



## EVOLUTION OF GREEN LAWS AND SUSTAINABLE DEVELOPMENT IN INDIA \*

### Introduction.

*“Sustainable Development is the pathway to the future we want for all. It offers a framework to generate economic growth, achieve social justice, exercise environment stewardship and strengthen governance.”*

***Ban Ki-moon<sup>1</sup>.***

In recent years large scale urbanization, industrialisation and associated environmental alteration and its impact on biodiversity pose a threat to human existence through basic necessities, recreation and the ecological functions. It is evident that pollution from various sources particularly from industries has negative impact on environment, irreversible in nature, cause extinction of species, resulting in loss of unique genetic resources of great use. On one hand we have extremely developed states and on the other hand we have states where people cannot get access even to minimum necessities of life. Therefore for those deprived of even basic minimum necessities of life, right to development has assumed great significance in recent times. However the process of development undertaken by most of the states involves hyper-consumption of energy and natural resources leading to environmental degradation.<sup>2</sup>

This is a transition period for many developing economies like India, so there is a strong need to strike a balance between industrial development and physical environment so as to reduce the intensity of pollution. Therefore industrial development cannot be undertaken in total disregard of environmental protection. Unfortunately in developing countries many industries dependent upon

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<sup>1</sup> Ban Ki-moon is a South Korean statesman and politician who is the eighth and current Secretary-General of the United Nations.

<sup>2</sup> Arvind Agarwal, Globalisation, Development and Environment degradation: A Human Rights Perspective, 86-100, (Bharat Law Publications, New Delhi, edn., 1st, 2007).

environmental resources have come up and it has threatened the natural resource base. What is needed is to pursue industrial development with a sense of responsibility. It is possible through sustainable development.<sup>3</sup>

Under Indian perspective the definition of 'environment' and, therefore, environmental law has always been rather broad. Even today, not only does it include the concept of sustainable development but also air and water pollution, preservation of our forests and wildlife, noise pollution and even the protection of our ancient monuments, which are undergoing severe stress due to urbanization and consequent environmental pollution. Community resources such as tanks, ponds, etc. have now been articulated by the Supreme Court for inclusion in the concept of environment, and why should it not be so, considering they all affect the quality and enjoyment of our life. Awareness about the environment and, particularly matters relating to pollution, have been reborn, so to say, such that it is difficult to imagine that our modern environmental jurisprudence is a little over three decades old. In these decades, however, the march of the law has been so rapid and sure which is reflected through this paper.

This paper focuses on the concept of sustainable development, its importance especially in a developing economy. Further, it deals with various Legislations which have been enacted to protect environment and regulate development process on sustainable line. The Indian judiciary has played a very crucial role in building the legislative policy relating to environment in this country, the environmental policies and laws have expanded to a great extent due to various judicial pronouncements. Some of the important judgements have been dealt here, which shows how judiciary has tried to expand the interpretation of Constitutional provisions relating to right to life to include right to safe and healthy environment.

### **Concept of Sustainable Development and its Key Concepts.**

The concept of sustainable development represents the core principle of international endeavour towards integration between environment and development. The concept of sustainable development was contained in the Stockholm Declaration of 1972<sup>4</sup>. The concept was further popularised by the Brundtland report. Its importance was reiterated again in the document *Caring for the Earth*. The Brundtland report defines sustainable development as:

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<sup>3</sup> Shailendra Singh, Puja Jain and Abhay Kumar, *Impact of Industrialization and Environmental Pollution*, The Indian Forester, Vol.135, Issue 9 September, 2009, available at: [www.indianforester.co.in/index.php/indianforester/article/view/481](http://www.indianforester.co.in/index.php/indianforester/article/view/481) (visited on 20th February, 2017).

<sup>4</sup> See Declaration of the United Nations Conference on the Human Environment, available at: <http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503> (visited on 20<sup>th</sup> February, 2017).

