

JUDICIAL APPROACH TO SUSTAINABLE DEVELOPMENT

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This paper primarily focuses on the Judicial Approach towards sustainable Development as in What the Indian Judiciary really thinks about sustainable development and how it acts. It commences with the introduction to environment and what it covers within its ambit. Then the paper further moves on by discussing the history of the environment and its position. It discusses how it was revered in the past and people used to relate themselves to the environment and they worshipped nature as in how nature was considered as a blessing to mankind. Incessant to this, will come the present scenario of the environment and how people's approach towards environment has completely changed over time. It then moves onto discussing the meaning and the concept of the Sustainable Development and from where it emerged. Then this paper progresses towards how our Indian Industrial Development and Sustainable Development are connected. In furtherance of this the relationship between the growing urbanisation and the concept of sustainable development is explained, in the Indian context. It then discusses how the Indian Judiciary plays an important role in protecting the environment and sustainable development. It also discusses, the various hazardous activities that we do, that harm the nature and the judicial decisions on the same, followed by the case laws regarding each activity. These activities include quarrying, felling of trees, mining etc. As it moves on, the paper also discusses how even the tribal people are entitled to their right of environment as their human rights and the take of our Indian Judiciary on it. The research methodology of this paper have been largely descriptive and analytical. Internet, books, research articles and newspapers have been of great use to us while writing this research paper. Last, but not the least the paper concludes with the certain set of recommendations and the conclusions drawn from the research done.

Environment is the milieu in which an organism lives which means it includes within its ambit everything that a man is surrounded by, no matter whether it is living or non living. It includes the sum of all of its surroundings. This includes natural forces and other living things. It defines the conditions of danger and damage to the existence, as well as the

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development and the growth.¹ Everything we are adjacent to, all the non living as well as the living things, constitute the word environment. All the materialistic things, which we are circumambient to compiled with the natural gifts which we are blessed with, are gauged to be the environment we habitat ourselves in. All the natural phenomenon that humans have completely no rein off, are the ones intended to be called as natural forces. All these natural forces are the fabrications of the creator, the Sun, the Water, the Air and similarly the effect of these forces like the heat that accrues from the sun, the waves that ensue from the water and the thunderstorms and the other form of natural calamities emerging as a result of the embezzle of these natural forces are just diabolical demonstration of the atrocity that they can cause to us. With every of its small action, it brings into light the apprehension of the damage that it can cause in the upcoming days or future. It is just that we humans are too ignorant of the fact that even nature speaks and has life.

"Environmental history deals with the various dialogues over time between people and the rest of the nature, focussing on reciprocal impacts"². It says that to understand what the nature has in gift for us, can be understood when we observe it carefully. We need not only focus on the natural impacts or the changes that are taking place in day to day life, but in addition to this we also need to understand and interconnect the rituals, practices and culture of the people linking to environment. Indeed the practice of environmental conservation has been a thing of the past and is not new to India. Indian people have been incessantly making efforts to conserve environment in many ways. In fact the concept of protecting nature and wildlife has been avid article of belief, faith and are evident in the practices of the people³. It means that protecting and conserving the nature and wildlife have often been connected and related with belief, faith and credence of the people. People have been indeed practicing certain rituals that show that the environment needs to be revered and has been done through so many ages. Therefore, the fact that the environment is revered cannot be hidden. It is something enshrined in the daily lives of people. It is in no doubt that the fascination, admiration and reverence for the nature has been an important strand of the Indian tradition and the Indian culture, the traces of which can be dated back to a thousand of years ago. Historically, conservation of nature and natural resources was an innate aspect of the Indian

¹ Black's Law Dictionary on the definition of "Environment".

² Beinard, William & Coates, Peter, Environment and History: The taming of the nature in the USA and South Africa (London,1995), p.1

³ Leepakshi Rajpal and Mayank Vats, Legal Dimensions With Reference to Environmental Protection in India, International Journal of Enviro Legal Research, vol.1 and issue 1.

psyche, faith and religion, folklore, art and culture permeating every aspect of the daily lives of the people⁴. The Indian evidences of the same can be found in the Bhimekta caves and the other rock caves. The adorable relationship between a man and a nature can be observed in the practices of every religion be it Hinduism, Sikhism, Jainism, Buddhism, Islam, Christianity and many more. every other religion in India has been a vital evidence which has always pivoted the images of the amicable relationship between the man and the nature. The images of the natural forces have been linked to various Gods and Goddesses overtime. The Tiger is considered as Sawari of Goddess Durga, the Snake and the Bull is often related to Lord Shiva, Owl is considered to be the messenger of the Goddess Saraswati and many more. The major reason for the amicability between the man and the nature have been images of the God and deities linked with the Nature. It has been often shown that they have been the originators of the nature and so it is important to worship them and take care of the nature so that they do not get furious over the humans in form of calamities, however scientifically speaking there is no evidence that these natural forces are related to the deities and it is all mythical.

