

Environmental Governance and Sustainable Development in India: A Critical Legal Study

SUMMARY of THESIS

SUBMITTED TO
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY



FOR THE AWARD OF THE DEGREE OF
Doctor of Philosophy
IN
LAW

Submitted by

Anuj Kumar

Enrollment No. 418/14

Under the Supervision of

Prof. (Dr.) Sanjeev Kumar Chadha

Head

DEPARTMENT OF LAW
SCHOOL OF LEGAL STUDIES
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
(A Central University)
VIDYA VIHAR, RAEBARELI ROAD
LUCKNOW-226025, UP, INDIA.

2023

SUMMARY

In 21st century, to protect environment, relative precautions, plans for development and preservation is not enough. One must search for expanded view, i.e. improvement of environment and remediation of damaged environment is also a part of sustainable development. This principle of doctrine of sustainable development must be enforced through law, and then only one can save not only human being, but the whole planet from the extinction. *Vellore Citizen's Welfare Forum v. Union of India* (1996) 5 SCC the Supreme Court observed that "Sustainable development as a balancing concept, between ecology and development, has been accepted as part of the customary international law though its salient features have yet to be finalized by the International Law Jurists".

Environmental governance is basically a combination of efforts including the concept like sustainable development, environmental sustainability and environmental management. Governance and management are not synonymous to one another. Management refers to operational decision to achieve specific outcomes, whereas governance is basically the process of decision making and their implementation and larger association to the interaction between the government, private sector companies involved in the market and the civil society. But of course, governance and management are not mutually inclusive. Governance is the cooperative efforts consisting of formal variables and these variables are linked together and coordinate property, it can give results at unprecedented levels. Governance is defined as the dynamic linking interaction of people, structure, process and traditions that support the exercise of legitimate authority in providing sound leadership, direction, oversight and control of an entity in order to ensure that its purpose is met and that its affairs, use of resources, and result of activities are properly accounted for. Environmental governance is basically a combination of efforts including the concept like sustainable development, environmental sustainability and environmental management.

The world is facing a global environmental crisis in addition to the crisis of security and development. The crisis of today is rooted in our attitude of domination and exploitation of nature, based on the idea of progress. Every anthropogenic activity has its impact on the environment Human activities are causing increasing impact on the integrity of the ecosystem which provides essential resources and services for the

well-being of the mankind. Man started attempting to become wealthy, materially, by exploiting natural resources beyond known limits. In the materialistic global economy there is no place for social justice and welfare. Scientific and technological advancement required for developing economy has created so many environmental, economic, social and political problems. They have brought immense benefit to the living being but also brought new dangers, largely through the chemical reactions and wastes. This can be seen from a report that the current patterns of energy production and use will not lead to a 'sustainable world'. Thus it is now recognized that environment should be assuredly protected for mankind to enjoy a meaningful life. This is possible only if the economic growth and progress are based on the concept of 'Sustainable Development'. This concept has encouraged probing the researcher into the problems and perspectives of environment in human life.

The possibilities for environmental governance depend on institutional structures and the economic resources available for ensuring governance. In some cases centralised governance structures are inefficient. In other cases, decentralised structures turn out to be inadequate. In India decentralisation of power to village level has not improved the efficiency of rural development. Decentralisation of power, it is said, by facilitating the empowerment of people in local communities can contribute to more sustainable development. On the other hand, in India, the delegation of power to the states in some cases has resulted in the destruction of the environment. Thus centralised and decentralised governance structure has both merits and demerits. Preservation of the environment which is essential for sustainable development cannot be achieved unless the pressure on forest and natural resources is reduced.

On the other hand, in India, pristine forests are being degraded because of lack of resources of the weak central government. Environmental governance also depends on appropriate institutions. Corruption, bureaucratic inefficiency, inefficient and corrupt law enforcement agencies undermine the capacity of institutions to facilitate good governance for sustainable development. Corruption and rent seeking activities can grow even in an economy which has tried to apply outward oriented economic policies if an appropriate institutional environment does not exist. A state which assumes predatory or semi-predatory status can systematically incapacitate all institutions for good governance and effective implementation of policies. Thus formulation of policies cannot ensure effective implementation in the absence of good

governance which in turn cannot be achieved in the absence of appropriate institutions. Hence, sustainable development requires good policies and effective provision of institutions conducive to environmental governance.