*“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs..... Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life”.*

This definition emphasises two core principles: *firstly*, the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given, and, *secondly*, the idea of limitations imposed on the environment’s ability to meet present and future needs. The document *Caring for the Earth* defines the term as *“improving the quality of human life while living within the carrying capacity of supporting ecosystems”*.<sup>5</sup>

The Brundtland report transformed sustainable development from an ecologically focussed notion to a human-centred approach by establishing a link between social, economic and environmental issues. The environment was recognised as a fundamental element in any growth equation, rather than an obstacle to growth. Thus, sustainable development was identified with increasing earth’s support to human needs, by promoting living within the limits of nature. Earth’s plants, animals and micro-organisms interacting with one another and with physical environment in ecosystems form the foundations of sustainable development. The continuing loss of bio-diversity reflects in true measure the imbalance between human needs and wants and nature’s capacity.

Thus, sustainable development carries various meaning according to the definition given to it. An economic definition places greater emphasis on the use of ‘renewable natural resources in a manner that does not eliminate or otherwise diminish their usefulness for future generations’. Alternatively, in a welfare State perspective, sustainable development has been described as development that improves health care, education and social well-being. A technology based interpretation is that sustainable development includes a rapid transformation of the technological base of industrial civilization with the use of new technologies that should be cleaner, more efficient and less natural resources intensive. Lastly, an ecological definition of the concept is that it involves ‘improving the quality of human life while living within the carrying capacity of supporting ecosystems’.<sup>6</sup>

Philippe Sands has summarised various components of the principle of sustainable development as under:

- I. The need to take into consideration the needs of present and future generations (the principle of intergenerational equity).

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<sup>5</sup>G.S. Tiwari, “Sustainable Development As A Socio-Economic Growth Strategy” 52 JILI 435 (2010).

<sup>6</sup> Ismail Serageldin, “Making Development Sustainable” 7 Finance and Development, IMF and World Bank 30 (1993.)

- II. The acceptance, on environmental protection grounds, of limits placed upon the use and exploitation of natural resources (the principle of sustainable use).
- III. The role of equitable principles in the allocation of rights and obligations between various states (the principle of equitable use or intergenerational equity).
- IV. The need to integrate all aspects of environment and development (the principle of integration).<sup>7</sup>

Thus, in a nutshell, we can say that, the concept of sustainable development means meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better living. Since poverty and inequality are endemic in the world, it will always be prone to ecological and other crisis. Therefore it requires that societies must meet human needs, both by increasing productive potential and by ensuring equitable opportunities to all.

### **Sustainable Development: An Indian Perspective.**

Developing priorities in developing countries like India are inescapable because welfare and happiness of all are democratic imperatives. India is a constitutionally ordained society promising an egalitarian social order signifying equality, liberty, socio-economic justice and dignity to all. The mandate of Article 38 and 39(b) and(c) cannot be fulfilled without fixing and implementing certain socio-economic goals and affecting structural change in the society. The imperative need is undoubtedly rapid socio-economic transformation to eradicate the problems of poverty, in equality access and distribution of natural resources and to promote basic indices of human development, minimum standard of welfare and human rights. But the goals of economic and social development must be infused with sustainability; in fact, sustainability embraces socio-economic development.

Thus, whereas industrialisation and technological advancement is necessary for economic development and is imperative for a developing country like India the process of modernisation is destroying the nature in that it fosters search for cheap biomass based raw materials and cheap opportunities for waste disposal. Modernisation is also steadily transforming the nature. Since commodification of nature gains priority in the planning process because of predominantly economic considerations, in physical terms, the tendency is to reduce the diversity in nature and transform it into a nature that is full of high yielding mono-cultures. The thrust on maximum profit and production overlooks long-term sustainability. Pressures of population on land for competing uses, such as agriculture, irrigation and power projects, industry, roads, etc. are contributing causes of the shrinking forest cover.

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<sup>7</sup> Philippe Sands, *PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW*, 198 (Cambridge University Press, London, 1<sup>st</sup> edn., 1995).

