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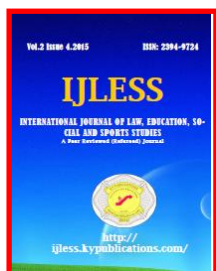
GREEN ECONOMY, SUSTAINABLE DEVELOPMENT AND RIGHT TO LIVE IN POLLUTION FREE ENVIRONMENT IN INDIAN CONSTITUTIONAL LAW PERSPECTIVES*

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RESEARCH ARTICLE



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ABSTRACT

'Green economy' is based on sacrifice of environment and economic growth. It can be achieved by balancing of both aspects of right to life, on one hand right to live in pollution free environment and on the other hand industrial as well as economic development for better and favourable living in contemporary changing scenario. The aim was to protect right to live in pollution free environment for which low-carbon and environment friendly technology play vital role worldwide. Human rights are basic, inherent and sacrosanct rights of human being. Few rights are guaranteed by Constitutional Law in India as fundamental rights in Part – III. Following harmonious construction of interpretation we can say even Part- IV also ensure human rights in the form of Directive Principles of State Policy. The Universal Declaration of Human Rights, 1948 and thereafter two International Conventions, i.e., the Convention on Civil and Political Rights, 1966 and the Convention on Social, Economic and Cultural Rights, 1966 are very significant for the protection of human rights and sustainable development. The scope of article 21 was expanded by the Apex Court after Maneka Gandhi v. Union of India and 'life' does not mean only mere animal existence rather it includes rights which are required for free and full enjoyment of life. So, every human right will be treated under article 21 with reasonable restrictions to achieve socio-economic justice in contemporary welfare society. Right to life includes right to live in healthy environment as held in M.C. Mehta v. Union of India. The pollution free environment, right to life, livelihood, equal distribution of resources, social progress and economic empowerment are basic requirements in the contemporary era of globalisation, urbanisation and sustainable development.

KEY WORDS: Green economy, sustainable development, industrial development, environment, pollution, resources, protection, right to life, judicial remedies, favourable living, livelihood, balance.

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- **Research Methodology applied:** This paper is based on logical analysis of data collected from several Text Books on Environmental Law and Constitutional Law of India, relevant Articles, International Conventions, Judicial Decisions and Visit Wetland Site of East Kolkata as also mentioned in reference. So, the research work is based on doctrinal as well as non-doctrinal method of legal research supported by case studies or fact based legal research.

1. INTRODUCTION

Green economy is essential for the improvement and empowerment of human being by considerably reducing environmental risks and ecological scarcities in the contemporary globalised, urbanised and liberalised social scenario for continuous development and progress. Green economy is based on sacrifice of environment and economic growth. It can be achieved by balancing of both aspects of right to life, on one hand right to live in pollution free environment and on the other hand industrial as well as economic development for better and favourable living with fulfillment of needs and desires in the contemporary dynamic society. The conflicting interests are increasing in society; therefore, we require law for balancing of interests, claims, rights, liabilities as well as duties for preservation and progress. The aim was to protect right to live in pollution free environment with sustainable development for which low-carbon and environment friendly technology play vital role worldwide.

Human rights are basic, inherent and sacrosanct rights of human being. Rights include duties. If one person performs his duties and liabilities properly then others can enjoy their rights peacefully. Therefore, article 51A of the Indian Constitution imposes certain Fundamental Duties which are also to be treated as rights of others. Few rights are guaranteed by the Indian Constitutional Law as fundamental rights in Part – III. But that does not mean that other rights are not recognised and protected by Law. Following harmonious construction of interpretation we can say even Part-IV also ensure human rights in the form of Directive Principles of State Policy. The Universal Declaration of Human Rights, 1948 and thereafter two International Conventions, i.e., the Convention on Civil and Political Rights, 1966 and the Convention on Social, Economic and Cultural Rights, 1966 are very significant for the protection of human rights and sustainable development. Indian Parliament enacted and passed the Human Rights Act, 1993 which defines the term ‘Human Rights’ that all fundamental rights and other rights enforceable by judiciary should be treated as human rights. The scope of article 21 was expanded by the Apex Court after **Maneka Gandhi v. Union of India**¹ and ‘life’ does not mean mere animal existence rather it includes rights which are required for free and full enjoyment of life. So, every human right will be treated under article 21 with reasonable restrictions to achieve socio-economic justice in contemporary welfare society. Bhagwati, J. observed that these fundamental rights represent the basic values cherished by the people of India since the Vedic period and they are calculated to protect the dignity of the individual, to create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights and impose negative obligations on State not to encroach on individual liberty in its various dimensions. These rights are essential to attain the full intellectual, moral and spiritual status. The absence of these rights will keep the moral and spiritual life stunted and potentialities of individuals will remain undeveloped. These basic rights also serve as reminder to Government to respect and implement the basic elements enshrined in the Preamble of our Constitution.

Right to life includes right to live with dignity, privacy, safety, security and healthy environment. Since **M.C. Mehta v. Union of India**² pollution free water and air, protection against hazardous industries, right to health and medicine, right to shelter and livelihood, right to equality and work, right to education, equal distribution of material resources, social progress and economic empowerment etc. are treated as fundamental rights. In **Bhopal Gas Disasters** case the Supreme Court of India pragmatically discussed the aspects of *economic empowerment, social safety and security* as well as *environment protection*. These three aspects are core of sustainable development and human rights protection worldwide.

The terms *environment, environmentalist, environmental protection, environmentalism and sustainable development* have become dictum in society as all are concerned about keeping the environment clean and maintaining sustainable development plan in addition to prevention and control of environmental degradation. Pollution is the public nuisance and is a tort or civil wrong committed against the community as a whole. Therefore, compensation or the damages for the restoration of environment and ecology shall be paid by the polluter.

