government but existed only on the papers not in practical. The need to decentralize the environmental courts was felt by the Supreme Court in the case of M.C Mehta vs. Union of India[18]. The need for such specialized courts was expressed in the Indian Council for Enviro-Legal Action vs. Union of India[19] and A.P Pollution Control Board vs. M.V Nayudu[20]. Following these judgements the Law Commission was asked to

[17] AIR 1987 S.C. 1086

[18] 1986 (2) S.C.C. 176

[19] 1996 (3) S.C.C. 212

[20] 2001 (2) S.C.C. 62

submit its report on the same subject matter. Wherein, in the 186th Law Commission report in September 2003. In response to the report submitted by the commission which recommended the setting up of the environmental courts, the central government passed the National Green Tribunal Act 2010. As mandated by the act the National Green Tribunal was established on 18th October 2010. The act was enacted with the objective:

"effective and expeditious disposal of cases relating to environmental protection and the conservation of the forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for the damages to the persons and property and for matters connected therewith and incidental thereto."

Chapter – V

5. Judicial Comparison of Environmental Laws in India and U.S.A

India is a country of more than one billion peoples, the majority of whom are packed together in the different urban focuses of the country. The normal age in India is 25, while the normal life compass is 65. Sixty percent of the work power is made out of subsistence agrarians. Twenty-five percent live underneath the destitution line. The country, all in all, is $117 billion owing debtors. India has persevering outskirt question with Pakistan, China, Nepal, and Bangladesh. Earth, India experiences the characteristic fiascos of yearly surges, dry spells, storms, and seismic tremors; and it is gravely focused by the man-made emergencies of deforestation, soil disintegration, overgrazing, desertification, modern and vehicular air contamination, and water contamination from the illicit and non-directed dumping and leaking of crude sewage, mechanical contaminants, and pesticides.

The soundness of the country's kin is discriminatingly influenced by these poor ecological and financial conditions. As per the World Wellbeing Association, ebb and flow boundless illnesses in India incorporate the accompanying: HIV (5 million tainted, or 1 out of each 100 grown-ups), jungle fever (2.2 million contaminated), tuberculosis (1.2 million tainted), disease, filariasis, instinctive leishmaniasis, Japanese encephalitis, dengue fever, and genuine mental infections (95% of which have been diagnosed as psychosis). The WHO report infers that a considerable lot of these ailments are a direct consequence of urban overpopulation, dirtied water and air, hunger, and eventually, an absence of complete natural enactment and satisfactory implementation of existing ecological enactment and judicially-ordered cures[21].

One of the greatest natural disasters that were ever confronted by the population of the world happened in Bhopal, in India in 1984. It was straightforwardly created by a multinational concoction and pharmaceutical maker, Union Carbide Partnership, which is

[21] Dr. Berry M. A., *Cleaning the Environment,* Available at https://www.ciriscience.org/a_269-Cleaning-and-the-Environment. Accessed on 31 January 2015.

at present an entirely claimed backup of DOW Pharmaceuticals – one of the greatest speculators in India's New Financial Strategy. Amid the late nighttime of December 2, 1984, the terribly weather beaten concoction plant at Union Carbide impacted, discharging twenty-seven tons of a harmful gas known as MIC, a cyanide isotope. That night, ten thousand individuals in the encompassing distraught neighborhood kicked the bucket from taking in the poisonous gas. Through the following few years, an alternate fifteen thousand individuals passed on from torpid introduction to the MIC that was discharged from the blast. One hundred thousand individuals keep on suffering serious and perpetual infections of the inward organs, tissue, and eyes as an aftereffect of the MIC gasses. While this was obviously the most exceedingly terrible disaster of its kind, India's kin are consistently attacked by commercial enterprises in India and abroad dumping actually billions of kilograms of dangerous effluents and perilous waste into India's surrounding.