In the light of the above facts and circumstances, environment degradation can be stopped if we compromise with development of industries and infrastructure, but this is impossible since there is no alternative to industrial development for non-development itself can be a curse and lead us to abysmal poverty. The only solution to this problem is that national development proceeds along rational sustainable lines. We have to ensure that development projects and programmes do not lead to depletion in our natural resources which imply that industrial development and environmental concerns have to be harmonised by carrying out environmental impact assessment of development projects and programmes. The legislature, the executive and the judiciary of this country has played and is playing a pivotal role in striking a balance between development and conservation and preservation of environment. Many Acts have been passed by the Legislature to ensure sustainable development. In this context judicial activism has played a very crucial role in protecting the environment by expanding the scope of right to life under Article 21 of the Constitution to include within it right to clean and wholesome environment.<sup>8</sup>

### **Development and Expansion of Environmental Laws in India**

The United Nations Conference on Human Environment marked a milestone in the evolution of environmental policy making in India. The Indian Prime Minister, Mrs. Indira Gandhi, was the only head of Government to address the Conference in Stockholm other than the Swedish Prime Minister<sup>9</sup>. The Conference proclaimed that underdevelopment in developing countries was the source of environmental problems and laid out 26 principles calling upon “*Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity*”<sup>10</sup>. The Government of India embraced the declaratory principles of the UN Conference whole-heartedly and refashioned environmental policy through a flurry of legislative and administrative activity.

### **Legislations relating to Wildlife and Forest**

**The Wildlife (Protection) Act** passed by Parliament in September, 1972<sup>11</sup>, was the first in a series of such legislations. The Act was notable on the point that Parliament exercised its over-riding powers under the Constitution to legislate on a subject assigned to the States. The Act continues

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<sup>8</sup> Supra note 3, 444-445.

<sup>9</sup> See United Nations Conference on the Human Environment, *available at*: [http://en.wikipedia.org/wiki/United\\_Nations\\_Conference\\_on\\_the\\_Human\\_Environment](http://en.wikipedia.org/wiki/United_Nations_Conference_on_the_Human_Environment) (*visited on 19<sup>th</sup> February, 2017*).

<sup>10</sup> Ibid.

<sup>11</sup> See The Wildlife Protection Act, 1972, *available at*: <http://indiacode.nic.in/fullact1.asp?tfnm=197253> (*visited on: 19<sup>th</sup> February, 2017*).

to form the cornerstone for wildlife conservation efforts. Hunting or destruction of species described in the Schedule to the Act was outlawed. A licensing procedure for game hunting of permitted species was set out. Mechanism for declaration of sanctuaries and National Parks for protection of wildlife living in the designated areas was specified with elaborate machinery for enforcement. The first census of the tiger population was conducted in 1972. The tiger population was estimated at an alarmingly low number of 1827. The Wildlife (Protection) Act notified in 1972 had defined the tiger as a protected wildlife species. The data on tiger population estimates raised alarm bells and a tiger task force was constituted. Project Tiger was born out of the recommendations of the Task Force<sup>12</sup>. Nine tiger reserves were established to protect the natural habitat of the tiger. Thus the age of species conservation struck root in India. The **National Forest Policy of 1988** stressed on environmental stability and maintenance of ecological balance. It differed from the earlier policies by placing economic benefits of forests and subordinate to its environmental value. The customary rights of local populace to minor forest produce were recognised. The policy protected the first claim of local communities to fuel wood, fodder and other produce of forests. It promoted the organisation of local inhabitants of forests for protection, development and management of forests. The Policy of 1988 brought in a community approach to forestry rights.<sup>13</sup>

