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HEALTHY ENVIRONMENT- AN INALIENABLE RIGHT

ABSTRACT

Nature makes us a whole and the universe is a one piece. Human being is just one of million living form on the earth with its intelligence, does not mean having right to exploit the nature's ecological balance. Human being is at the position to interfere with the natural resources and breaking the nature's delicate balance.

Concept of human rights was emerged after Second World War but it's never prioritized in environmental perspective. In 1972, Stockholm Declaration firstly initiated the concept of human environment i.e. principles and recommendations for environmental policy.

Again in "Caring for the earth, 1991" & "Earth Summit, 1992" declared every human being is entitled to enjoy the healthy life in harmony with nature. The United Nations Human Rights Council recognized a clean, healthy and sustainable environment as Universal Human Right.

Before this recognition Indian constitution is the first in world to conferred constitutional status to the environment protection. It imposes duty on the state to protect and improve the environment and to safeguard the forest and wildlife of the country. On the other hand it is constitutional duty of every citizen to protect and preserve the environment.

Indian judiciary is very conscious while dealing with the environmental issues and played significant role through the various PIL's and evolved environmental principles.

Keywords: *Paryavaran-Vahini, sustainable development, public trust doctrine, precautionary principle, inter-generational equity.*

Indian constitution and judiciary played important role in environmental jurisprudence.

Introduction:

Environmental disaster always realizes us the importance of healthy and clean sustainable environment. It plays important role in human beings quality of life. Indian people are highly closed to the environment since ancient times. There were number of mass movements and still this legacy carry forwarded with time very efficiently. Indian constitution also gives it equal status with respect to other rights and the legislators also effectively implemented the international covenant on the domestic level through the various legislation. Along with the constitution and various legislation judiciary also highly influenced by these efforts and makes them possible to expanding their interpretation in a

various cases especially through the public interest litigations.

Paryavaran - vahini scheme was launched by the Ministry of Environment and Forest during 1992 for creating awareness and to encourage for the involvement of people with active participation and to report the illegal acts relating to the forest, pollution, wildlife and environment degradation.

International Perspective:

Recently the United Nation recognizes a clean, healthy and sustainable environment as a universal human right. There are number of international conventions and agreements on environment protection, but only few had direct impact on the Indian environmental legislation. Right to clean environment is originated in 1972's Stockholm declaration. it gives principles and recommendations

for environmental policy. It was the first step to discuss the environmental politics at the international forum.

In 1983 Brundtland Commission formed by the United Nation i.e. World Commission on Environment and Development (WCED) for achievement of the common goal of sustainable development. "Our Common Future" report submitted by the commission in 1987 popularly known as Brundtland report. It is foundation for the Rio conference, 1992 i.e. Earth Summit.

Agenda 21, the Earth summit made global plan to promote sustainable development across the globe with the help of government and other groups. It declared that human beings are entitled to healthy and productive life with the nature

All these conference shaped today's international environmental laws.

Constitutional Provision:

❖ **Directive Principle:** Before the Stockholm convention article 47 puts the duty on state to raise the level of and the standard of living and to improve the public health. It depends upon the quality of environment. In 1972, after the Stockholm declaration created separate chapter by 42nd amendment (1976) on fundamental duties in the constitution it includes Article 48A and 51A (g).

❖ **Fundamental Duties:**

Article 48A imposes a fundamental duty on state to protect and improve the environment and further to safeguard the forest and wildlife. Wildlife and forest inserted in concurrent list so that both the government fulfills their duties for protecting wildlife. Article 51A (g) imposes a duty on citizen to protect and preserve the environment.

❖ **Fundamental Rights:**

Article 32 and 226 is the remedial measures to invoke the fundamental rights have been used to raise the issue of environmental protection through the public interest litigation.

Article 19(1) gives freedom of speech and expression has been used by the Supreme Court to approach the issue of noise pollution. It means right to freedom of speech and expression does not include right to use amplifiers or loudspeakers. It cannot be used to cause problems for others.

Article 21 gives right to life so it does not mean merely animal existence but life with human dignity with its essential and basic for the enjoyment of standard of life and free from environmental pollution and hazards.