Environmental Economics deal with theoretical and empirical research relating national or regional environmental policies worldwide. More significantly, it deals with the costs and benefits of alternative environmental policies relating to air pollution, toxic substances, water quality, solid waste, global warming etc. *Ecological economics* deal with ecosystem for the preservation of natural resources, human made resources and sustainable progress of mankind with healthy environment³.

Since the Rio-Earth Summit on green economy and inclusive growth to the United Nations Climate Change Conference in the year 2011 it is established fact that green economy has significant role in Indian socio-economic culture. India has built up system of low-carbon, green economy, using of information and communication technology, developed science and technology which are environment friendly as well as favourable to maintain eco-control. Hence, Industrialisation is increasing at highest speed to compete in global market along with increasing complexities, such as, interests and claims of farmers, forests dwellers, people depends on agriculture, aqua-culture, mines and the like. Deforestation and Industrialisation are causes of climate change and global warming which have an effect on environment, livelihood and economy of individual as well as community at large. The United Nations Water Conference in the year 1977 observed that everyone whatever their stage of development and their socio-economic conditions have the right to access drinking water in quantity and of a quality required to fulfill their basic needs.

The National Commission on Higher Education and Research Bill was aimed to allow institutions to design own curriculum to achieve skilled professionals. The Mines and Minerals Regulation of 2011 and the Law relating to Land Acquisition, Rehabilitation and Resettlement for Industrial Development are vital initiatives.

2. Sustainable Development

Society has not only to develop but also to progress in its totality. Every human has the inherent tendency to develop and progress in life. Self-development and self-preservation are minimum contents of human being. In the contemporary dynamic society of e-commerce and multimedia technology, development depends on natural resources, human resources, economic growth, changing lifestyle and post modern socio-economic changes. Every such development process has its own merits and demerits in society. Economics is concerned with gross national product and gross domestic product for social development. According to Richard Lecomber, no economic formula relating to development, growth or progress is valid unless it takes into account the trouble relating to damage to environment, natural resources and biodiversity. Industrial development is the urgent necessity in the World and so in India but it is impossible to achieve without derogating the environment and causing effect on the Earth. For our overall development we have no other option but to depend on natural resources which are also exhaustive in nature. The International Union for Convention of Nature (IUCN) coined the term '*Sustainable Development*' in its World Congress in the year 1980. Natural resources, such as, forests, sea beds, etc. are not the fruits of the labour of the present generation and these resources can only be exploited with adequate consideration of the rights of future generations. It was widely accepted after publication of the report, 'Our Common Future' by the World Commission relating to Environment and Development in the year 1987.⁴

It is not possible to give precise definition to the term *Sustainable Development* as development of society and sustainability of natural resources both has to keep in mind and most of the times for economic and industrial development we need to compromise with sustainability.

The most essential requirements for Sustainable Development are (a) needs of the poor and general people should have the prior concern; (b) imposing of reasonable restrictions, through the rule of law by the State, on use of science, technology, explosives, gas, etc. which has effects on the environment and used by the institutions, organisations, associations or other entity; (c) development is required keeping in mind that present generation should be able to meet their needs from the environment and (d) present generation should also maintain or keep the environment for the future generations so that they should have ability to meet their needs and desires from environment.

3. Right to Live in Pollution Free Environment and Sustainable Development in International Perspectives

In contemporary era the world is facing unsustainable economic growth. Consumption of fuels from factories, articles and deforestation are in high speed. People are exhausting the planet's natural resources and accelerating climate change to support their lifestyles and fulfill changing needs and desires. This process is actually turning into threat to life, sustaining ecosystems and the economy. This is also the cause of infringement of right to live in pollution free environment which is our most cherished fundamental and basic right.

3.1 The United Nations: The United Nations Commission on Human Rights the year 2001 in Geneva had come to the conclusion that all has the right to live in a world free from toxic pollution and environmental degradation. So, Healthy

Environment is inherent, basic, and fundamental to enjoy life worldwide. It was first time the Commission addressed significant relation between environment and human rights.

However, the principle of sustainable development and aim to live in pollution free healthy environment was started since the Rio Earth Summit. The Association of Environmental and Resource Economists (AERE), the European Association for Environmental and Resource Economics (EAERE), the International Society for Ecological Economics (ISEE) and the Green Economics Institute play noteworthy role at the academic and professional level for better environment and economy.

The United Nations General Assembly Conference on Environment and Development was held in Brazil (Rio-de Janeiro) in the year 1989 and in the year 1992 the Rio Declaration proclaimed about Agenda 21 for sustainable development through a Commission which was implemented in the year 1993 and two Conventions on the protection of environment, these are (i) the Convention on Biological Diversity and (ii) the Convention on Climate Change.

3.2 Principles of Rio Declaration: The Rio declaration on Environment and Development proclaimed several principles⁵ to achieve ecology, economic, cultural and social justice through international co-operations. Few relevant principles are as follows: (i) Human being is at the centre of concern for sustainable development. They are entitled to healthy and productive life in harmony with nature. (ii) According to the United Nations Charter and principles of International Law, States have the sovereign right to exploit their own resources pursuant to their own environmental development policies and the responsibility to ensure their activities within their control not to cause damage to the environment of other States or of areas beyond the limit of national jurisdiction. (iii) The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. (iv) To achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation or separated from it. (v) All States and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development in order to decrease the disparities in standards of living and meet better needs of majority of the people of World. (vi) States shall reduce and eliminate unsustainable patterns of production and consumption. State shall also promote appropriate policies to achieve sustainable development and a higher quality of living for all. (vii) 10th Principle provides that environmental issues are best handled with the participation of the concerned citizens at the relevant level, i.e., international, national, regional, districts, sub-division, block and village levels. (viii) 13th Principle provides that States shall develop Domestic Law on liability and compensation to victims of pollution and other environmental damages, co-operate in an expeditious and most determined manner to develop as well as contribute to develop Law at International level on liabilities and compensations in case of adverse effects of environmental damages caused within their jurisdictions and even beyond.