### **Legislation to Control Water Pollution**

The next in the succession of legislative action was the enactment of the **Water (Prevention and Control of Pollution) Act in 1974**<sup>14</sup>. This legislation was enacted by the appropriation of States' law-making powers on the subject of water by Parliament. Pollution of water bodies and discharge of untreated industrial effluent was sought to be prevented through the law. The Act was comprehensive in its coverage of water bodies to include rivers, streams, sea, tidal water, wells and inland water bodies whether natural or artificial. The Central Pollution Control Board was created along with State Boards for granting permissions and enforcement. No industry, operation or process and no treatment and disposal of effluent or sewage could be established without obtaining a consent order from the concerned Board. The Board was empowered to set standards for desirable levels of discharge and specify conditions for release of effluents. The Board could take recourse to emergency powers where, due to an accident or unforeseen act or for any other

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<sup>12</sup> Wildlife Conservation Strategies and Management in India: An Overview, *available at*: [http://www.arlis.org/docs/vol1/69415913/hundal\\_edited\\_final\\_march\\_10.pdf](http://www.arlis.org/docs/vol1/69415913/hundal_edited_final_march_10.pdf) (visited on 18<sup>th</sup> February, 2017).

<sup>13</sup> See Community Participation and Forest Policies in India: An Overview, *available at*: <http://www.environmentportal.in/files/forest%20policies.pdf> (visited on 18<sup>th</sup> February 2017).

<sup>14</sup> See The Water (Prevention and Control of Pollution) Act, 1974, *available at*: <http://indiacode.nic.in/fullact1.asp?tfnm=197406> (visited on 19<sup>th</sup> February, 2017).

reason, noxious substances were found to have been released into water bodies. Preventive powers were also available in case of apprehension of pollution<sup>15</sup>.

### **Constitutional Amendments Relating to Environment**

The Constitution was amended through the **42nd Amendment in 1976**<sup>16</sup> introducing **Article 48A** in the Directive Principles of State Policy, stating that the protection and improvement of the environment and safeguarding forests and wildlife would be a guiding principle fundamental in the governance of the country. Although the Constitution specifically forbade the enforceability of the Directive Principles by any court, Article 48A was read into the right to life guaranteed under **Article 21** as a fundamental right of every citizen by the Courts, laying the ground for judicial activism in environment matters in later years. The Amendment transferred the subject of “forests” and the “protection of wild animals and birds” from the legislative jurisdiction of State Legislatures to the Concurrent List, granting Parliament concurrent powers to enact laws on these subjects. The 42nd Amendment also incorporated Article 51A in the chapter on Fundamental Duties, requiring every citizen to protect and improve the natural environment. The 42nd Amendment effectively shifted the locus of administrative action towards the Union, making the States subordinate to the Union in the field of environment conservation.

### **Social Activism leading to Legislative Actions**

The first truly people-led environmental conservation movement, Chipko (literally “hugging” in Hindi), came to attention in 1973 when a group of women in Mandal village, in the hilly tracts of Northern India, embraced trees to prevent loggers from cutting them. In 1974, an especially notable confrontation occurred in Reni, where a women’s group placed themselves between the trees and an army of lumberjacks, singing ballads of tree protection and environmental conservation<sup>17</sup>. The non-violent method adopted by village women caught the imagination of people across the country and outside. Over the decade, several such confrontations received attention, spurring people’s involvement in preservation of the environment. The return of the government led by Mrs Indira Gandhi in the general elections of 1979 brought the environment back into focus<sup>18</sup>. Inspired by the Chipko movement, Mrs Gandhi constituted a committee in January 1980, headed by Narayan Dutt Tiwari, who came from the same hilly tracts and who had

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<sup>15</sup> Neelima Rajvaidya and Dilip Kumar Markandey, *Environmental Pollution Control*, 27-30 (A.P.H Publishing Corporation, 1<sup>st</sup> edn., 2008).

<sup>16</sup> See 42<sup>nd</sup> Amendment, 1976, available at: <http://indiacode.nic.in/coiweb/amend/amend42.htm> (visited on 19<sup>th</sup> February, 2017).