The main obstacle to the integration of intermediate levels in the process of territorial environmental governance development is often the dominance of developing mentalist inertia in state political mindset. The question of the environment has not been effectively integrated in national development planning and programmes. Instead, the most common is that environmental protection curbs economic and social development, an idea encouraged by the frenzy for exporting raw material extracted using destructive methods that consume resources and fail to generate any added value. In the face of this attitude, citizens, encouraged by certain civil society actors (and sometimes even their own states are developing empowerment strategies that may help to ease poverty and provide an economic boost through sustainable development.

Sustainable development is a vision and a way of thinking and acting so that we can secure the resources and environment for our future generation. It will not be brought about by policies only it must be taken up by society at large as a principle guiding the many choices each citizen makes every day, as well as the big political and economic decisions that affect many. It is clear that environmental degradation tends to impose the largest costs on those generations that are yet to be born. Future generations are disadvantaged with regards to present generations because they can inherit an impoverished quality of life, share a condition of structural weakness in having no voice and representation among the present generation and so their interests are often neglected in present decisions and planning while it is very much needful that we think about our generation. We can only improve sustainable development when it will put an emphasis on involving citizens and stakeholders. Ultimately, the vision will become reality only if everybody contributes to a world where economic freedom, social justice and environmental protection go hand in hand, making our own and future generations better off than now.

The whole thesis “**Environmental Governance and Sustainable Development: A Critical Legal Study**” is divided into seven chapters which are briefly introduced as follows:

Chapter-1 deals with the introductory part of the thesis. This chapter gives the introduction of the issue of environmental governance and environmental sustainability. This chapter has also given the objectives of the present research, research question, hypothesis and review of literature and utility of research.

In the chapter-2 the researcher has deals with the meaning and definition of Environmental Governance and Sustainable Development as given in International Law and National Law and provides a historical overview of the evolution of the definition of sustainable development in international law and national law. The Environment (Protection) Act, 1986 was enacted under Article 253 of the constitution of India in the wake of Bhopal gas tragedy. The Preamble to the Act sets out that the purpose of the Act is to implement the decision made at the United Nations conference on Human Environment held at Stockholm in June 1972, in which India had actively participated. The Environment (Protection) Act seeks to supplement the existing laws on control of pollution by enacting a general legislation for environmental protection and to fill the gaps in regulations relating to major environmental hazards. Unlike the water (Prevention and Control) Act of 1974, and the Air (Prevention and control of Pollution) 1908, which entrust the task of controlling of pollution on genies created by the statutes, namely state and Central pollution control board, the environmental protection act as provides wide powers to the Central Government, although the Central and State pollution control boards are subject to the control of government. The term Environment owes its genesis to a French word *environs* which means encircle. It encompasses within its ambit land, water flora fauna living creatures, forest and everything above the earth. Therefore, for the purpose of our discussion, 'environment' can be understood to refers to all components surrounding man, which consist of two important major parts, i.e. physical and natural. Physical environment constitutes lithosphere, i.e land (the surface layer of the ground), hydrosphere, i.e. water and atmosphere, i.e. air. The natural environment constitutes living organism including human beings, flora and fauna, etc. while the physical environment on the earth is essential for the existence of life in various forms, the natural environment provides food and other materials for the sustenance of man on the earth. Man cannot survive on the earth without plant and animal life.

Chapter-3 describes various International Environmental Governance and Laws in respect of Sustainable Development. A number of preliminary problems arise

in any attempt to identify International environmental law. First some scholars have avoided the use of the term arguing that there is no distinct body of international environmental law with its own sources and methods of law-making deriving from principles peculiar or exclusive to environmental concerns. Rather, they stress that relevant law as does exist originates from the application of general rules and principles of classical or general international law and its sources. While it is unquestionably correct that international environmental law is merely part of international law as a whole, rather than some separate, self contained discipline, and no serious lawyer would suggest otherwise, the problem with overemphasizing the role of general international law, as one writer points out, has been that the traditional legal order of the environment is essentially a laissez-faire system oriented towards the unfettered freedom of states. In this chapter the expression international environmental law is thus used simply as a convenient way to encompass the entire corpus of international law, public and private, relevant to environmental issues or problems, in the same way that use of the terms Law of the sea, human right law is widely accepted. The role played by international law in protecting the environment is not fundamentally different from, or any less varied than, domestic environment law. Nor, in many cases, is it necessarily any less sophisticated, indeed rather the reverse is true in the case of some countries. Firstly, in its constitutional role international law provides mechanisms and procedure for negotiating the necessary rules and standards, settling disputes, and supervising implementation and compliance with treaties and customary rules.