3.4 The Stockholm Declaration: The Stockholm Declaration of 1972 affirmed that 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. He bears a solemn responsibility to protect and improve the environment for present and future.

3.5 India is a party of following International Environmental Agreements: The International Convention for the Regulation of Whaling in 1946; the Antarctic Treaty in 1959; the Conservation of Antarctic Marine Living Resources in 1980; the United Nations Convention on Law of the Sea; the Civil Liability for Oil Pollution Damage in 1969; the Fund Convention in 1971; the International Convention for the Prevention of Pollution from Ships in 1973; the Ramsar Convention in 1971 (Wetlands); the World Heritage Convention in 1972; the Convention on Trade in Endangered Species (CITES) in 1973; the International Tropical Timber Agreement in 1983; the Convention on Biological Diversity, 1992; the Vienna Convention for the Protection of the Ozone Layer, 1985; the Convention on Climate Change, 1992; Kyoto Protocol in 1997 on Reduction of Green-house Gases, the Johannesburg Declaration on Sustainable Development, 2002 etc.

3.6 Klaus Toepfer's opinion: Klaus Toepfer⁶, the Executive Director of the United Nations Environment Programme said that many of the fundamental rights enshrined in the Universal Declaration of Human Rights have significant environmental dimensions. Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, traditional livelihood and culture. He also rightly said that it is time to recognise that those who pollute or destroy the natural environment are not just committing a crime against nature, but also are violating

human rights. Human rights cannot be secured in a degraded or polluted environment. The right to life is also threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes, and contaminated drinking water. Therefore, the successful implementation of environmental treaties on biodiversity, climate change and chemicals can make significant contribution to protection of human rights. It was a step of progress towards sustainable development that has been attained since Rio Earth Summit.^{6a}

4. Right to live in pollution Free Environment and Sustainable Development in Indian Scenario

4.1 Significance of environment: Since the Vedic period the core value of Indian society was to live in harmony with nature. We worship plants, trees, earth, stone, sky, water, air, animals and so on. The Constitution of India contained provisions relating to protection of environment as rights, liabilities as well as duties.

Following the Magna Charta in the year 1215 in England, the American Bill of Rights in the year 1689, the French Declaration of Human Rights of Man and Citizen in the year 1789, the Universal Declaration of Human Rights in the year 1948 etc. the Indian draftsmen were influenced and adopted whole Part-III as Fundamental Rights in the Constitution of India, Part-IV deals with the Directive Principles of State Policy and Part-IVA article 51A provides to impose certain Fundamental Duties on citizens.

India tends always to green economy system traditionally which can perform best in the economic sector and build up wealth, but it may failed to build bridge between the rich and the poor in our society. Due to increasing industrialisation there are several numbers of conflicts increasing in society. The major disturbing areas of them are the conflicts between farmers, forest dwellers, miners and industrialists. There is need of balance between economic growth and environmental protection to achieve green economy. The concept of *Green Economy* can be achieved through Sustainable Development protecting right to live in pollution free environment.

4.2 The Preamble of the Indian Constitution: The preamble of our Constitution contains fundamental principles as basic elements of Constitution. On the 26th January, 1949 India became a Sovereign, Democratic, Republic country and adopted, enacted as well as resolved by the people of India *to achieve social, economic and political Justice*, Liberty of thought, expression, belief, faith and worship, *Equality of opportunity*, Unity of Nation along with other principles. Thereafter, in the year 1976 by the 42nd Constitutional Amendment the words *Socialist*, *Secular* and *Integrity* were inserted in the Preamble. The word '*Socialist*' was impliedly there under article 39(b) and (c). However, it signifies that in *democratic country* like India ownership on private property or privatisation is allowed with some form of ownership on production and distribution of material resources by the State. The State control on the economy but it depends on the nature of Government. India is democratic as well as socialistic State. So, the concept of *mixed economy* will prevail in India. According to the judicial decisions the directive principles are also enforceable as fundamental rights under article 21 of the Constitution.

4.3 Due Process of Law: The Fifth Amendment of the American Constitution declared that no person shall be deprived of his life, liberty or property without due process of Law. So, the limitation is the due process and by application of it one's right can be deprived or infringed. In **Maneka Gandhi v. Union of India**⁷ the Supreme Court of India adopted the American principle of due process and held that articles 14, 19 and 21 are to be interpreted by application of harmonious construction. There is no water tight compartment between these articles, they are closely related and for fulfillment of one other should be enjoyed. Right to life and personal liberty only can be deprived according to procedure established by Law which should be just, fair and reasonable. So, the process of Law should be due process and following of natural justice principles. And right has to be interpreted not 'as it is' in black letter following positivistic theory of Law rather it needs to be interpreted by application of theory of Natural Law, i.e., 'Law as it ought to be'. So, the positivistic interpretation of article 21 in **A.K. Gopalan v. State of Madras**⁸ was prospectively overruled.

4.4 Relevant Directive Principles: Directive Principles of State Policies are the liabilities and duties of State to achieve its objectives for social, economic and cultural progress. Few relevant articles of the Constitution of India are mentioned below.