Careless enactment and requirement is an essential driver of this issue. For quite a long time before the Bhopal calamity, columnists, NGO's, residents, and straightforward government authorities cautioned Union Carbide that their synthetic plant was in gross decay and therefore a threat to the country. Union Carbide declined to overhaul their plant's condition, and India's legislature stayed quite on the issue. This authority quiet proceeded with well after the Bhopal catastrophe. In the common suit that took after the blast, the Preeminent Court of India imposed $470 million in harms against the organization, which it paid into the stores of the Bank of India. The dominant parts of these monies have never come to their exploited people as a consequence of political and bureaucratic tie-ups. A large number of exploited people have brought private and class activity suits against the Bank of India keeping in mind the end goal to get to their separate offer of the harm honors, yet these cases themselves are as yet pending in an apparently unending accumulation of cases on the dockets of India's courts.

Obviously, legal activism is not only an Indian sensation. While the Supreme Court of the USA demonstrates much institutional regard, post-Chevron, to the EPA and other environment-managing managerial organizations, the Court has uncovered an in number measure of strategy activism in its utilization of procedural and substantive laws in the

most recent twenty years. This approach activism of the US Federal Courts has positively been impacted by the worldwide monetary approaches of this country. Interestingly with India, the USA's three extensions of government cooperate towards such a worldwide monetary vision. Positively, natural concerns brought by offended parties up in our government courts don't serve to hamper the country's "race to how everything adds up."

Amid the exchange shortfall of the 1970's and 1980's, the USA established numerous protectionist measures to guarantee that our products and administrations could contend all the more energetically on the world business sector. Through muscle-flexing military operations in the Middle East, Eastern Europe, the Pacific Rim, and Africa, and all the more thus, through eco-political cooperations –, for example, the amazing extension of the OECD in the 1990s, the formation of NAFTA (1993), the US-Israel Free Trade Agreement (1985), the Trans-Atlantic Economic Partnership with Europe, the Asia-Pacific Economic Cooperation Agreement, the Partnership for Economic Growth and Opportunity for Africa, and through an intense and order vicinity in global financial bodies, for example, the World Trade Organization (WTO), the International Monetary Fund (IMF), the World Bank, US AID, and GATT, the USA has given first-in-line positions for its major multinational firm[22].

[22] For reference see Environmental Law Research Guide, Georgetown Law Library, https://www.law.georgetown.edu/library/research/guides/environmental.cfm. . Accessed on 01 March 2015.

Chapter - VI

6. Recommendation and Conclusion

6.1. Recommendation[23]

India is in a unique position where we have all the laws that need to be there. It is in the details that have made these laws strict and thus made to twist around in ways to eke oneself out of judicial trouble. Very often these laws are seen practical but are often ineffective because of there isolated formulation. India has carried an impressive legacy of sound environmental laws though the implementation of these laws are plagued by issues such as failure by authorities to perform there statutory role, lack of provision of funds and infrastructure to authorities by the state and runaway urbanization. Yet there is a hope as the country constantly look to create a better administrative system. The Indian legislature has also taken on the responsibility to create laws which are founded on sound international principles. India is a committed country towards creating a development structure which is sustainable. These laws actively allow it to forge relationship with the other countries on a global platform and creating alliance and coalitions to put forward the ideas which not only represents the Indian consciousness but also those which could bring a positive change in the world. Sustainable practices are embedded in the country's planning process and the following year will see the country recommit itself to creating a safer environment for its citizens. The urgent need at this point of time is to appoint a Minister who is an expert in environmental group of expert around him. The need of the hour is to create a mechanism which is independent, authoritative, responsive and can effectively co-operate and co-ordinate with other Ministries where environmental issues have a prominent stake. These coordinated activities must create a list of common goals which will allow minimum friction between and among ministries and their divergent goals allowing for a mechanism where common goals and hurdles are tackles together

[23] To cite/for reference Lloyd J., International Journal of Energy for a Clean Environment, 2150-363X, Accessed on 31 March 2015.

while keeping separate interests unhurt. India already has a good network of laws,and its effective implementation could bring in some well needed reforms. Policies formulated in addition to these laws must be comprehensive with a focus to bring in innovative yet effective solution to the problem of the day. There ministries must keep itself attuned to the realities of the ground. This can be done by purposefully forging relations with responsible and accredited NGO's with proven track records of sustained good work in the spheres of environmental issues. The establishment of "Rashtriya Paryavaran Salhakar Samiti" (National Environmental Advisory Committee) within the department of Environment consisting of representatives from voluntary agencies to keep the government informed about peoples' problem and emerging issues is the step in the right direction. This will ensure peoples' participation. Due to India's coalition political system, ministries are often bartered on the basis of sheer number of representation on the parliament floor. Change will only begin when the Minister and the Ministry itself is empathetic towards environmental issues and can form a core thus create greater sense of responsibility not only in the Ministry but also amongst the citizens who will deem themselves to be true stakeholders of the environment.