In chapter-4 the researcher has discussed about Environmental Governance and Sustainable Development in the National Prospective. It deals with National Laws, Constitutional provisions policies, and Schemes in respect of Sustainable Development. The environmental law in India contains various measures to protect and improve the environment. There is a Constitutional pointer in the Constitution of India directed to the states as well as citizens of India with respect to protection and improvement of the environment as well as safeguarding forests and wildlife of the country. The Indian judiciary has demonstrated exemplary activism and treated right to healthy environment as a part of fundamental rights to life guaranteed under Article 21 of the constitution. Parliament of India enacted the Water (Prevention and Control of Pollution) Act, 1974 to prevent, control and abate the pollution of streams which includes rivers, water course (whether flowing or for the time being dry), inland

water. In 1981, parliament enacted the Air (Prevention and Control of Pollution) Act for prevention, control and abatement of air pollution. The violations of the environmental legislation are treated as offences and are vested with penal consequences. The environment legislation provides for stringent punitive mechanism which evidence and demonstrate the deterrent effect of the legislations.

In chapter-5 the researcher has discussed the Role of Judiciary in the context of is the nature of Environmental Governance and Sustainable Development rights, etc. Above point is described with leading cases decided by High Court and Supreme Court. This chapter deals with Environmental Governance for Sustainable Development recognized and legalized, by judiciary. This chapter is a significant part of the thesis containing latest judicial developments which fulfill a legal loophole. The Indian judiciary has declared that even in the absence of legislative mandate to contain and curb noise pollution, the courts are not powerless to deals with the problem of noise pollution. The courts, in exercise of their constitutional duty to protect and safeguard fundamental rights, can issue necessary orders to control noise pollution. The courts need not wait for a legislative mandate to be in place before judicial initiative is taken.

One of the most important features of judicial efforts to protect and preserve the forest and ecology has been the judicial clarification of the role of the Central government vis-à-vis State governments. The court has clarified that after the commencement of the Forest conservation Act, it is the Central government that is overall in charge of the problem of the protection of forests and ecology. The Supreme Court has also clarified that although the act confers overriding power on the Central government in matter of forest protection, it was in fact and reality a duty and not a power that has been conferred on the central government. One more redeeming feature of the judicial intervention has been its expansive interpretation of the expression “forest” and “forestland” so as to cover all kinds of forests notwithstanding their designation and ownership criteria. This kind of expansive interpretation of the words “forest” and forestland” is necessary to effectively regulate all forest produce-based industries operating within the vicinities of forests in all parts of the country. The judicial activism in the area of protection of forests and ecology has been prompted more than in any other area of environmental protection by the neglect, indifference and inaction on the part of the concerned administrative authorities. To infuse in them a sense of responsibility, it may be necessary and appropriate for the

Supreme Court to use its contempt power to shake them from their bureaucratic slumber.

Chapter-6 deals with various Judgments, orders, directions and role of National Green Tribunal. Recognising that most environment cases involve multi-disciplinary issues which are better addressed in a specialised forum, the Tribunal was setup as per recommendations of the Supreme Court, Law Commission and India's International law obligations to develop national laws on Environment and implement them effectively. The Tribunal is tasked with providing effective and expeditious remedy in cases relating to environmental protection, conservation of forests and other natural resources and enforcement of any legal right relating to environment. The Tribunal's orders are binding and it has power to grant relief in the form of compensation and damages to affected persons.

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially, the National Green Tribunal is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of the Tribunal.

Chapter-7 deals with "Conclusion and Suggestion" In this chapter researcher has made concluding remark on this research work which is title as Environmental Governance and Sustainable Development in India: A Critical legal study. A part

from this, the chapter deals with the significance of the finding in relation to the research objective and final result of hypothesis. The researcher has put forward some suitable suggestions and recommendations in this chapter.

In conclusion, above chapter explored the concept of environmental governance and its relationships with sustainable development. The research has provided an in-depth analysis of the meaning, history and evolution of environmental governance and sustainable development, its impact on future generation. Through a comprehensive review of literature, case studies, the researcher has highlighted the benefit and challenges of environmental governance in achieving sustainability.