Article 47 provides that it is the duty of State to raise the level of nutrition and the standard of living and to improve public health. It runs thus: 'the state shall regard the raising of the level of nutrition and *the standard of living of its people and the improvement of public health as among its primary duties* and, in particular, the State shall endeavour to bring about

prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health'. **Article 48** deals with organisation of agriculture and animal husbandry. It provides that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular steps for preserving and improving the breeds and prohibiting the slaughter of cows, calves, and draught cattle. **Article 49** deals with protection of monuments and places and objects of national importance. It provides that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest as declared by or under law made by the parliament to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export as the case may be. Two articles relating to environment were inserted by the 42nd Constitution (Amendment) Act, 1976, i.e., articles 48-A and 51-A (g). **Article 48A** is a directive principle to State deals with the protection and improvement of the environment, to safeguard the forests and wild life.

4.5 Fundamental Duties: Article 51A (g) imposes duties on citizen of India and provides that it shall be the duty of every citizen of India to protect the natural environment including forests, lakes, rivers and wildlife; and to have compassion for living creatures. The words protection and improvement includes the progress of the natural resources and improvement of living pattern of general people. **Article 51A** imposes other relevant duties on citizen of India and it provides that it shall be the duty of every citizen of India under **Clause (f)** to value and preserve the rich heritage of our composite culture, **Clause, (h)** to develop the scientific temper, humanism and the spirit of enquiry and the reforms, **Clause (i)** to safeguard public property and to reject violence, **Clause (j)** to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

4.6 Fundamental rights: The Indian Judiciary evolved the principle of healthy environment under article 21, i.e., right to life to support sustainable development and awarded compensatory remedies to the victims of pollution. **Article 21** of the Indian Constitution guarantees right to life and personal liberty; it provides thus, 'no person shall be deprived of his life and personal liberty except according to procedure established by law.' Right to life means and includes right to live with dignity and to be lived in a healthy environment which is free from danger of diseases and infections. So, right to life is not limited to mere animal existence.

4.7 Constitutional remedies: According to the maxim '*ibi jus ubi remedium*' there is no right without remedy. Where there is a right there is a remedy. So, remedies are available in case of violation or deprivation of above rights even in the nature of directives and duties. Constitutional remedies are under articles 32, 136, 226, 227, 323A, 323B etc. of which article 32 is a fundamental right and soul of Part-III of our Constitution. Access to justice, therefore, is a fundamental right under our Constitution. **Articles 32 and 226** of the Constitution empowers the Supreme Court and the High Court's respectively to issue appropriate writs, directions, orders including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto, Certiorari and any other proper remedies. However, Parliament may by making Law empower other Court to give the similar relief to the society so that justice should reach at the door step of people. **Article 136** is available to people as the special leave application to the Supreme Court of India which may be accessed by any person not satisfied with the decision of any court or tribunal. International conventions and conferences have important role to play according to **article 253**. **Article 141** of the Indian Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. **Article 142(1)** provides that the Supreme Court (SC) may pass such decree or make such order as is necessary for doing complete justice in any matter and **Clause (2)** of the said article provides that SC has all or every power to make any order for the purpose of securing the attendance of any person, discovery of production of any documents or investigation or punishment of any contempt of itself.

4.8 Important Statutes: Several Statutes have been passed by the legislature to handle the forthcoming situation and sustainable development with pollution free environment, as well as right to live in healthy environment, e.g., the Indian Penal Code, 1860; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Water (Prevention and Control of Pollution) Act, 1974; the Wild Life Protection Act etc. The Public Liability Insurance Act, of 1991 provides for the remedies to the victims of the accidents if occur in the case of handling any hazardous substances. This Act was the result of the Bhopal Gas Disaster case and it acknowledged the principle of 'no fault,' liability as well as strict liability too.⁹

5. Judicial Decisions on Constitutional Mandates in India

5.1 Mining for Industrial Development and Environment: The Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh¹⁰ case the petitioners were frightened about the mining activities of the lessees which then caused disturbance to the ecology. As per the Governmental order, the lessees had right of mining activities on certain conditions. According to the report of the Committee constituted by the Court in this regard the mining of limestone in the specific area, i.e., Himalayan range of Mussoorie, was very much damaging, dangerous and there was degradation of the environment affecting the balance of ecology. The Supreme Court of India considered the hard difficulties faced by the lessees and held that *it was a price that had to be paid for the protection and safeguard of the right of the people to live in healthy environment with minimum disturbance to ecological balance*. The Judiciary also suggested for rehabilitation of the lessees and directed that they might have given preferences at the time of granting mining leases in that area by the State Government. Workers should also be rehabilitated by their respective employees along with reclamation, deforestation and soil conservation programmes in the areas. The judiciary observed that lime-stone quarrying and excavation of the lime-stone deposits do seem to affect the constant water springs. Such environmental disturbance had the effect in the balance of ecology due to industrial purposes.

5.2 Right to Life and Healthy Environment: In **T. Damodar Rao v. the Special Officer, Municipal Corporation of Hyderabad¹¹** case the Court held that enjoyment of life and its attainment as well as fulfillment as guaranteed by article 21 of the Constitution of India embraces the protection and preservation of nature's gift without which life cannot be enjoyed. The slow poisoning to the atmosphere causing environmental pollution should also be treated as violation of article 21, i.e., right to life and personal liberty.

