

Right to Environment – A Critical Appraisal

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Abstract: Mankind is confronting with major challenges of environmental pollution. Humanity cries for sustainable development. The leaders all over the world loudly declare to overcome the issues concerning environment and sustainable growth. Several meets arranged in the international arena to resolve such issues, yet the environmental pollution caused major setback in the progress of mankind. In the name of development, there is exploitation of mother earth. The materialistic attitude and conflict of interest causes serious problem to save the Earth from the danger of exploitation. Every year thousand species became extinct away, million hector of forest is destroyed, billion tons of carbon dioxide is dumped in to atmosphere, and million tones of industrial wastes are drained into the river and sea, causing challenge for species on the Earth. The war, armed conflict and terrorist attack cause environmental degradation by way of using weapons chemical warfare, nuclear weapons and conventional explosive force, often cause danger to people, animals and plants. Poverty is also responsible for causing environmental pollution. It causes major concern for environmental protection. In this article introspection is made to create healthy environment. The article throws light on the international covenant, constitutional protection of rights and Indian experience on environmental jurisprudence.

Key words:- Environmental pollution, human right, earth summit, constitutional protection of rights, sustainable development and healthy life.

Introduction:-

Man is the creator and moulders of his environment. Environment plays an important role for his physical sustenance and renders him an opportunity for physical, moral, social, spiritual and intellectual growth. The protection of environment is the major concern for whole world. Industrial growth and technological advancement brought several social changes but the purity of environment has been threatened to the greatest extent. There are serious efforts to end poverty and improve the economic conditions for better living. If the issue of transforming such growth is taken wisely, the surroundings can be mobilized for the sustainable growth. But this is not happening so. It caused incurable harm to the human being and the environment. The last few decades have witnessed unprecedented progress to achieve human welfare as well as unimagined detriment of human environment. Scientific growth and technological advancement have raised the standards of living for millions of people beyond the expectation and at the same time global attention is raised to minimize poverty and sustain ethical growth. The advent of weapon race, persistence nuclear test and the threat of chemical weapon creating havoc for the peaceful survival of mankind on the earth. In the name of growth the extensive air pollution, water pollution, atmosphere pollution and environmental pollution caused. The depletion of ozone layer, melting of glaciers layer and polar ice causing serious

depletion of environment. Ruthless exploitation of non-renewable natural resources causing threat to the future generation Drug trafficking, organ trade, incurable diseases and communicable diseases cause hindrance for healthy living. Extinction of various species of flora and fauna causes ecological imbalance. Similarly sequence of other problems like perpetuating poverty, female-infanticide, flesh and limb trade, apartheid and terrorist attack created threat to the living condition of life. It is well perceived that, ecological imbalance can be a threat to living creatures and to the Earth itself. Enough ink has been spilt and dialogues are made to safeguard the environment both in the national and international arena, yet the matter relating to environment remained under threat. In this article international concern and national agenda for environmental matter is discussed for the protection of present and future generation.

Environment Protection Before Independence:-

Ancient Indian philosophy was based on the principle of morality and well concerned with the spirit of nature. Trees, animals and stones were worshiped as God. Mohenjo-Daro and Harappa civilization proved that, population lived in consonance with the ecosystem and harmony was maintained with the environment. Kautilya's Arthashastra also describe about the adverse effect of environmental pollution and deforestation. During Mughal period there was close harmony

between man and the nature. Mughal kings have been maintained magnificent gardens, green parks and conscious about their environment. They never exploited the nature ruthlessly.

The population explosion was not in an alarming stage. During British rule more natural resources were used. A general survey on environmental legislation reveals that, environmental related matter was partially regulated by legislation in some part of India. In the nineteenth century some efforts were made to stop public nuisance and Indian penal code was enacted in 1860, to take penal action if a person fouls water endanger life. Similarly, Water Pollution Act and wildlife protection legislation etc mark the beginning of the era of environmental protection in British India. The legislative measures were undertaken by the British government for the prevention of pollution and conservation of natural resources.

Environment Protection After Independence:-

After Independence, government tried to make different legislations to suit the growing needs of the society. It has enacted several laws to protect the environment, forest and wild life. Constitution of India provided broad measures for it. However, pre-Independence law was mostly in vogue and there was no direct law made in relation to environmental protection.