The country like India among the few in the world having different kind of law in the area of social, economic and environment protection, which deals with the three component of sustain able development from time to time and most of these show a broad rubric of integration or interrelation between the three pillar of sustainable development, but the problem of enforcement and implementation aspects is still a big challenge before the government to realize the concept of sustainable development and ensure social justice.

A basic tenet of the environmental movement is that everything is connected to everything else. Twenty one years after the Rio Earth Summit and more than 40 years since the creation of the India. Environmental Protection Act, we see this tenet extending beyond eco-systems to government systems. Perhaps recognition of the common precepts of an effective, integrated system of governmental intervention built on the rule of law and geared towards producing a sustainable future would represent a meaningful step forward, as countries endeavor to manage their development in a sustainable and environmentally protective manner.

The intent to take seriously the problems of environmental governance is welcome, and it is important to move forward on this recognition and act to improve the state of environmental governance in India. At the same time, there are several major ambiguities in the specific NEPA proposal as it stands today, which, if not addressed, could lead to an inadequate or even cosmetic change. The core problems with environmental governance in India are several and are all embedded in the larger debate on environment, local livelihoods and development. Attempts to revamp the

structures and procedures of environmental governance cannot be oblivious to this larger debate. They must clearly identify the problem in its multiple dimensions and put forward a somewhat comprehensive set of interlinked solutions. At minimum, the following questions to be addressed:

- ❖ How do we diagnose the underlying problems of environmental governance, and what subset of these may be addressed through administrative solutions?
- ❖ How will critical design issues of any regulatory process, including independence, selection, funding and capacity be addressed?
- ❖ What other changes, in laws, regulations or practices, is necessary if the regulatory process is to be effective?

The setting up of an independent regulatory body covering environmental clearance, monitoring and enforcement could make a positive contribution to solve the problem if it addressed seriously these questions. Our hope is to promote a discussion that can quickly yield practical and useful suggestions towards improving environmental governance in India.

Apart from all this, there is crucial role to be played by every human being. The future generations must be protected and their living condition must be preserved and improved, to achieve this, environment must be protected by restraining deforestation, keeping up of ecological balance and by conservation of natural resources. For that purpose there is a pressing necessity to use natural resources and nature's gifts. Sustainability planned development is also of dire need and this has promoted the concept of Sustainable Development. There is a dire need for reconciliation between Rights to develop and duty to maintain and improve environment. This kind of planned development is envisaged in Recycling of waste material industrial or domestic refuse for further utility, etc. The development activity must be tailored to the capacity to improve environment, this activity could be a new hope for the 21st century. This kind of activity involves developmental process which should be, to that extent, sustained by environmental potentiality. This reminds us the English saying "cut your coat according to the cloth"

The global community demanded for a balance between right to develop and duty to protect environment. These correlatives of right and duty are fundamental for secured living of man and for his progress. Though right to development is a human

right, it should not be confined to economical only but must extend to environmental protection. The excessive development involves over exploitation but sustainable development is a mechanism which control exploitation and protect environment along with development. Thus the development activity of human beings must manage to achieve sustainable balance and benefit to both present and future generations by maintaining the potential in the basic foundation of sustainable development.

Man influenced the whole planet earth's climate by his development process which affected the global society. The earth's climate is in open access and is transboundary, all these affect nature's services, like carbon recycling and renewal, potential to shield from ultra violet radiation, ecologically balanced biodiversity and of biogeochemical cycles, etc. The diagnosis of these impediments in sustainable development leads to significant contributions to global environmental factors.

There are some potential dangers to environment like ozone depletion, greenhouse effect, transboundary air and water pollution. Marine and land pollutions and pollution due to hazardous gases and chemicals. To protect the earth from these dangers the old transitional approach is not sufficient, thus the only way for protection and improvement of environmental conditions, for the sustenance of the planet, to improve the quality of human life and to eliminate difference of rich and poor the fundamental viable principle is the principle of sustainable development.