Legislative Perspective:

Indian environmental legislation is highly influenced by the Stockholm declaration. But the Environmental Protection Act, 1986 called as an umbrella legislation enacted in the wake of Bhopal gas tragedy. It was enacted according to the article 253 with the objective of protection and improvement of the environment for the implementation of decisions taken by the United Nations Conference on human environment in 1972 Stockholm declaration. Numbers of legislation are there for environment protection such as:

The Water (Prevention and Control of Pollution) Act, 1974

The Forest (Conservation) Act of 1980

The Air (Prevention and Control of Pollution) Act, 1981

The Environment (Protection) Act of 1986

The National Green Tribunal Act, 2010

After analyzing all the major environmental conference around the globe this act enacted. Statutory body formed under this legislation i.e. National Green Tribunal for the speedy disposal of the case which involves the issues relating to the environment. This body having power to protect the environment and effective implementation of sustainable development goals.

Role of judiciary:

History of the Indian judiciary shows its creativity and liberal views on environmental aspects. Indian judiciary preserves the environment and also evolved various principles to protect the sustainable development. Judiciary used both the soft and hard international environmental laws to form environmental jurisprudence at domestic level. Judicial activism indicates the involvement of judiciary in environmental laws and human rights violation. Supreme Court played key role in the enforcement of article 21 in perspective with the healthy environment.

Right to life fulfilled only when it comes with the clean, safe and disease free environment otherwise it's meaningless. Supreme Court directed to the industries who did not comply with the prior direction of the court regarding the installation of air pollution controlling system should be closed. Court laid down its emphasis on Article 19(6). M.C.Mehta v. Union of India (1994)

Supreme court of India formulate the principle of doctrine of absolute liability for damage caused by the hazardous industries and extend the scope of article 32 and issued appropriate guidelines for the proceedings. Further absolute liability widened the scope of strict liability in the "oleum gas leak case". Indian judiciary introduced the doctrine of absolute liability as optimal measure.

Principles evolved by the judiciary:

Inter-generational Equity:

Every generation having equal right over the earth because of that the resources should be utilized in equal manner or for the common benefit to all. It is obligation on state to conserve and use the environment and natural resources for the benefit of present and future generation. It is the foundation of sustainable development. Sustainable development and corporate social responsibility are the inseparable twins and it is not merely human centric but it is eco-centric. It is duty of the company to take into consideration that outcomes of their thermal projects on environment at present and its effects on the future generation. G.Sundarrajan v. Union of India, 2013

Sustainable Development:

State should achieve the balance between development and environment. Development should be of the extent that can be sustained by the nature with no mitigation. (Narmada Bachao Andolan v. Union of India) Economic development should not be done at the cost of ecological destruction and it should not be hampering ecological development. Ecological development and economic should be well balanced with its effectiveness. (Indian Council for Environment Legal Action v. Union of India)

Public Trust Doctrine:

It imposes a duty on state to not use or exploit the natural resource on commercial basis or for particular class. It having a great importance and benefit to the general public. State is the trustee of all the natural resources and it cannot be permitted to use for the commercial purpose and it can be allowed only for the benefit of public at large. (M.C.Mehta v. Kamalnath, 1997)

Precautionary Principle:

It is a preventive measure for environmental degradation. To take precautions is always better to protect the environment from damage and it is

important step in the absence of scientific evidence of the potential harm to the environment. (AP Control Pollution Board v. Prof.M.V.Naydu, 1999)

Polluter pays Principle:

According to this polluter should pay the cost of damage which caused to the natural environment. It is absolute liability of the polluter to not only compensate the victim but also to pay the cost for the damaged environment by the polluters act. (Vellore Citizens Welfare Forum v. Union of India, 1996)

Conclusion:

The right to clean and healthy environment is not recent invention in fact before the United Nations recognition Indian judiciary already recognized it under article 21 of the constitution. Indian judiciary always shown its enthusiasm in respect of environment through the public interest litigation. It is biggest challenge to protect the natural resources and maintain pollution free environment over the century with the development. Environmental deterioration and climate change started to show their irrevocable damage to the developmental progress. It is one of the challenges to achieve the developmental goals without breaching environmental legislations.

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