<sup>17</sup> See THE CHIPKO ENVIRONMENT CONSERATION OVEMENT IN INDIA, available at: <http://www.rareplanet.org/sites/rareplanet.org/files/Singhal%20of%20Social%20Movements%204-7-08.pdf> (visited on 19<sup>th</sup> February 2017).

<sup>18</sup> Saligram Bhat, *Environment Protection and Sustainable Development*, 67-68 (A.P.H Publishing Corporation, New Delhi, 1<sup>st</sup> edn., 2008).

served as the Chief Minister of Uttar Pradesh, to review existing environmental laws and recommend suitable administrative machinery for environmental protection. The Tiwari Committee recommended the creation of a Department of Environment in the Union Government and a relook at some of the existing laws. Later that year, Parliament passed **The Forest (Conservation) Act, 1980**<sup>19</sup> tightening the control of the Central Government over reserved forests by expressly prohibiting the States from de-reservation of notified reserved forests without the prior approval of the Central Government. The Act passed after the constitutional amendment in 1976, transferring the subject of forests from the State List in the 7th Schedule to the Concurrent List, effectively limited the power of the States over reserved forests<sup>20</sup>.

### **Legislation on Air Pollution**

**The Air (Prevention and Control of Pollution) Act, 1981**, was the next piece of legislation to emerge. The Air Act referred to the agenda of the UN Conference in Stockholm in its preamble and expressed the necessity to implement the decisions taken at the Conference “in so far as they relate to the preservation of the quality of air and control of air pollution”. The Act defined air pollutant to mean any solid, liquid or gaseous substance, including noise present in concentrations sufficient to be injurious to human health – as wide a definition as could be required to deal with any eventuality<sup>21</sup>. The Pollution Control Boards were vested with the same powers under the Air Act for prevention, control and enforcement of mitigation measures for air pollution as was rendered to them under the Water Act in relation to water pollution.

The phase of legislative hyperactivity but administrative incapacity was woefully exposed by the greatest industrial disaster to confront the world in recent times - the Bhopal Gas tragedy.

### **Bhopal Gas Tragedy- Leading to Flurry of Environmental Legislations**

In the early hours of December 3, 1984, poisonous methyl isocyanides gas from the Bhopal plant of Union Carbide India Limited (UCIL) was released into the atmosphere. Thousands of people residing in the vicinity of the plant were caught unawares. No alarm was sounded and by the time morning arose, the effects of the gas release became visible. Over the next few days, the death count arose sharply reaching 4000. It was estimated that over 5,00,000 people had been exposed to the gas with the health of over 35,000 people being affected in the medium and long-term<sup>22</sup>. The

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<sup>19</sup> See The Forest (Conservation) Act, 1980, available at: <http://indiacode.nic.in/fullact1.asp?tfnm=198069> (visited on: 19<sup>th</sup> February, 2017).

<sup>20</sup> See ,Law and the Constitution: Eviction of Forest Communities, available at: <http://www.ielrc.org/content/f0401.html> (visited on 19<sup>th</sup> February, 2017).

<sup>21</sup> See The Air (Prevention and Control of Pollution) Act, 1981, available at: <http://envfor.nic.in/legis/air/air1.html> (visited on 19<sup>th</sup> February, 2017).

<sup>22</sup> See Case Study of the Bhopal Incident, Environmental Toxicology and Human Health, available at:

incident completely changed the course of public response to environmental issues. The public clamour from the Bhopal Gas tragedy forced policy action from Government.