In **L. K. Koolwal v. State of Rajasthan¹²** case the Rajasthan Municipalities Act, 1959 was the legal issue. The Municipal Authority was in charge of *the prime duty to clean public street, sewers* and all places which are not being private property rather which are open to the enjoyment of public. They have duty of removing of noxious vegetation and all public nuisances and removing of fifth, rubbish, nigh, soil, odor or any other noxious or offensive objects. The petitioner filed a writ petition showing that the Municipality had failed to perform its primary duty which resulted in acute sanitation problem in Pink City (Jaipur). The High Court observed that article 51A can ordinarily be applicable in this situation as it is also *the duty of citizens but in fact it is the right of citizens as it creates the right in favour of citizens to move the court to see that the State performs its primary duties and obligations devotedly in accordance with the law of the land*. Omissions or commissions are brought to the notice of the Court by the citizen. Article 51A gives a right to the citizens to move the court for the enforcement of the duty cast on the State instrumentalities, agencies, departments, local bodies and statutory authorities created under the peculiar law of State.

5.3 M. C. Mehta Cases: There are several Public Interest Litigations (PIL) filed by the social activist M. C. Mehta who's contribution is significant in the history of PIL in India. However, few important cases are discussed here.

5.3.1 In M. C. Mehta v. Union of India¹³ case the Supreme Court of India directed the Government of India to develop a national policy for location of chemical and hazardous industries with due care where the risk of pollution to community are lesser and to see that large human habitation should not grow around that area.

5.3.2 M. C. Mehta v. Union of India¹⁴ was the Delhi City Pollution case in which the Supreme Court declared that Delhi is one of the most polluted cities in the World at that time. The air was so polluted that lung and respiratory diseases were increasing dangerously. The city became unmanageable due to commercial, industrial and unauthorised colonies. Therefore, the court directed for the relocation of all industries and available land should be used according to a Master Plan for providing lung spaces, i.e., green belts and open spaces.

5.3.3 In M. C. Mehta v. Union of India¹⁵ case Court directed for shifting of about 168 hazardous and noxious industries of Delhi on National Capital Reason.

5.3.4 M. C. Mehta v. Union of India¹⁶ is popularly known as Brick Kiln case. In this case 246 brick kiln of Delhi territory were treated under 'H' or Hazardous and were directed to close down immediately with effect from 30th June 1997 with an option to adopt new technology by using fly ash, sand, lime and intimate to the Delhi Administration and Pollution Control Board. If such authorities are satisfied and permitted according to relevant Law then they may operate on the same site

with due permission. However, judiciary also laid down the norms relating to rights and benefits to be given to the employees in case of closing down of the industries.

5.3.5 M. C. Mehta v. Union of India,¹⁷ popularly known as Ganga Pollution case the tanneries within and around Kanpur City was the issue as they were discharging effluents and waste products in the river Ganga without setting up of waste treatment plant which caused ganga-water unfit for use. Therefore, public interest litigation was lodged by Mr. Mehta before the Supreme Court requesting the directions to the Industries and restricting tanneries from discharging polluted waste to the river and the Court directed the polluters to stop such pollution activities. K.N. Singh, J. opined that closure of tanneries may bring unemployment, loss of revenue which will affect right to life, irrespective of that; health and ecology have the greater significance to the general people. The Court observed that the financial aspects of those industries are irrelevant and their primary requirement is to establish primary treatment plants otherwise they cannot be permitted. It is the same as in case of other industries where they cannot be allowed to exist if they cannot pay minimum wages to their workers. If they continue such polluted discharge to river it will cause adverse effect on public at large. It was held that according to the Common Law, by an injunction the Municipal Corporation can be restrained from polluting the water of the river. The Corporation polluted the water by discharging into the river insufficiently treated sewage. The petitioner is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga. His right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance. It would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition was allowed as a Public Interest Litigation. The petitioner was entitled to move the Supreme Court to enforce the statutory provisions which impose duties on the Municipal Authorities and the Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974.

5.3.6 In M. C. Mehta (Calcutta Tanneries matter) v. Union of India¹⁸ case was relating to environmental pollution which was treated under article 21 and compensation by way of damages was awarded by the judiciary. This case was regarding tanneries located at Tangra, Tiljala, Topsis and Pagladanga, the four adjoining areas in Eastern City of Calcutta which accommodated about 500 Tanneries. According to the examination report dated 30.09.1995 by the National Environmental Engineering Research Institute (NEERI) 90% of the Calcutta tanneries were using chrome based tanning process while the remaining were utilizing vegetable process. On 19.02.1993 the State Government also informed this Court that the Calcutta Tanneries were being shifted from their present location and the new location would be fully equipped with pollution control devices. In this case the Supreme Court with lordship of Justice Kuldeep Singh and Justice S. Saghir Ahmed awarded the compensation which would be recovered from the polluting tanneries and would be deposited to the Environmental Protection Fund and should be make use of for restoring the damaged environment as well as ecology. It was also held that pollution of environment is infringement of right to life; therefore, *polluter should be compelled to pay the compensation*.

So, if we the people of India wish to shape our society as we think fit and to secure ourselves without any touchstone of violence, irresponsibility, negligence; firstly we all should be aware about our rights and duties and then accordingly government have to work as we think necessary. Side by side not only Judiciary but also other State organs will become very active and realistic thinking to do public oriented activities.