During seventies a lot of legislations were passed in the history of environmental management. National Committee on environmental planning and co-ordination (NCEPC) was established to design policy relating to environment. India Government got more energy from the “Stockholm Declaration” The NCEPC taken various decisions in the matter of environmental protection and improvement. It had assigned responsibilities to the ministries and government agencies for the execution of plan and policies. The year 1972 marks a watershed in the area of environment policy in India and several legislations were passed to tackle the problem concerning environment. However, it may be noted that, some legislations were passed in Indian parliament; those had some indirect nexus with environments. For instance: The Indian Penal Code 1860, The Factories Act – 1948, Industrial Development and Regulation Act – 1951, The Mines Act – 1952, The Prevention of Food Adulteration Act – 1954, The Merchant Shipping Act - 1958, The Insecticide Act – 1968, The Wild Life (Protection) Act – 1972, The Water (Prevention and Control of Pollution) Act – 1974, The Forest (Conservation) Act – 1980, The Air (Prevention and Control of Pollution) Act – 1981, The Hazardous Waste Management and Handling Rules 1989, etc. may be taken for consideration. The direct law that concerned with environment is The Environment (Protection) Act – 1986.

International Efforts on Environmental Protection:-

Rapid economic, scientific and technological growth caused alarming form of ecological imbalance. The global forum realised that, economic growth is based at the costs of ecology. The global community expressed their concern over environmental protection. In 1972, at Stockholm conference of United Nations made a Declaration containing twenty six principles for the “Human Environment”. It is known as the ‘Magna Carta’ of our Environment. The basic feature of declaration was to preserve and protect ecology with scientific temper and coordinating spirit. The important aspect of the declaration was to draft an action plan and directions were made to the various institution of the world to undermine environmental problems. It includes conserving non-renewable resources, conservation of nature, wild life, marine life etc. It received recognition in planning of economic and social development for ensuring a healthy environment. One of the principle envisages that, “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generation.”

The U N General Assembly convened next conference on ‘Environment and Development’ at Rio de Janeiro in 1992. The conference witnessed the largest participation of world leaders, deliberated that, how the world community paid heavy price for the economic growth in the last few decades. The Statistics envisaged that, advancement of science and technology as well as the growing gap between developed and developing world compel us to live in a shrinking world. The conference chalked out a blue print for the survival of the mother Earth and addressed on the new dimension of development. It laid down a foundation for global partnership between developed and developing nations on the one hand and governmental and private agencies on the other hand to undertake the responsibility to save environment to meet present needs and future generations. The summit singed two important conventions i.e. one is “bio-diversity” and another is “on climate change”.

After a decade of Rio conference The U N General Assembly called on the world Summit at Johannesburg, in 2002. The main thrust was “Sustainable Development.” It once again reaffirmed the agenda of sustainable growth and add new impetus of global action to end poverty and protect environment. It planned to implement a seventy one page document containing 21 agenda for setting the environmental problem to achieve the goal of Rio conference. It committed to take action with UNCED.

The United Nation Conference of Environment and Development (UNCED) was held from 13 to 22 June 2012, well known as Earth Summit 2012 or Rio+20. It was held in Rio de Janeiro, Brazil and 172 governments and twenty thousand representative of NGO's attended the conference to address various issues concerning environment and global climate change. The major issues addressed include systematic scrutiny of patterns of production to minimize toxic component i.e. lead in gasoline and radioactive chemical, alternative sources of energy to replace the use of fossil fuels, new reliance of public transportation system to reduce vehicle emissions by polluted air causing health problems, the growing usage and limited supply of water. The import and achievement of summit was an agreement on the climate change convention and agreement not to carry any activities on the land of indigenous people that would cause environmental degradation. These international conferences have opened the mindset of the global leaders to work for sustainable development and ecological modernization. It encouraged the governmental and NGO sector to take appropriate action and leave ecological footprint for conservation and protection of ecosystem.