**The Environment (Protection) Act, 1986<sup>23</sup>**, was passed by Parliament with extraordinary rapidity with the time duration between the introduction of the Bill in Parliament to its passage by both Houses of Parliament and its assent by the President spanning just 16 days. This Act invoked the provisions of the Constitution, enabling Parliament to legislate for implementing a decision taken at an international conference with reference to the deliberations at the UN Conference in Stockholm, thereby resolving the intricate issue of legislative jurisdiction. The statement of objects and reasons of the Act expressed concern about “*decline in environmental quality, increasing pollution, loss of vegetative cover and biological diversity, excessive concentration of harmful chemicals in ambient atmosphere, growing risks of environmental accidents and threats of life systems*”. The Act defined environment comprehensively to include “water, air and land and the inter-relationship which exists along and between water, air, land and human beings, other living creatures, plants, micro-organisms and property.” The Environment (Protection) Act gave extensive powers to the Central Government, assuming to it the power to set environmental standards, granting environmental clearances for all kinds of industries and activities, laying down safeguards for prevention of accidents and notifying enforcement authorities. The States’ role in environment policy was greatly diminished, though the State Pollution Control Boards continued to remain the notified enforcement authorities by virtue of subordinate legislation under the Act. The Environment (Protection) Act, along with the Water Act and the Air Act, constituted the triad of laws that regulated environmental pollution and abatement measures. Two other legislations emerged from the ashes of the Bhopal Gas tragedy – the **Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985<sup>24</sup>**, and the **Public Liability Insurance Act, 1991<sup>25</sup>**. The first legislation empowered the Central Government as the sole representative of all victims in all legal matters with the Union Carbide on compensation to victims. The compensation claims were first filed in the U.S Federal Court which ruled that India and not U.S was the appropriate forum for pursuit of compensation litigation. In May 1986, Judge Keenan directed Union Carbide to offer an interim relief of \$5-10 million as “a matter of fundamental human decency”. The Bhopal District Court on December 17, 1987 awarded an interim compensation of rupees 3.5 billion. On appeal, the Madhya Pradesh High Court reduced the interim compensation to rupees 2.5 billion. The Supreme Court gave a “full and final

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<http://www.eolss.net/sample-chapters/c09/e4-12-02-04.pdf> (visited on 20th February, 2017).

<sup>23</sup> See The Environment (Protection) Act, 1986, available at:

<http://envfor.nic.in/legis/env/env1.html> (visited on 20<sup>th</sup> February, 2017).

<sup>24</sup> See The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, available at:

<http://indiacode.nic.in/fullact1.asp?tfnm=198521> (visited on 20<sup>th</sup> February, 2017).

<sup>25</sup> See The Public Liability Insurance Act, 1991, available on:

<http://indiacode.nic.in/fullact1.asp?tfnm=199106> (visited on 20<sup>th</sup> February 2017).

compensation” of U.S \$470 million (rupees 705 million at the prevailing exchange rates) of all claims, rights and liabilities as “just, equitable and reasonable settlement”. Learning from the experience of continuously stalling release of immediate compensatory relief to victims of a disaster through litigation, the **Public Liability Insurance Act, 1991**<sup>26</sup> was enacted with the objective “to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to victims”. The liability was ‘no fault’, not requiring negligence or wrongful action to be proved and did not indemnify the installation from punitive claims for damages.

### **Role of Judiciary in Expanding the Horizons of Environmental Laws**

The development of environmental laws got further accelerated through Public Interest Litigation. The instrument of PIL became the tool for judicial activism in the environmental field. Although there are plethora of cases dealing with environment, some of them which have resulted in expansion of environmental laws have been produced in this paper.

The Bhopal Gas tragedy had shocked the nation bringing alive the potential threat to life due to unsafe manufacturing practices. Soon after, there was an incident of oleum gas leakage from an industry in the national capital, Delhi, in which amongst others, a practising advocate died. This was brought to the Supreme Court in a PIL by M.C. Mehta, an advocate and a public-spirited citizen. In **M.C.Mehta v. Union of India**<sup>27</sup>, the Supreme Court considered the damage being done to the environment and the threat to life and the health of the people. The Court brought forth the doctrine of strict and absolute liability and refused the claims by the petitioner of ‘no fault’ and ‘reasonable care’ to escape compensatory liability.