5.3.7 M. C. Mehta v. Union of India¹⁹ popularly known as Taj Trapezium case It was Public Interest Litigation case for the protection of Taj Mahal at Agra from pollution. The contention of the petitioner was that if not prevented, the huge chemical from hazardous industries and refinery of Mathura will cause damage to Taj Mahal which is the national and International Heritage. Refinery emission, brick kiln, vehicular etc. were causing air pollution around Taj Mahal. The Indian judiciary applied the principles of *Polluter Pays and Precautionary Principle* and interpreted article 21 along with articles 47, 48A and 51A(g). The Court held that according to *Precautionary Principle* the environmental measures must anticipate, prevent and attack the cause of pollution and degradation of environment. The onus of proof was on industry and it was proved beyond reasonable doubt that coke in industries was the main polluter. Therefore, it should pay for its act according the principle of *Polluter Pays*. The Court also ordered about 292 industries of the said area to stop using coke or coal instead use natural gas and should be relocated soon. Agra Master Plan and Industrial Units should take the initiatives to give incentives to the relocated factories or industries. All emporia and shops within the premises should also be closed. The

Government of India was directed to declare Agra as the Heritage City of India within two months of the judgment was passed in the year 1997.

5.3.8 M.C. Mehta v. Kamal Nath and others²⁰ case, the Court opined that articles 48A and 51-A (g) have to be considered in the light of article 21 of the Constitution. The basic elements of environment, i.e., air, water and soil are essential for life; any disturbance to these may be hazardous to life. Emphasising articles 14 and 21 the Court held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance but also for the victims who have suffered due to such disturbance. The court also emphasised on the principle of *Polluter-Pays*.

5.4 Sweet Water Case: In Attakoya v. union of India²¹ the issue was shortage of water supply and drawing of water through pump from the ground in the coral isles in the Lakshadweep was violation of article 21. The Kerala High Court held that there was deprivation of basic human right as right to life does not mean only animal existence rather it has several related facets and one of them is the right to clean and reasonable water supply too. Hence, right to sweet water and pollution free air are essential features of the right to life for which life itself sustained.

5.5 Balance between Economic Development and Environment (Sustainable Development): In Charan Lal Sahu v. Union of India²² the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was considered by the Supreme Court and held that the Act was valid. The judiciary directed polluter for payment of compensation and suggested for taking the precautionary measures to manage the disasters to achieve sustainable development.

People United for Better Living in Calcutta v. State of West Bengal²³ case was the *result of urbanisation* and wish of native people to lead better life with reasonable facilities which their neighbours are accessing because the wetland is adjoining to the urban and the developed area of Kolkata, the City of Joy, which is now the part of Bishwa-BangaSarani in Kolkata. However, in this case Calcutta High Court observed that maintenance and conservation of Wetlands are significant. The Court granted injunction against the retrieval of the land. But this decision of the court was and is the debating issue under article 21 as most of the area became the part of *East Kolkata Township and local people are suffering from lack of basic needs and desires for better living though they are the part of Kolkata. It also causes people grievances as they are deprived of right to equality and reasonable freedoms with right to life which are enshrined under articles 14, 19 and 21 of the Constitution of India because right to life includes desire of human being to live better life for social progress.*

As in **M. L. Sud v. Union of India²⁴** case the judiciary directed the Delhi Development authority to maintain the *city forest* and not to destroy the same. But it was done for *urban development* and the authority was alleged for destroying forests as they have cut trees for the construction and laying roads in the city which was shown in the Master Plan as Green Belt. *So, sometimes we need to sacrifice green for our own development and progress.*

5.6 Public trust: In M. C. Mehta v. Kamal Nath,²⁵ the judiciary held that the State had committed a breach of public trust which is significant for the entire ecosystem operating in the natural resources in India. According to the doctrine of public trust certain resources such as, water, air, forests, sea are natural and very important for the people. So, public has right to natural flow of rivers and streams and natural configuration of land. Therefore, privatisation of ownership of those natural resources should be treated as unreasonable and unjust as well as deprivation of life.

5.7 Bhopal Gas Disasters: Union Carbide Corporation (II) v. Union of India,²⁶ popularly known as Bhopal Gas Disasters case was the result of the various pending proceedings before the Court relating to the Bhopal Gas Disaster and settlement between the Union of India and the Union Carbide Corporation. The writ petitions were challenging the validity of the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act, 1985. It was held that the Union Carbide Corporation will continue to be subject to the jurisdiction of the courts in India until further orders. The attempts were made by the Court to settle the dispute between both the parties in respect of compensation to be paid to the victims involved in the Bhopal Gas Disaster in the sum of U.S. 350 million dollars and towards the expenses, if the government so required, in the sum of U.S. 100 million dollars. The parties were directed by the Court to file respective affidavits representing the precise and terms of the proposals regarding the settlement of the claims, the quantum of compensation, the time frame for payment, and other particulars suggested in the proposals mentioning the name of concerned persons suggested the quantum and particulars of the negotiations.

On 10th December in the year 1993 the Union of India filed application for judicial directions and it's the implementations there was the Court assisted settlement between the Union of India and the Union Carbide Corporation. The Supreme Court observed that on humanitarian ground and for fulfillment of the offer made earlier, both the parties should agree to bear the financial burden for the establishment and equipment of a hospital, and its operational expenses for the period of eight years. However, the Union Carbide Corporation had accepted the suggestions of the judiciary by setting up of a Trust as its obligation for equipment of hospital for the benefit of the general public of Bhopal and specifically the victims of the gas leak. Rt. Hon. Sir Ian Percival Q.C. was the main trustee of the Bhopal Gas Hospital Trust.