In 21st century, to protect environment, relative precautions, plans for development and preservation is not enough. One must search for expanded view, i.e. improvement of environment and remediation of damaged environment is also a part of sustainable development. This principle of doctrine of sustainable development must be enforced through law, and then only one can save not only human being, but the whole planet from the extinction. *Vellore Citizen's Welfare Forum v. Union of India* (1996) 5 SCC the Supreme Court observed that "Sustainable development as a balancing concept, between ecology and development, has been accepted as part of the customary international law though its salient features have yet to be finalized by the International Law Jurists".

An Integrated sustainable development process comprises of the pollution control strategies, mechanisms and policies. These policies and mechanisms

effectuated by legal enactments should be vigorously enforced. Legislative instruments ensure protection by setting rules and regulations. The policies to control pollution are of two types, the regulatory instruments and effluent charge strategies, i.e. institutional managements and environment impact assessment.

The Governmental and legal institutions are in the form of laws, rules, regulations, orders, ministries, departments, divisions, courts, parastatal bodies, commissions, tribunals, boards and councils in a complex web of inter relationships. Decentralization is better than highly centralized body for pollution control. For example fisheries departments rather than environmental protection departments should deal with marine pollution.

The legal basis for policies is to be ensured. National standards for environmental quality are established and environmental risks must be identified and assessed by identifying and recognizing the environmental hazard and must be estimated and evaluated. Based on scientific evidence by establishing specific codes, and regulations by which the assessment can be made.

Monitoring constantly the emissions, other polluting substances through procedures like quality assurance and quality control; by analytical instruments used in laboratories, environment can be assessed. Governmental departments and judiciary by inspecting, monitoring through investigation and prosecution, by considering polluter pays and precautionary principles and auditing, i.e. by frequent environmental audits, one has to evaluate the environmental standards. They are the basic management tools to evaluate environmental conditions. Thus for achieving sustainable development co-operation at all levels, i.e. local basic level to central level, all the three organs legislative, administrative and judiciary, all authorities concerning to environment protection from lowest to highest level must equally involve themselves in conserving, preserving, protecting, improving and sustaining the environment.

The World Commission on Environment and Development Report described sustainable development as “not a fixed state of harmony, but rather a process of change, in which exploitation of resources, the duration of investment, the orientation of technological development and institutional change are made consistent with future as well as present needs”. To achieve these aspects of sustainable development in a

country like India with multicolor and character, over-grown population, poverty, scarcity, drought and famine will be most difficult. According to our late Prime Minister Indira Gandhi, Environmental degradation, poverty, Science and technology are interlinked by a definite equation, one cannot be thought of in isolation of the other. Further she says that environment problems of developing countries like India are not the side effects of excessive Industrialization but due to underdevelopment.

A balance must be maintained between the desire for development and environmental protection. During 1980 Indian Government established a department of environment and started many legislative and administrative activities and also judicial activism. Environment matters are different in various states according to their development and its influence on environment. The effectiveness of its regulation, protection and improvement depends on the machinery possessed by those states. Thus this is one of the main cause for and battle to be fought for environmentally sustainable development Though there are adequate environmental laws provided both at centre and states with sufficient authorities to control pollution, there are various impediments like lack of economic development, lack of machinery, inadequate institutional arrangements, policy conflicts, undue emphasis on command and control in the administration of laws, bribery, delay of proceedings through courts, etc.

During 1980-95 importance has been given to bring about awareness in public in the field of environment. Non Governmental Organization's also played very important role in protecting environment and in the field of development. Even the government policy statement on environment and development also specified the necessity for cooperation among Non Governmental Organization's and State Governments. The network is necessary to work effectively on environmental surveillance and monitoring, in giving information and transmitting development in science and technology to the people.

Some policies are established adhering to the Principle of sustainable development on areas like land use planning, energy production, environment awareness, natural resources, air and water quality, waste management, health, noise abatement, toxic chemicals, marine and coastal zones, etc. Legal power to enforce these policies must be given. NGOs, Governmental agencies, and public all must be

equally involved in environment protection and sustainable development and must co-ordinate their activities. There are sufficient legislative and administrative means but enforcement and compliance are the problems. Jurisdictional conflicts, lack of proper co-ordination and co-operation among governmental agencies are some of the impediments. Therefore, sustainable development will have to be internalized.

One earth and one environment, thus rich or poor, developed or developing countries must co-operate with each other to protect environment and for their very survival. We live in a world of sharing an interacting environment and therefore must believe the principle 'Vasudaiva Kutumbam' to ensure sustainable development. No country can single handedly tackle the problem. Thus all of us must strive for protecting and improving the environment and to establish the principle of sustainable development. For that some principles have been culled out which are discussed here.