Promoting public participation should be made through a national program which raises the knowledge and sensitivity towards the environment. This knowledge must be made accessible not just to individual but to the community at large. National Program must create a guideline for the various pollution control boards on public consultation with special emphasis on public-government monitoring and enforcement structure. This program must also focus on industries coming out with guidelines for public participation of the community surrounding the establishment. These guidelines must revolve specifically around the specialty of the industries and how such participation could improve the project performance. Sharing local knowledge with the governmental agencies and the industry should be facilitated which will allow a greater sense og equality and protection to the local community when industrial establishment are being set up.

There must be effective use of Right to Information (RTI) Act 2005. This Act is the power tool in the hands of the common man of India. RTI has proved to be a worthy

weapon in finding answers from Governmental agencies. As the name of the Officer is registered along with the query, delay in providing answers often lead to promotional issues for the officer, thus the result of RTI in most cases is swift. As the question revolving the environment and allied issues do not fall under the exceptional clause it is pertinent that the people use this Governmental Machinery to its maximum possible potential to elicit information that could help affected people get justice. The information received from such methods must be disseminated to the total communities which could be affected from such knowledge or lack of it.

Environmental agencies should streamline their public information services by regularly putting information online and updating their data base. Along with this they must create easy and accessible public information centers with widely distributed offices. Like the RTI procedure, the minimal upkeep fees will allow for maintenance of such offices. Industries must also provide for such centers where the work done by them and there records are in easy reach of the public along with updating their websites with information. In addition to the above, industries must develop sectoral guidelines and share best practices to overcome specific knowledge gaps.

The Government Environmental Agencies should review best practices method, test them for Indian conditions and then put them up as standards for the industry. This mechanism must also update upcoming sectors into its data base and monitor their contribution to pollution. This methodology must be done regularly to keep updating with the ever progressing and new scientific advances. At the same time they must issue new economic impact assessment studies for these standards. The civil society must be given an opportunity to review these standards independently and come up with their own assessments. The Government through effective channel must allow such reports and observations to reach policy makers for further reviews. The industry too should collaborate with the Government in the making of these standards by contributing economic data to make these standards much more effective and industry friendly. Industry should also develop, in collaboration with the government a consistent framework for integrating externalities in the regulatory regime for the power sector.

6.2.Conclusion

With our population, extreme climate, vulnerable ecology, compliance ratio of monitored industries being less than 50%, and the economy resting heavily on extinguishable natural resources, sustainability is the next big challenge for the country. The new tomorrow which India hopes to see with its economic flashlights requires an intense debate about environmental viability. In this scenario the environmental agenda is immense. In a country like India where dichotomy exists in everyday life, pollution and environmental hazard chiefly emanate from "poverty related risks" and "growth related risks." Wide ranging changes from institutional reorganization to paradigm shift amongst the people and finally turning the crooked industrial approach to the environment are required at this point of time. This change will require determination, consensus, commitment, planning and effective execution of will and national programs, consultation with the public, regulated community and various wings of the government will become vital. India has risen to such national challenges before and has tremendous potential to do so now. What is required is the faith of the people as there is a serious breakdown in the trust on the government machinery and constructive dialogue.

Though the work done by the Judiciary in this regard is praiseworthy; yet a lot can still be expected. Similarly the executive whose arms are forever twisted in favour of politician, corruption and wrongful human resource execution has hampered what could have been a successful fight chartered effectively through well intended law making and sound judicial backing. It would be important to move quickly towards reaching a broad agreement with all major on the actions, and develop a medium to long term program of implementing the agreed action supported by necessary resources and clear accountability mechanisms.