5.8 International principles: In *Essar Oil Ltd. v. Halar Utkarsh Samiti and Others*²⁷ case the Court tried to maintain the *balance between environmental protection and economic development* and held that certain principles were articulated in the Stockholm Declaration with broad parameters and guidelines for sustaining humanity and environment. The Stockholm Declaration should be treated as Magna Carta of Indian Environment Policy because the importance of environment has been articulated at International level by this declaration. However, few principles are relevant to the present context. Second principle provides that the *natural resources of the Earth including the air, water, land, flora and fauna are representative samples of natural eco-systems and must be safeguarded for the benefit of present and future generations* through appropriate planning and management. Forth principle provides that people are responsible to safeguard and manage the heritage of wild life and its habitat wisely. *Nature conservation including wild life is very important in economic planning and developments.* These two principles highlighted both, on one hand the *need of environment* and on the other hand *economic development*. Eighth Principle provides that *economic and social developments are essential for ensuring favourable living and working environment* for man; and for creating necessary conditions *on earth for improvement of the quality of life*. The Judiciary referred these principles and held that *while economic development should not be allowed to take place at the cost of ecology or by causing wide spread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments of human being. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment or vice versa, but there should be development while taking due care and ensuring the protection of environment.*

5.9 On Sustainable Development: Bhandari, J. in *Karnataka Industrial Areas v. Sri C. Kenchappa and Others*²⁸ observed that there has to be balance between sustainable development and environment. The Court observed that the consequence and adverse impact of development on environment must be properly comprehended before acquisition of lands for development. The lands must be acquired for development and it should not damage the ecology. The concerned Development Board should incorporate the conditions of allotment to obtain clearance from the Karnataka State Pollution Control Board before allotting the land for development. The condition of allotment of lands should also be treated as mandatory for all the projects to be sanctioned in future. The respondent agriculturists, who were affected by the acquisition of lands of different villages, filed a writ petition under article 226 of the Constitution with a prayer that the Karnataka Industrial Areas Development Board (KIADB) be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle. The Court held thus: *'inconsonance with the principle of Sustainable Development, a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation'*.

In *Managing Director, A.P.S.R.T.C. v. S.P. Satyanarayana*²⁹ in the year 1998 the Indian Judiciary referred the White Paper published by the Government of India that the vehicles contributes 70% of the air pollution as compared to 20% in the year 1970. The Court also gave comprehensive directions to reduce the air pollution on the recommendation of an Expert Committee appointed by this Court.

In *State of Uttaranchal v. Balwant Singh C. and Others*³⁰ on 18 January, 2010 civil appeals (NOS.1134-1135 OF 2002) have been filed before the Supreme Court of India by the State of Uttaranchal (now Uttarakhand) against the orders dated 12.7.2001 and 1.8.2001 passed by the Division Bench of the High Court of Uttaranchal at Nainital. The Court emphasised on the judicial directions to meet the requirements of public interest, environmental protection, elimination of

pollution and sustainable development. However, relating *sustainable development* the Court observed that *it must be kept in view that there is no danger to the environment or to the ecology*. The Supreme Court referred the decisions of **Subhash Kumar v. State of Bihar and Others**³¹ where the court held that under article 21 of the Indian Constitution people has the right to enjoyment of *pollution free water and air for full enjoyment of right to life and personal liberty*. If any act causes harm and damage to life then a citizen has right to have remedy under article 32 of our Constitution for removing the pollution of water, air or which may be detrimental to the quality of life.

There are several cases where judiciary tried to protect forest wrap, ecology and environment. The Supreme Court has a regular Forest Bench (Green Bench) for passing orders and directions relating to forest cover, wild life, illegal mining and destruction of marine life etc. In the case of **A.P. Pollution Control Board (II) v. M.V. Nayudu**,³² the Court held that the right to have *access to drinking water is fundamental necessity for right to life under article 21*. Therefore, it is the duty of the State to provide clean drinking water to its citizens. In **M.C. Mehta and Another v. Union of India and Others**,³³ the Supreme Court held that an enterprise engaged in a hazardous or inherently dangerous industry causing potential threat to the health and safety of workers as well as people residing in the surrounding area should be liable and duty bound to the society to make sure about the consequences of such activity which it has undertaken and repair the harm, if it caused. The Court directed that (i) the enterprise must adopt highest standards of safety, (ii) the enterprise must be absolutely liable to compensate for such harm, (iii) the enterprise should not plea that it had taken all reasonable care and the harm occurred without any negligence on their part. In **Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. and Others**³⁴ case court observed that every citizen has fundamental right to *enjoy the quality of life and favourable living as reflected* by article 21 of the Constitution of India. Anything which endangers environment by human conduct either in violation or in derogation of laws as well as affect on quality of life and living then the victim will be entitled to access remedies under article 32 of the Indian Constitution.

6. Conclusion and Suggestions

Harmful changes made in the environment due to human activities are causing environment pollution. Whatever we receive from our Earth naturally without human intervention are our natural resources. In the contemporary society, industries and vehicles are major sources of pollution. They pollute our environment by discharging harmful gases, toxic chemicals, smokes out of petrol, diesels etc. People causes harm to environment by throwing garbage and waste materials unorganisedly, washing clothes in rivers or ponds, bathing cattle too in rivers or ponds and using of chemicals in ponds and vegetables for quick growing which cause harm to human, animals and plants. Use of bicycle instead of using vehicles in a short distance, building as well as shifting of factories and industries in city sides are preventive measures will prevent diseases to human being and living creatures in Earth.

- The dumping of hazardous and toxic wastes, both solid and liquid, released by the industries is major of environment degradation in our country. The Supreme Court of India has recognised the precautionary principle and explained that environmental measures by government and the statutory authorities must anticipate and prevent environmental degradation. Where there are threats of serious and irreparable damage, lack of scientific certainty should not be treated as a reason for postponing preventive measures of environment degradation. The burden of proof is on the person or developer or industrialist to show that his action is environmentally benevolent.
- Indian judiciary gave several directions for public interest and made a solemn endeavour to protect and preserve ecosystem and environment, specially on forests, hills, rivers, marine life, wildlife etc. We need to follow those directions.
- Very important canvass on the Earth is Grass to sky which required special attention for greenery and ecology to achieve sustainable development.
- Several policies for sustainable development have been prepared worldwide but its implementations through legal and administrative mechanisms are in progress as per the national and regional circumstances. There is need of more speed of progress.