In **Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.**<sup>28</sup>, the Supreme Court directed the closure of all lime-stone quarries in the Doon Valley. The Court observed that lime-stone quarries and excavation in the area had adversely affected water springs and the ecology of the region. In another PIL, **M.C Mehta v. Union of India**<sup>29</sup>, the issue before the Supreme Court was Ganga water pollution caused by trade effluents discharged by tanneries into the river in Kanpur. The Supreme Court in **Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.**<sup>30</sup> stated that every citizen has a fundamental right to enjoy a healthy quality of life.

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<sup>26</sup> See Public Liability Insurance Act, 1991, available at: <http://envfor.nic.in/legis/public/public1.html> (visited on 20th February, 2017).

<sup>27</sup> AIR 1987 SC 1086.

<sup>28</sup> AIR 1985 SC 652

<sup>29</sup> AIR 1988 1 SCC 417.

<sup>30</sup> AIR 1990 SC 2060.

In **Subhash Kumar v. State of Bihar**<sup>31</sup>, the Court observed that under Article 21 of the Constitution, people have the right to clean water and pure air for full enjoyment of life. If anything endangers or impairs that quality of life in violation or derogation of laws, a citizen has the right to take recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In **Vellore Citizens Welfare Forum v. Union of India**<sup>32</sup>, the Supreme Court built the 'precautionary' principle and 'polluter pays' principle into environmental law. Articles 48A and 51A(g) introduced by the 42nd Amendment were read as part of the constitutional mandate imposed upon the State to protect and improve the environment.

This was further articulated in the case of **M.C.Mehta v. Kamal Nath**<sup>33</sup> where the Court was of the opinion that Articles 48A and 51A (g) have to be considered in the light of Article 21 of the Constitution on the right to life. The Court pronounced that: *“any disturbance of the basic environment elements, namely air, water and soil necessary for life, that could be hazardous to life, would result in abridgement of the right to life and a Court could award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance.”* This was a landmark judgment in the course of evolution of environmental policy and law.

### **Conclusion and Suggestions.**

The UN Conference on Human Environment in 1972 marked a significant milestone that changed the course of environmental policy forever. The presence and participation of the Prime Minister of India in the Conference deliberations brought an immediate response by way of Government's focus on conservation initiatives. The period from 1972 to 1980 saw a large number of legislations being enacted, aimed at forest conservation, protection of wildlife and a framework for abatement of water pollution. These legislations were passed by Parliament exercising its powers under the Constitution to legislate a common framework for two or more States on subject matters assigned to States. New organisations, the Pollution Control Boards and Wildlife Wardens were established in the States and invested with legal powers. The 42nd Amendment to the Constitution in 1976 permanently shifted the locus of environmental policy to the Central Government. After 1976, the elected State Governments were left with little say in policy formulation on environmental matters.

The Bhopal Gas Leak Disaster was a defining moment in India's environmental history. The inadequacy of the governance structure in prevention of the disaster, the inability of legal and administrative processes to deliver adequate compensation to the affected people and stirring of

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<sup>31</sup> AIR 1991 SC 420.

<sup>32</sup> AIR 1996 SC 2715.

<sup>33</sup> AIR 1997 (1) SCC 388.

public consciousness about the threats posed by environmental negligence, came together to reshape environmental policy. A chemical leak incident in the national capital shortly after the Bhopal disaster and the death of a practising advocate in the incident became the trigger for judicial involvement in environmental matters. The instrument of the public interest litigation had been discovered by the judiciary to deliver basic civil rights emerging from constitutional provisions in the post-Emergency era. PIL became an important tool for evolution of environmental policy, prodding the Government into action. Judicial dictum laid down the three guiding principles for judging environmental issues – ‘polluter pays’, ‘precautionary principle’ and ‘sustainable development’. However, it is suggested that environmental considerations have to be integrated with development priorities to assure a sustainable present and future. We have to understand that sustainable development is predominantly a growth strategy compatible with ecological stability and consistent with socio-economic justice.