Yet there is a lot to praise. NGO's have been constantly striven towards excellence and with continued governmental support rural India may soon feature prominently in environmental programs while law making and execution will begin a new journey towards effective ends

Also if we check the analysis of various conventions make it clear that it can be held hereby that some of the very strong steps taken earlier by the British in order to protect environment from Degrading and to preserve it for future generation of mankind. But some of the laws enacted by them are merely on the piece of paper and not on the practical ground. Many of the Acts enacted by them have proved to be more useful for them when compared with us. They made several laws so as to make their task easy as by that they were able to make use of the resources and degrade environment comfortably and lawfully. Some of the laws were so as to protect the resources from the native itself, so that the British can utilize them for their own needs which were to gain as much capital from India as possible.

For example the introduction of Railways in India is thought to be the major reward for the Indians by the British and there is no doubt that it is one of the very valuable gifts of the British for India. But, the British never brought rail to India with the thought of benefiting us but for their own benefit. They introduced it so that the resources available in India that they were harnessing, can easily or quickly reach their destination. They made the laws for conserving the forest and in the process marked much of the area as the property of the government so that no one could object as to the use of these forest by the British. Even if some laws were present which were helpful for the environment conservation, then they were not implemented properly by them.

The punishment prescribed under the laws were not very severe and strict and so the offender was very easily allowed to escape. Moreover, most of the time, the British themselves depleted the resources. The theories like Sovereign immunity always saved the government from being sued under public offences. The maxims like "King can do no wrong" was applied to its full extent. But to say British always thought of their benefit will be a wrong statement. The laws like IPC and CrPC were very effective. Moreover, the laws made by the British paved a way for Indians to think and implement new laws in this field itself. These laws were the one of the first lessons for the Indians to formulate new laws for the protection of environment in the modified form to save future generation of mankind from the curse pollution and environmental degradation. The Indian constitution has accorded primacy to protection of the environment, forests and

wildlife through Art. 48-A and 51A(g) but these provisions are not enough. The Indian SC and HC have dealt most of the matters relating to environmental protection by a creative interpretation of Art. 21, that is protection of life and personal liberty. The Indian courts have held that right to life also includes right to healthy environment. In getting relief of this sort, writ jurisdictions of the Indian courts were exploited by the public-spirited citizens. Therefore, taking a dispassionate view it can be safely said that the Indian constitution lacks substantive basis for environmental protection and this also account for one of the reason of the problem. Lack of sound environmental law principles in Indian environmental and forest policies and laws is a major hurdle in effective environmental governance. This is the reason that the Indian Planning Commission has recommended for a review of the laws and their revision.

However, the SC have directed the closure or relocation of industries and ordered evacuated land to be used for community needs. Sustainable Development has been held to be applicable in environmental litigations, and the precautionary and the polluter pays principle have been held to be part of the law of India. It is now for the Indian government to initiate the process of restructuring of environmental policies and laws aimed at incorporating the substantive environmental law principles. This would remove the hurdle of lack of substantive environmental law principles in the Indian law and then it would be the duty of both the enforcement agencies and the public to contribute towards environmental protection without the necessity of igniting the writ jurisdiction of the Indian courts by filing PIL. Even the state of the Environment Report 1999 states that 'economic instruments are not in vogue because the regulatory mechanism is quite weak and ineffective'.

Indian states enjoy considerable flexibility in adopting scientific standards and procedures in regulatory enforcement. There is a complete delegation of enforcement authority from the CPCB to the SPCB. But the lack of national support is one of the reason for ineffective enforcement of the pollution control regulations. Most of the CPCB and SPCBs depend on government grants for their survival, although some subsidies are available to them on a project-by-project basis. Because of inadequate funding of these pollution control bodies, their capability to enforce environmental regulations is seriously

impaired. For example, the enforcement wing of the Delhi pollution control Committee only has strength of three Senior Environmental Engineers, 25 Juniors Environmental Engineers and 12 Assistant Environmental Engineers. Given the magnitude of pollution in Delhi, such manpower falls short of what is needed for effective enforcement.

The Indian Planning Commission has documented that the pollution control bodies are not able to exercise the powers to force compliance by stopping electricity supply or water because of interference by powerful pressure groups. The position of cases filed by CPCB and SPCBs gives a very dismal picture. Conviction percentage is very poor. The Indian SC interpretation that the fundamental right to life includes right to clean and healthy environment elevates what is otherwise an ordinary legal right to that of a basic human right constitutionally protected through writ jurisdiction of the SC and the HC. Therefore, despite failure of administrative and legal arrangement in the effective protection of the environment, human right standards and procedure have advanced the cause of right to clean environment by putting administrator on the defensive and generating a positive enthusiasm to give priority to environmental issues.