Constitutional Provision and Right to Environment:-

Being one of the signatory of International covenants, India has tried to seek measures to undermine the ecological imbalance. In the initial stage, the founding father of Indian Constitution, never felt the serious impact of environmental pollution. Therefore, originally, the constitution did not contain any direct provision regarding the protection of natural environment. However, the constitution of India contained certain directives concerning improvement of public health under article agriculture and animal husbandry on modern and scientific spirits under articles 47 and 48. The Article 49 also provides for the protection of national monuments from spoliation and disfigurement of national monuments. The UN Conference of Human Environment held at Stockholm in 1972, created awareness in India in relation to environment. The constitutional 42 amendment Act – 1976 was made to protect and improve the natural environment. The 42nd amendment of Indian Constitution adopted Articles 48A and 51A(g) affirm governmental action to improve the quality of environment. It directs state to safeguard forests and wildlife of the country as well as imposes a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. Further the interpretation given by Supreme Court in *Menaka Gandhi's* case, added new dimensions to the concept of 'life and personal liberty' of the person. In *M.C. Mehta vs Union of India* the Supreme Court clearly spelt out that, every person has the "right to clean environment" under Article 21. In

the instant case, the court directed to close certain tanneries and viewed that closure of industries may bring unemployment and loss of revenue to the state, but life, health and ecology have greater importance for the people in India.

Similarly the need to amend the constitution by placing environmental protection as specific entry in the concurrent list was urged by an expert committee, appointed by the central government. The 73rd constitutional Amendment declared that, Gram Panchayats to be the institution of self-government to prepare plans for economic development and social justice. It is established that, social justice includes right to wholesome environment. It was realized that rural areas are the real repository of ambient environment which need protection. Article 38 and 39 declare certain directive principle to be followed by states for rendering social justice. The fifth schedule of Indian constitution empowers states to prohibit the transfer of land in schedule areas even for developmental projects. It is because, it may cause detriment to the conservation of environment. The directive principle of state policies creates conditions to improve health and protect natural environment for better living. The Supreme Court held that, Directive Principle of State Policies create conditions for better enjoyment of fundamental rights.

An Insight of environmental legislations:-

In pursuance of constitutional promise, several legislations have been passed to protect and preserve environment. In India, there are over 400 central and state legislations are in force, having relevance with environmental protections. But most of these enactments have incidental reference to environmental protection. The most comprehensive legislations in India for the prevention and control of pollutions are as follows:-

1. The Water (prevention and control of pollution) Act of 1974
2. The Air (Prevention and control of pollution) Act of 1981.
3. The Environment (Protection) Act – 1986.
4. The Public Liability Insurance Act – 1991.
5. The National Green Tribunal Act – 2010.

The Main objective of water (prevention and control of pollution) Act 1974 is to maintain or restore the wholesomeness of water and prevent, control and abate water pollution. In *Susetha's* case the Supreme Court held that the state is under constitutional obligation under Article 48 to protect the natural water bodies. The parliament enacted Air (prevention and control of pollution) Act 1981 is to preserve quality of air and the treat noise and an air pollutant, contaminates the environment, causes nuisance. It affects health and causes inconvenience. The Environment (protection) Act 1986 came into force after the Bhopal Gas tragedy. It empowers central government to take appropriate

measures with respect to the planning and execution of nationwide programmes for prevention, control and abatement of environmental pollution. The public Insurance Act – 1991 ensures immediate relief to the victim of accident. It followed the principles of “no fault liability.” If any accident taken place while handling any hazardous substance, the victim will get relief under the Act. The National Green Tribunal Act, 2010, replaced the Environment Tribunal Act 1995. The main object of the Act is to establish specialized Green Tribunal on the regional basis. These Tribunals are special adjudicative body, consisting of experts, provide effective and speedy remedy in the matter of environment issues. These tribunals dispose cases relating to the protection and conservation of natural resources. Estimating the growing urbanized tendency and industrial growth, the governments are empowered to restrict the freedom guaranteed under article 19 (g). These enactments are passed to deal with environmental problem and pin point the issues concerning environmental pollution for better action.

Judicial Trends:-

In order to fulfill the constitutional obligation, the judiciary has played very important role and issued appropriate order against the persons who violates the norms of environmental laws. There are catena of cases, in which Supreme Court has responded with equal order of constitutional mandate and welfare of the people. The role of Supreme Court is quite pioneering and shown it's tremendous spirit for judicial activism.