- The sustainability with caring for the Earth is a process to be maintained indefinitely and the development is required for increasing the capacity to meet human needs and desires as well as to improve the quality of life. So, there should be increasing of efficiency of resource use in order to improve human living standards.
- The primary necessity in the contemporary socio-economic scenario is to preserve ecology and environment without hampering developments and social progress. Both development and environment must continue to exist together.
- The news published recently in the internet that the United Nations Environmental Programme (UNEP) offered to do a comprehensive assessment of the several areas with the aim of proper clean-up worldwide. However, the Government of India has rejected it as the India government has implemented its own plan to move the toxins from one area to another and nationwide plan for Clean City, Clean India, Ganga Action Plan etc. should be accepted.
- *The recent change of public transport in most Metropolitan areas in India from diesel engine to CNG engine to ensure pollution free environment is significant. What is the emergence of the contemporary society is that we need to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat directly or indirectly, minor or major. Certainly, the very existence of humanity and the rapid population growth and consequential demands to sustain the population has resulted in the urbanisation of open lands, dried land, cutting of trees etc.
- Development and environment are closely related and there is no water tight compartment between two rather they need to go side by side. The objective should be to evolve harmony between the two since neither one can be sacrificed to achieve another.
- Worldwide activities on caring for earth raised the issue of sustainable development with synthesis of nature and economic growth. The best strategy for sustainable living is sharing and caring, i.e., sharing with each other within the limit and caring of the environment.
- The thinking of Industrialists must not be that harm to the environment may occur. However, they should take the necessary precaution to prevent any degradation or damage to the earth. The developers should prove that their actions are socially, economically and environmentally benevolent.
- There is need of implementing the rules relating to environmental protection reasonably as lack of it may result in damage to health and welfare of the people. Though, the sustainable development has its own importance.
- There is also need of more public awareness about environment and ecology to preserve and protect in consonance with the provisions of the Constitution. People use chemicals in fishes, meats, water of ponds, vegetables, aqua-cultural and agricultural products etc. for early growth which causes environmental pollution and affects human health. These actions required to be prevented and controlled by appropriate Laws, authorities and people at large in society.
- Even today thousands of factories are functioning without pollution control devices. Numerous people go to mines and hazardous work without proper safety and protection. Massive raw waste materials are dumped into rivers and hazardous waste are dumped in open areas without process of dissolving the same. In this way polluted environment is poisoning society. There is need of developing more active technology and pollution control devices.
- Millions people in India live in below poverty line and are not able to get safe and healthy drinking water, proper shelter and basic amenities. Therefore, there is need of more implementation of governmental schemes and movements. To achieve green economy initiatives there is urgent need of poverty eradication and specific Law on ownership of property.
- There is need of social, economic and environmental interrogation and ensuring of consistency with more employment facilities for clean environment.
- Though it is not easy but we have to have courage to face problems and challenges by strengthening of social, economic and environmental agendas with mutual balance.

- So, in the name of economic and industrial growth most cherished right of human being, i.e., right to life and personal liberty should not be violated because people should live and enjoy their right to live in pollution free environment along with other basic rights. There is also need of co-ordination and co-operation at every level.
- However, every nation should also feel free to adopt International principles according to their national conditions and priorities for protection of human rights because we must accept that green economy are very essential for human progress but it is not the supernatural.
- The conservation of the East Kolkata Wetland (WKW) had strike a difficulty with the rules framed by the Ministry of Environment and Forest. The Wetland (Conservation and Management) Rules, 2010 in its Rule 4 Clause (iv) prohibits dumping of sewerage and solid waste in Wetlands and if it is in existence it should be removed within 6 months. But the officials of the EKW Management Authority argued that the very nature of Wetland will be altered if flow of sewage water is blocked as the dumping of waste is counter-productive for the Wetland. The stretch of EKW bordering the Metro has been used as natural sewage treatment plant since two centuries. Daily sewage generated is about 980 and annual saving of about Rs. 500 Crore. According to the local people the system is working well without damaging the ecosystem. The population is increasing in the East Kolkata Wetland area in every hour at highest speed. People are the protector of the wetland from the generation after generations and they are developing the area for better living
- In the year 2012 an umbrella organisation of several NGO was working on Wetland in the Ministry of Environment and Forest for conservation plans of Wetland but it was not progressed. The inter-tributaries of Bidyadhari and Hoogly rivers were the origins of East Kolkata Wetland and East Kolkata Township. The area specifically Saltlake, New town, Garia, Patuli, Mukundapur, Bhagabanpur, Uchhepota, Madurdaha have urbanised long back and in progress of development to fulfill the needs and desires of society. Dean R Thompson, the U.S. Consul, visited this site between the years 2012-13 on International Wetland Day and had given opinion that there is proximity of the so called Wetland to the Kolkata City and accepted its remarkable interdependence with sustainable development.

The Government of West Bengal approved the construction of buildings on dried open area of wetland to fulfill basic needs and livelihood of people and to achieve right to better and favourable living in the City of Joy. It is contributing to revenue as land owners are paying regular taxes, mutation fees and fees for land registration with stamp duties. The constructions of dwelling houses are regularised with the aim of providing livelihood which includes right to shelter and enjoyment of own house. It is a movement of socio-economic progress without causing much pollution to environment; therefore, it should be welcomed.

So, we require building of bridge between healthy environment and economic empowerment by balancing Sustainable Development and Green Economy.

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