Dating to the present scenario, the situations are not the same. People in the wake of accomplishing materialistic pleasures have gone hullabaloo, and have completely lost their sense of respect towards natural forces or for that matter for their own fellow beings. The human nature has drastically changed from being so reverent to amenable. Their conduct is totally self centred without even considering the nature as an entity on which, their actions might have an adverse effect. Ruthlessly, people are focussing on earning money and accomplishing the materialistic pleasures, which will help only gain a materialistic and an artificial betterment of the lifestyle, while completely ignoring the nature and that its betterment will lead to actual and beneficial, betterment of the lifestyle. Achieving high standards of artificial life will result in the deprivation of the "real" quality of life. By the term "real" we focus on being more healthy and living in an environment that is beneficial for the human mankind. This happened not in one or two decades but it took a lot many years for such decrease in moral and environmental conditions of the country. Through the many years of the so called development that the country is heading towards, the environment which was considered sacred, is now neglected for the accomplishment of self made desires and greed for the artificial lifestyle. So much so, that the recent news of the air pollution in Delhi, was one of the most top trending news of the world. The air quality in Delhi was so much affected

⁴ S.M. Nair on Cultural traditions of Nature Conservation in India.

after the Diwali festival celebrations that people found it difficult to move and breathe outside their houses. If this is the development they are running and working for, I think it is time to pose a question on ourselves, Why such a development which leads to irrecoverable loss or a loss that is not possible to recover from. Such a development, which leads to fresh air nowhere ? or a development that leads to seeing only the fancy walls of our home and not the lush of the trees and the forests that are just a topic of fascination these days?

This paper discusses how the concept of Sustainable development was framed and how the realisation of depriving environmental state was given action upon but the implementation of which at the individual level is still pending and that cannot be enforced by any lawful body, until and unless every individual takes a stand and efforts to improve the environment at his own level because every single change would unite to make a big one.

Moving onto the meaning and the concept of Sustainable Development. The term sustainable development in a layman's language means to use the natural resources in such a way that the needs of the present generations are met keeping in mind the needs of the future generation. This term "sustainable development" was brought into common use by the World Commission on Environment and Development (The Brundtland Commission) in its seminal 1987 report Our Common Future. The World Commission on Environment and Development was set up by the General Assembly of the United Nations in the year 1983⁵. It has given a very comprehensive definition of the term Sustainable development in the following words :-

Sustainable Development is development that meets the needs of the present without compromising the ability of the future generations to meet their own needs⁶.

According to the above mentioned definition, it contains two key concepts :-

- (a) The concept of the "needs", in particular the essential needs of the World's poor, to which overriding poverty should be given; and;
- (b) The idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs⁷.

⁵ See Dr. P.S. Jaswal and Dr. Nishtha Jaswal, Environmental Law, Sustainable Development,p.97

⁶ Our Common Future - the World Commission on Environment and Development, 1987, p.43

⁷ See M.C. Mehta V. Union of India, (2004) 12 SCC 118. In this case the Supreme Court observed that the definition of Sustainable Development as given by the Brundtland Commission in 1987 still holds good.

This means that the goals of economic as well as social developments are to be met with the environmental goals so as to achieve the goal of sustainable development. Thus the goal of economic and social development must be defined in terms of sustainability in all countries no matter if they are developed, developing or are underdeveloped, market oriented or centrally planned. Development involves a progressive transformation of the economy and society because efforts are required at both the national, state or even the individual level so as to be sustainable enough to meet the requirements of the future generations. Sustainable development is not a new name of environmental conservation and neither it does stop the process of development. It is for that matter, economic policy, fiscal policy, monetary policy, developmental policy and every policy but with sustainable methods. It means that every policy is made, keeping in mind the needs of the future generations and the needs of the present. It is a process of change, in which economic and fiscal policies, trade and foreign policies, energy, agricultural and industrial policies all aim to induce development paths that are economically, socially and environmentally sustainable. The report emphasised that the aim of sustainable development cannot and will not be achieved with the world which is stricken by the poverty. It called for a new era of economic growth. Economic growth and development obviously involves changes in the physical ecosystem.⁸ It means that a country or a state where the poverty prevails, it cannot be sustainably developed. First, it needs to get rid of the poverty and only then it can achieve the aim of the sustainable development, and this is the reason it calls for equitable economic growth. Then everyone will be at the same level of the economy and enjoy the same economic status and will use the same amount of resources according to need and when everyone is at the same line of economic level, the needs of the resources will also be at the same level, and so the goal of sustainability will pave a way for its development.