In accordance with decision 2001/11 of the United Nations Commission on human rights, the United Nations high commissioner for Human Rights and the Executive Director of the United Nations Environment Programme jointly organized a one-day Expert Seminar on Human Rights and the Environment (16 January 2002). This Seminar was preceded by a two-day preparatory meeting of experts (14-15 January 2002). The object of the meeting and seminar was to review and assess progress achieved since the 1992 United Nations Conference on Environment and Development (UNCED) in promoting and protecting human rights in relation to environmental questions and in the framework of Agenda 21.

During the two-day meeting participants reviewed progress made since UNCED at the international level. In particular, they examined multilateral environmental agreements developed since 1992; considered the activities of global and regional human rights bodies and the jurisprudence that some of them have developed; and assessed the activities of international organizations and agencies. Experts at the meeting also examined developments that have occurred at the national level, in particular through constitutional law, legislation, administrative practices and decisions, and the case law of municipal courts.

These sets of national and international developments indicate the close connection between the protection of human rights and environmental protection in the context of sustainable development. They reflect the growing interrelationship

between approaches to ensuring human rights and environmental protection, as well as the synergies that have developed between these previously distinct fields. The experts recognized that since 1992 important developments have occurred at the national and international levels. They indicate a growing inter-connectedness between the fields of human rights and environmental protection. The overall context for these developments is the concept of sustainable development, which requires that different societal objectives be treated in an integrated manner.

The experts found that at the national and international levels, Principle 10 of the Rio Declaration (on access to information, participation and effective remedies) has played an important role in fostering connections between human rights and environmental approaches. The experts observed that multilateral agreements at the global and regional level have developed Principle 10 of the Rio Declaration by establishing mechanisms for the exercise of procedural rights, in particular the right to environmental information and to public participation in decision-making. This was reflected, for example, in the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, which aims to provide effective means for the exercise of procedural rights in the field of the environment. Other international developments, for example, treaties dealing with civil liability regimes, have developed mechanisms of redress for individuals in relation to “environmental and related harms.

From a review of the decisions of international treaty bodies (including courts and commissions), the experts noted that in the last decade a substantial body of case law and decisions has recognized the violation of a fundamental human right as the cause, or result, of environmental degradation. A significant number of decisions at the national and international levels have identified environmental harm to individuals or communities, especially indigenous people, arising as a result of violations of the rights to health, to life, to self-determination, to food and water, and to housing. Particularly in the European system, a clear connection has been made between a violation of the right to privacy and home life and the right not to be subject to pollution, including the right to know whether pollution is likely to affect a particular individual or community.

Many international organizations and United Nations agencies have also addressed the connection between human rights and the environment in their organizational structures and activities, particularly through the adoption of policies that favour access to environmental information and public participation in their procedures, but also through their policies aimed at sustainable development and poverty alleviation. At the national level, the Right to healthy environment (or a related formulation) has been formally recognized in most national constitutions enacted since 1992. In many constitutions this right permits individuals or groups to file legal actions to protect the environment or fight against pollution. Over the past ten years there has been a growing domestic case law indicating the potential role that environmental rights may play in achieving practical protections. That case law may also be relevant for international jurisprudence.

The experts also noted the progress that has been made in the context of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, subsequently renamed the Sub-Commission for the Promotion and Protection of Human Rights, and the Commission on Human Rights towards understanding the interconnections between human right and environmental protection, particularly through the work of the Special Rapporteur on human rights and the environment, and currently the work of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

The experts recognized that respect for human rights is broadly accepted as a precondition for sustainable development that environmental protection constitutes a precondition for the effective enjoyment of human rights protection, and that human rights and the environment are Interdependent and interrelated. These features are now broadly reflected in national and international practices and developments.