The right to live in clean and healthy environment is the invention of the higher Judiciary of India. The Supreme Court has ushered a new era by recognizing right to life includes the right to clean environment. Right to clean environment now assumed to status of fundamental right. In Ratlam Municipality's case the “right to life” has been interpreted to mean a life of dignity to be lived in a proper environment free from the danger of diseases and infection. The municipal corporations are under statutory duty to provide for scavenging and cleaning the cities and provide clean surroundings for healthy body and mind. They can't avoid such duties in the name of paucity of resources. Maintenance of health and preservation of sanitation is falling within the ambit of Article 21, as it affects the healthy living of citizen and amounts to slow poisoning as well as reducing the life of the people. In stone quarries case, the Supreme Court passed order to stop stone crushing industries as it causes heavy interference with ecology and top soil to be preserved without being eroded by the natural setting of the area.

It was held that church using loudspeaker, drums, voice amplifiers etc, causes compulsory exposure to dangerous and disastrous levels of noise, is protected under Article 21 of the constitution.

Noise affects sleep, may affect physical necessity, causes irritability and de-concentration. Apart from deafness, it affects the digestive system, cardiovascular disturbance and reduce efficiency. Therefore constitutional mandate requires enforcing noise pollution with its strict vigil. In another case the Supreme Court ruled that “once the activity carried on is hazardous or inherently dangerous the person carrying such activity in liable to make good of loss caused to another. The court adopted ‘the polluter pays’ principle, liable to pay cost of the individual sufferers as well as the cost of reversing the damaged ecology. In Taj corridor case, court held that emissions generated by coal consuming industries are air-pollutants, having damaging effect on Taj monument and people living in the Taj Trapezium (TTZ). The atmospheric pollution in TTZ has to be eliminated at any cost, which causes environmental degradation. Air pollutants are in the form of smoke, fume, dust, odour, gases have harmful effects on human being and vegetation, is protected under Article 21. The court directed to the transport authorities to stop air pollution in Delhi. The court also directed to convert petrol and diesel related locomotive to CNG fuel mode to stop pollution.

The Supreme Court passed several verdicts and revolutionarised the law on environment. The right to life has many facets and it means meaningful life free from all hazards. The right includes the right to enjoyment of pollution free environment. Anything endangers life or impairs the quality life is derogation of laws, a citizen has right to have recourse to constitutional remedies under Article 32. The court said – the word ‘environment’ encompasses wide spectrum of surroundings “which brings with its ambit hygienic atmosphere and ecological balance, free from pollution of air, water and sanitation, without which life can't be meaningful. The hygienic environment is an integral facet of right to healthy life and it would be impossible to have human dignity without healthy environment.

Conclusion:-

International legal regime speaks about the strict implementation of international environmental law and recognized the interest of future generations against the activities we take today. According to the international court of justice - “The threat or use of nuclear weapons should be compatible with the obligation of Non-proliferation of Nuclear Weapons Treaty (NPT), specifically with the obligation not to use nuclear weapons against non-nuclear powers.” The world health organization has calculated both the human and environmental effects of a global nuclear warfare. It estimates that, at one stroke, over one billion people would be killed immediately, one billion would be injured and perhaps three billion of world's population would be affected immediately. The spread of radiation would affect even large numbers of

people through the destruction of crops and wildlife, the pollution of seas and water, which would pave path for ruin. Many people far from the site of the nuclear war would die of starvation and hallucination.

The transboundary catastrophic nuclear damage creates fear to the people living on the Earth and dreaming for meaningful life. Both customary and treaty law of International regime and national law ensure protection for human environment. The apex courts of India made all attempts and tried to bring remedy in case of violation of environmental law. It has changed the entire surface of law in the light of sustainable development and people welfare. Yet much do be done.

Law can't change the society. Social action can't change the abnormal situation of the society. The plethora of law and precedents are an eye catcher, solace giving effort. Those are the last resort for the

pre-destined life. Unless our social sense is not well developed, the letters of law and judicial justice seems to be too cold to gralo the national and international impulses of environmental philosophy. Developing countries are roiling hard against the menace of poverty, illiteracy and economic dependency, yet hopes are not destroyed. The Paris Agreement of 2015 created hope for the seven billion people across the world. There are 196 countries adopted the agreement towards a green future and it is estimated "as the victory for climate justice." Let us hope for the best. In the process of such endeavour the world citizenry must keep in mind, the words of Gandhiji that, "The Earth has enough for every one's need, but not for every one's greed". The truth and justice have their inner beauty; people must perceive it and endure it, so that environmental protection can be accomplished.

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