Environment in India, is going from bad to worse day by day and so it is not only the duty of the state but the duty of every single citizen to play his or her part. It is really difficult to play one's own part but Indian Judiciary has always made sure it has always performed its part. The Indian Judiciary due to its special feature of independence plays a great role in the functioning of the country. In India, like any other country, the condition of environment has degraded day by day due to overexploitation of resources, depletion of traditional resources, industrialisation, urbanisation and population explosion. India, however has not been oblivious to this fact. It has always been in the fore front of taking every possible step for the

⁸ Ibid, p.45

protection and improvement of the environment and aiming at sustainable development. Since the man is the creator and the moulder of his environment, his habits and practices on the environment can be altered, though it will still leave the impact but the scope of improvement always remains. The problem is that the changing pace of environment is much faster as compared to the changing pace of the law, so the laws have to be amended regularly and new laws have to be brought in. This becomes all the more important in the view of the ever increasing scientific and technological development and advancement which man has made⁹. India has made various laws relating to environment and the Indian Judiciary has always played a pivotal role in interpreting those laws. In fact the Indian Judiciary has created a new Environmental Jurisprudence¹⁰. It is because of the judicial environmental litigations that the Indian Judiciary has reached such an height in the environmental jurisprudence. The adherence to the principle of sustainable development is now a constitutional requirement. The Judgement is made only after analysing what amount of damage and harm is caused to the environment depending upon the facts of each case. Therefore, the courts are required to maintain a balance between the development needs of the ecology and the protection of environment. It is true, that in a developing country like India, development is necessary but that should not be done in an excessive manner that the country goes through an irrecoverable loss. Development should be done but not at the cost of the environment. The developmental process should be such that there is a minimalistic harm to the environment and environment should not be neglected in the wake of materialistic developments. In the wake of the materialistic developments, if we do not look for the environment concerns then, it will result in total devastation and disaster as it is happening now. On the wake of 21st Century it is neither feasible nor practicable to not think about development of the country or the nation, but that does not mean without any consideration for the environment. Thus, sustainable development is the only answer and administrative actions ought to proceed in accordance therewith and not d'hors at the same.¹¹ The Judiciary in India has played a very important role for the environmental protection and decided many cases on the basis of the principles of the sustainable development. It is important to notice that the most of the cases of the environmental law come through what is known as a Public Interest Litigation. It means the litigation is filed for the general interest of the public and anyone can file it. There is no

⁹ See Paramjit S. Jaswal, "Developments in Environmental Laws : the case of India", in Proceedings of the Workshop on Development and Planning, University of London, U.K. (1992)

¹⁰ See Paramjit S. Jaswal, Directive Principles Jurisprudence and Socio Economic Justice in India, (1996) p.543

¹¹ See, People United for Better Living in Calcutta V. State of West Bengal, A.I.R. 1993 cal., p.215

obligation on anyone to file this litigation, but it is generally done, if it is felt that the common rights of the public has been violated. Right to Good and Better Environment is covered under Article 21 of the Indian constitution which states that every individual has the right to life and personal liberty except for the provisions established by law.

One of the major reasons for the environmental degradation has been the coming of industrialisation in the country. It is a news of utter disappointment that in the wake of achieving industrial development, we totally forgot to divert our attention towards environment. Industry is central to economics of the modern societies and indispensable motor of growth. It is essential to developing countries, to widen their development base and meet the growing needs of the society. Industry extracts material from the natural resources base and insert both the products and pollution into the environment. It has the power to enhance and degrade the environment, and invariably it does both.¹² The products that are released into the environment have negative impacts on the water, air and land pollution. However with the rapid pace of growing industrialisation, these problems have taken a new disastrous end.