Principle 1 of the Stockholm Declaration established a foundation for linking human rights and environmental protection, declaring that man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. It also announced the responsibility of each person to protect and improve the environment for present and future generations. Almost twenty years later, in resolution 45/94 the UN General

Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment. In contrast to the earlier documents, the 1992 Conference of Rio de Janeiro on Environment and Development formulated the link between human rights and environmental protection largely in procedural terms. Principle 10 of the Rio Declaration on Environment and Development proclaims as follows:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. Rights to information, participation and remedies in respect to environmental conditions thus formed the focus of the Rio Declaration. In addition to Principle 10, the Declaration includes provisions on the participation of different components of the population: women (Principle 20), youth (Principle 21), and indigenous peoples and local communities (Principle 22). Public participation also is emphasized in Agenda 21. The Preamble states: One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. This includes the need of individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those that potentially affect the communities in which they live and work. Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures. Agenda 21 also calls for public participation in environmental impact assessment procedures and in decisions, particularly those that potentially affect the communities in which I individuals and identified groups live

and work. It also encourages governments to create policies that facilitate a direct exchange of information between the government and the public in environmental issues, suggesting the Environmental Impact Assessment process as a potential mechanism for participation.

In the decade since preparations began for the Rio Conference, global and regional treaties adopted in the fields of human rights and environmental protection have included provisions specific to the rights contained in Principle 10. The language used by different instruments is far from being homogeneous. Sometimes public participation is used in a broad sense to designate the recommended openness of authorities towards individuals and groups of individuals and includes the right to information rather than separately guaranteeing it. Some treaties also contain substantive rights to a particular environmental quality while others, such as the Lugano Convention, focus on remedies for environmental damage.

This thesis has argued that the members of present and future generations whether rich or poor are morally entitled to enjoy life opportunities that are undiminished relative to those available today. This claim rests on the principle of equality of opportunity that is broadly recognized in democratic societies. It is also argued that sustaining opportunities require broad attention to an array of social, political, and economic factors especially the integrity of basic institutions and the structures necessary to provide young people with the resources and human capital necessary to lead rich, meaningful, and vibrant lives. It is emphasized once again the importance of which conserving natural resources and environmental quality. In particular, “fair sharing principle,” which holds that future generations are entitled to inherit either: (a) undiminished stocks of environmental resources; or (b) full compensation for the depletion of what is sometimes called “natural capital.” The fair-sharing principle can be viewed as a concept of “sustainability” that is linked to a long – standing perspective in American political thought. It suggests a need to specifically characterize the differential impact that natural resources depletion and environmental degradation would have on members of present and future generations.

The researcher submits that there exist lapses in environmental protection laws. There is failure on the part of governmental machinery. It is submitted that violence on environment should be denuded. There is need to look into the working of

pollution control boards. It has also been an accepted fact that Indian laws for pollution control are replete with flaws. There is no flexibility in the standards as they are more prescriptive and define uniform standards without taking into account, the type or size of the industry or the cost of pollution abatement. Legal action to protect and preserve the environment is not up to the mark in India due to the poor enforcement of environmental protection laws.

It is high time that we the people of India wake up to realize the severe magnitude of the damage wrecked on our mother earth in the guise of development. Pollution of environment is irrevocable and our country cannot afford to bear environment cost of grandiose schemes. To our decision makers, the protection and welfare of our environment, hardly matters. All these add up to an unredeemable violation of human rights by the industrialists who assists for the state's inaction under the facade of industrial and technological development. We cannot, any more succumb to fatalism or eat the opium of industrial and technological development involving human causalities as an inevitable evil. The researcher submits to eliminate the subdued thought that has been too deeply ingrained in our psyche that expenses on environment protection is a sheer waste and make the common man suffer has to be discarded from the minds of Indians.

It is clear from the discussion in the thesis that protection and preservation of the environment are necessarily related to development, which is sustainable and falls under Article 21 of the Indian Constitution. By virtue of India being a signatory to many international instruments which became the part of the law of land. Therefore, the judicial role for evoking the role of judicial activism through public interest litigation is a Constitutional norm. The concepts of sustainable development are fully appreciated and applied by Indian judiciary, while adjudicating environmental issues. Whenever, there is threat to environment, the same must be resolved and appropriate steps to be taken to avoid damage to environment. It is already late that we must wake up. 'Do or die' is the call at this crucial moment when environmental survival and life's safety are at stake. It has been repeatedly, time and again stressed that the mankind must take global approach to maintain ecological balance in order to preserve life on earth. Otherwise, it turns into green politics to cheat ourselves and extinguish not only human but very life on planet earth.