The SC has been relaxing the requirement of locus standi when question of environment and human rights were brought before it. This has given to an incomparable growth of PIL in India. A feature of many PIL cases is the courts ingress into field traditionally reserved for the executive. "Prof. Baxi describes this gradual judicial takeover of the direction of administration in a particular arena from the executive as creeping jurisdiction. The case of M.C Mehta vs Union of India[24] is worth mentioning. This case dealt with the escape of oleum gas injuring many persons. In this case, the principle of absolute liability as a common law principle was formulated. While commenting on the applicability of the rule in Rylands vs. Fletcher[25], the court said:

The challenge for the court was to evolve new principles and lay down new norms, which would adequately deal with the new problems, which arise, in a highly industrialized economy. The court have creatively done it by formulating the principle of absolute

[24] AIR 1987 S.C. 1083

[25] 1868 (3) HL 330

liability adopting a no-fault liability standard. The court also formulated another principle in this case that the larger and more prosperous the enterprise, greater must be the amount of compensation payable by it. Parliament is supposed to do this churning process before enacting any legislation but they cannot do because of the heavy demand on the parliamentary time. Executive machinery more often than not take a mechanistic view of the legislation and there enforcement. The net result is that environment suffers. Judicially formulated principles often aim at helping governments and parliaments. In fact these two institutions in enacting new environmental legislations have acted upon many judicial recommendations. Judges are not mimics. When a law comes before a judge he has to invest.

Given the crises within the executive and legislature in discharging their constitutional duties, the SC's innovative methods have attempted to arrest the dysfunctional trend of other organs and enable the effective enforcement of environmental laws. However in reminding other organs of their Constitutional duties and enforcing fundamental rights of citizen, the SC has at times, crossed its boundaries and started interfering in the very basic affairs of environmental management. In resolving more than 100 environmental cases since 1980, the SC has continuously engaged itself in the management and resolution of environmental conflicts and thereby increased the country's dependence on the court for environmental protection. This dependence on the judicial institutions that has already crossed its boundaries of its responsibilities has been further complicated by the lack of monitoring of the SC's orders and the vagueness of the legislative and the executive roles regarding environmental issues.

The global environmental concern have led to the remarkable growth of International Environmental law in post Stockholm Conference period. The environmental decision of the national/state courts and International environmental law has influenced each other. The decision of the state courts which is subsidiary source under Art. 38(1) of the statute of the ICJ, may lead directly to the growth of " Customary rules of International law." Similarly, the state courts have often developed national environmental law by taking inspiration and help from the International Environmental law.

The influence of international law in general and international environmental law in particular is growing and there has been a close interaction between international environmental law and municipal law in India. It appears that the growth of Indian environmental law has been co-extensive to the growth of environmental law under international law. After the Bhopal mass disaster (December, 1984) all the three branches of the state and particularly the Indian SC, having inspired from the international environmental law, have developed environmental law in India.

The Judicial activism of the higher judiciary and particularly the Supreme Court has led to incorporation of certain international environmental principles under domestic law whose legal status is still open to question under international law. The SC in Vellore Citizens' Welfare Forum vs. Union of India[26] affirmed the principle of sustainable development, precautionary principle and polluter pays principle as 'customary international law' and made them as part of the Indian domestic laws. Justice Kuldeep Singh, who delivered the Vellore judgement applied the ratio of this case in several landmark cases and in this way successfully made the Vellore case as a landmark which, in post 1996 period became a well settled Judicial precedent under Indian environmental jurisprudence. Consequently, the international environmental law principles namely sustainable development, precautionary principle and polluter pays principle have not only been made 'part' of the Indian domestic law but have also been given 'new' meaning which is now a unique feature of the Indian environmental law. It appears that the international environmental law principle have been utilized by the Indian courts not only to 'formulate' much of the contemporary environmental jurisprudence in India but also to enrich the same. The process is still going on and it has been resulting into the progressive integration of the Indian environmental law with the international environmental law.

[26] AIR 1996 S.C. 2715