During the recent years, in India there has been growing awareness of environmental degradation and people as well as the Judiciary as a whole have shown their anxiety about the situation arising out of the Industrial growth and pollution. A monumental judgement was delivered by the Supreme court in the case of M.C. Mehta v. Union of India¹³. Bhopal catastrophe is only a manifestation of the potential hazards of all the chemical industries in India, none of which are amenable to effective regulation. Hardly had the people got out of shock of the Bhopal disaster when a major leakage of oleum gas took place from one of the chemical industries, Shriram chemicals in Delhi and this leakage led to a big disaster. The court in this case, observed some major consequences. First, that nearly about 4000 people will be thrown out of the employment, if the plant gets shut down¹⁴. Secondly, the short supply of chlorine which was being produced by the said plant could have affected many activities in Delhi. Thirdly, the production of downstream products would have also been seriously affected resulting too some extent in short supply of these products. The Supreme court appointed a committee of the experts and once the court was satisfied that all the safety measures and the control measures had been taken by the management, it was held that the

¹² Our common future - The World Commission on Environment and Development, 1987, p.206

¹³ A.I.R. 1999,p.208

¹⁴ M.C. Mehta V. Union of India, A.I.R. 1987 SC, p.982

plant can be restarted subject to certain stringent conditions and the provisions of the Water Act, 1974 and the Air Act, 1981 should be strictly observed.

In this case the Supreme Court, though deliberated upon did not answer the question whether private enterprises carrying inherently dangerous and hazardous activities can come under the scope of the term "other authorities" stated under Article 12. However, by allowing the writ petition to be filed under Article 32 of the Constitution, it impliedly meant that such private enterprises are a part and under the meaning of the term "state" under Article 12 of the Constitution.

In *Union Carbide Corpn. v. Union of India*,¹⁵ the then Chief Justice Ranganath Misra, in his concurring judgment observed that the view of the Supreme Court in *Oleum Gas leakage case III*, in toxic mass tort actions arising out of hazardous enterprise, the award for the damage must be within the economic capacity of the offender cannot be pressed to assail the settlement reached in *Bhopal Gas Tragedy case*. In such cases, quantification of damages can be had without paying much attention to the individual loss because the loss caused to the public at large is of much more importance than the loss caused to the individual because of his own actions. It is because of his own actions that the public at large is suffering and so the individual loss does not matter. The results should be given in favour of the public and not of the individual. It was further observed that if the settlement found is exhausted, the Union of India should make good the deficiency. In this case the Court ordered for establishing a full-fledged hospital equipped as specialist hospital for treatment and research of MIC gas related affliction, operation expenses which were to be borne by the MCC.¹⁶

However, the Supreme court in the case of *Indian Council for Enviro-Legal Action v. Union of India*,¹⁷ over-ruled the observation of the previous case that "the view declared by the *Oleum Gas Leakage Case III* was only obiter ans cannot be accepted". In the *H-Acid Case* the SC reiterated the principle of liability laid down by the Supreme Court in *Oleum Gas Leakage Case III* which the opinion of the court was simple and practical principle suited to the conditions obtaining in this country.

¹⁵ 1991 4 SCC, p.584

¹⁶ Ibid, p.609

¹⁷ 1996 3 SCC, p212

In *Charan Lal Sahu v. Union of India*,¹⁸ the Supreme Court while deciding the question of constitutional validity of the Bhopal Gas Leak Disaster Act, 1985, held that the said Act was valid but directed the interim compensation or maintenance to be paid and further suggested for taking the pre cautionary principle in mind for effectively dealing with such industrial disasters in future.

In *M.C. Mehta v. Union of India*¹⁹, the Supreme Court took cognizance of the increased pollution caused by the existing slaughter house in Agra. After considering the recommendations and observations made by the central pollution control board in respect of old slaughterhouse located near Taj and new slaughterhouse proposed to be located at Kuberpur, the Supreme Court ordered for the closure of the slaughterhouse.

In *M.C. Mehta v. Union of India*²⁰, The Supreme Court took note of the air pollution caused by the brick kilns operating in the Taj Trapezium. In order to protect the Taj Mahal and other monuments, human health and vegetation the Supreme Court issued the following directions :

- (i) Licensed brick kilns within 20kms radial distance of the Taj Mahal and other significant monuments in the Taj trapezium and Bharatpur Bird Sancturay to be closed.
- (ii) District Magistrate and Superintendent Police concerned to close all the unlicensed and unauthorised brick kilns in the said area and the U.P. Pollution control board to file compliance report within two months.
- (iii) No new license to be issued for establishment of brick kilns within the said area.
- (iv) Board also to ensure compliance with National Environment Engineering Research Institute recommendations regarding the improvement of kiln designs, coal quality, shifting to clean fuel etc.
- (v) Board also to issue notices to brick kilns operating beyond 20kms radial distance to install pollution control devices suggested by NEERI.