Suggestions

A powerful movement has grown up all over the world for protecting environment. Especially International Environmental conferences adopted principles to guide the governments in their handling of global environmental crisis. States also adopted policies and guide lines in protecting environment. Judiciary has given helping hand in promoting environmental protection. The setting up of an independent regulatory body covering environmental clearance monitoring and enforcement could make a positive contribution to solving the problem to achieve sustainable development if it addressed seriously these questions. Our hope is to promote a research that can quickly yield practical and useful suggestions given by Researcher towards improving environmental governance to achieve sustainable development in India. A few more suggestions by the researcher are:

1. Environment elegance and sustainable development should be part of education Need supporting with project work and practice. Opportunities should be made available through industries universities government for “Technology for sustainable development” in their research.
2. Use of traditional method of production in combination of advanced technology and reduce human created pollutant by changing our life style. Sincere commitment to good environmental practices must be supported throughout the globe for sustenance of life and adopting green technology, viz., using solar energy, low CFC emitting technology, those which are highly innovative, cost-effective, Eco friendly technologies.
3. United Nations and government of nation can do three key course of action:
 - ❖ Proper information regarding seriousness of the environmental problem.
 - ❖ Incentive may be provided to those who develop standards to meet the challenge of environmental pollution.
 - ❖ To set-up a unified research center and implement the principle of sustainable development.
4. To control population growth so as to protect planet earth from over pollution.
5. Government must initiate the Programmes to create public awareness with regard to relation between human rights and environmental protection and also related laws.

6. Environmental law should be implemented effectively by adopting new instruments, mechanism and procedures like environmental impact assessment and environmental audit and incorporate environmental objectives in manufacturing processes, minimum usage of hazardous materials and toxic chemicals, careful usage of toxic gases will reduce environmental load.
7. Facilitating and improving rights of access to information, effective participation in decision making and access to justice and other remedies in National and International instruments.
8. Coordinating efforts globally between all states and locally among government (center and states), private groups, organizations, operational and financial institution and people at large in appropriate aspects of their respective activities, by:
9. Exchanging of information, sharing of expertise and enhancing arrangements for monitoring and reporting systems.
10. Developing arrangements for assisting technical cooperation to promote an integrated approach.
11. Promoting programmes to sensitize decision- makers, including public officials legislator and member of the judiciary, as to the need to develop a sense of commitment to the protection of human and environmental rights and to adopt more holistic approaches to integrating the requirements of sustainable development in the interpretation and application of national and international norms for the protection of those rights and sustainable development concepts.
12. India has taken a move aiming at reducing greenhouse gases and phased out the ozone depleting substance halon, such a positive move has to be adopted worldwide.
13. Environmental laws should be clear, even-handed, implementable and enforceable
14. Environmental information should be shared with the public
15. Affected stakeholders should be afforded an opportunity to participate in environmental decision-making
16. Roles and lines of authority for environmental protection should be clear and coordinated.

17. Graft and corruption in environmental program delivery can obstruct environmental protection and mask results and must be actively prevented.

It can be submitted that Environmental governance does not operate in a vacuum but is linked to and complementary with other aspects of good governance, including the need to ensure independence and prevent corruption within the various elements of the environmental governance system. Corrupt and unprincipled decision-making frustrates program implementation, masks environmental results, and erodes public confidence in the environmental rule of law.

Effective environmental governance systems hold government accountable for making principled decisions, grounded in science and law, to ensure confidence in the impartiality and public purpose of their actions. Effective environmental governance systems also hold polluters accountable for compliance with environmental requirements and for remediating any environmental damage caused by them. Where government is itself a polluter it should lead by example and, at a minimum, commit to the same standard of conduct it expects from the private sector.

The ability of citizens to seek legal recourse against polluters and against the government, discussed under public participation above, can be an important part of the overall system of accountability. Governmental enforcement usually makes up a critical part of an effective accountability regime. Compliance assistance, reporting requirements, inspections, and monitoring, and administrative, civil, and criminal enforcement authorities can all play important roles in an effective enforcement system. As an initial priority, enforcement remedies should require halting the violation, through injunctive relief or related tools. Penalties or fines assessed must be sufficient to deter noncompliant behaviors. To do so, they typically must at a minimum disgorge from the violator the economic benefit of noncompliance. The costs of environmental remediation should ordinarily be borne by the entity that produced those costs rather than the public at large (“polluter pays”). Enforcement actions should endeavor to treat like violations in like fashion, providing a level playing field of expectation and response.