In *M.C. Mehta v. Union of India*²¹, the Supreme Court took note of the fact that in Agra, air quality has not improved 100%. The court directed the U.P. Pollution Control Board as well

¹⁸ 1990 1 SCC, p. 613 at 707 -708

¹⁹ 2002 9 SCC, p.574

²⁰ 2001 9 SCC, p.235

²¹ AIR 2002 SC, p3696

as the Central Pollution Control Board, to find out the reasons responsible with regard to the RSPM level. the state govt. was also authorised to find whether unauthorised brick kilns/factories causing such increase are within the 20 kms radial circle of the Taj Monument.

In *M.C. Mehta v. Union of India*²², the Supreme Court, while clarifying its order prohibiting the mining and construction activities in the close vicinity of the lakes so as to protect them from environmental degradation observed :

The "precautionary principle" has been accepted as a part of the law of the land. Article 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate as to safeguard the forests and wildlife of the country. It is the duty of every citizen of India, to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "precautionary principle" makes it mandatory for the state government to anticipate, prevent and attack the causes of environment degradation.²³

In *M.C. Mehta v. Union of India*²⁴, The Supreme Court pointed out that it has to be borne in mind that the Masterplan of 1990 made it obligatory on the hazardous industries to shift within three years. No time limit was stipulated with regard to the existing heavy and large industries, but the spirit clearly was that they should shift within a reasonable period of time.

In *M.C. Mehta v. Union of India*²⁵, (popularly known as the Taj Mahal Case), the Supreme court once again followed the path of the sustainable development and applied the "Precautionary Principle" by directing that the industries operating in Taj Trapezium Zone using coke as an industrial fuel must stop functioning and they may relocate themselves to the alternate site provided under Agra Master plan. The shifting industries were directed to be given incentives at the new industrial estates in terms of the Agra Master Plan. In this case also the SC specified the rights and benefits to which the workmen of such industries were entitled.

The above showed case laws clearly present how with the growing industrialisation the Indian Judiciary has always went out of its way to protect the environment and even created a new horizon for the environmental jurisprudence. It is clearly evident that our judiciary has always tried to keep pace with the rapid industrialisation but it is also evident in every

²² (1997) 3 SCC, p.715

²³ *M.C. Mehta v. Union of India*, 1997 3 CC, p.715 at p.720

²⁴ (2000) 5 SCC, p525.

²⁵ (1997) 2 SCC, p.353

decision that sustainable development would never be possible without the efforts of every individual. It is with the efforts of every single individual that the goal of sustainable development can be achieved. It is not only with the passing of certain judgements that this goal will be achieved but with the every single small move, that our country will move ahead in its dream of getting sustainably developed.

Another important factor to consider when we talk about devastation of environment is the rapid pace of urbanisation. Due to rapid growth of urbanisation and the changing plan and policies, there has been a tremendous effect on the environment. Sometimes even the development plan is not followed and the land reserved for purposes of recreational parks under the development plan is acquired for construction of different structures and buildings. This has had an adverse effect on the open environment. Whatever land is available and free, instead of creating parks and sanctuaries for the environmental species, we humans in the wake of self interest, build more and more buildings around which are spread the artificial flowers. Just imagine, if those artificial flowers give us a sense of freshness, then imagine the amount of ecstasy the real flowers would give us, but we do not think all this instead more and more buildings that go huge in the air. The rapid increase in urban population has adversely affected the facilities needed for an adequate human life such as clean air and water, sanitation, schools and transportation. The urban solid waste is posing a serious threat to the environment. The urban poor suffer from the high incidence of the diseases most of which are environmentally based. It has increased slum dwellers, over-crowding, insect and rodent population, air pollutants and street filth. According to a report by the Centre for Science and Environment, out of India's 3119 towns and cities, only 209 had partial and only 8 full sewage treatment facilities, On the river Ganges, 114 cities each with 50,000 or more inhabitants dump untreated sewage into the river every day.²⁶ The section of the Yamuna river which flows through Delhi collects nearly 2000 million litres of untreated sewage daily. In Delhi, alone nearly 2000 metric tonnes of air pollutants of air are thrown away every day. This has made the capital the fourth most polluted city in the world. There has been an increase of 40% in the respiratory diseases in the past decade.²⁷

The Indian Judiciary has shown its concern to the problems of urbanisation and need for protecting and preserving the environment.

²⁶ Our common Future- World Commission on Environment and Development, 1987, p.240

²⁷ B.R. Jindal, K.L. Toky and Paramjit S. Jaswal, Environment Studies, 1997, P.295

In *M.L.Sud v. Union of India*,²⁸ It was alleged that the Delhi Development Authority was denuding the forest by cutting trees and putting up construction and laying roads in the city forest area which was shown in the Master Plan as "Green" and was to be maintained as city forest. the Supreme Court issued the necessary directions to the concerned authorities for maintaining the city forest.

The Supreme court reiterated the above observations in *Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd.*,²⁹ A public interest litigation was filed against the construction of a hotel and sea beach resort in Goa coastal area on the ground that it would cause ecological or environmental damage of the coastal are. The Court held that the permission granted to the proposed hotel project was based on consideration of relevant material and having regard to Coastal Regulation Zone Notification dates 19.02.1991 issued by the Ministry of Environment and Forest under sections 3(1) and 3(2)(v) of the Environment Protection Act, 1986. Also there was no evidence of the ecological degradation on construction proposed hotel complex, hence the petition was dismissed.

In *Citizen, Consumer and Civic Action Group v. Union of India*,³⁰ the Madras High Court observed that while the courts have social accountability in the matter of protection of environment, there should be a proper balance between the same and the developmental activities, which are essential for progress. There can be no dispute that the society has to prosper ,but it shall have to be protected, but not at the cost of degradation of the environment. In the like vein, the environment has to be protected otherwise it will be difficult for the mankind to sustain. Both the development and the environmental conservation has to go hand in hand and thus the development has to be sustainable.

In *Ajay Singh Rawat v. Union Of India*³¹, a public interest litigation was filed alleging water, air and noise pollution in Nainital . It was found that in Nainital there were unauthorised construction of buildings, Ballia Ravine through which outflow of Nainital lake water passes during rains was in a dilapidated condition, hill cutting and destruction of forests was going on in the catchment area of the lake, water was full of human waste, horse dung and other heavy vehicles were plying on the mall road and the Bridle paths. The Supreme Court issued certain direction, regarding the preventive and remedial measures to be taken on war footing

²⁸ 1992 Supp (2) SCC, p.123

²⁹ (2001) 2 SCC, p.97

³⁰ AIR 2002 Mad., p.298

³¹ (1995) 3 SCC, p.266

so that the Nainital may regain its unsoiled beauty and attract tourists. It was directed that sewage water has to be prevented at any cost from entering the lake. Cure has to be taken that the horse dung does not reach the lake. The court also suggested that multi storied group housing and commercial complexes have to be banned in the town area of the Nainital. the court further directed that the offence of the illegal felling of the trees was required to be made cognisable and vehicular traffic on the mall road had to be reduced.

In *M.C. Mehta v. Union of India*³², the Supreme Court took the notice of news item under the option "falling groundwater level threatens the city" of Delhi which appeared in the Indian Express on 18-3-1996. the news item was brought to the notice of the court by Mr. M.C.Mehta, advocate. the court treated it to be as a public interest litigation and issued notice to the Central Government, Ministry of Environment and Forest. The Supreme Court issued direction to the Central Government to appoint Central Groundwater Board as an authority under section 3(3) of the Environment Protection Act, 1986 and to confer the "authority" the power to giive directions under the section 5 of the Act. Board was an authority could resort to the penal provisions under sections 15 to 21 of the Environment Protection Act, 1986. The board was required to apply its mind in respect of the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country and issue necessary directions in the same regard.

In *Bombay Dyeing and Mfg. v. Bombay Environmental Action Group*³³ the Supreme Court after referring to a large number of decisions rightly stated that whereas the need to protect the environment is a priority, it is also necessary to promote development. The court observed:

The development of the doctrine of sustainable development indeed is a welcome featurre but while emphasising the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore the dire need which the society urgently requires³⁴. Thus, the harmonisation of the two needs is required. the doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not an ipse dixit of the court.³⁵

³² (1997) 11 SCC, p.121

³³ (2006) 3 SCC 434

³⁴ Ibid. p. 526

³⁵ See *Susetha v. State of Telangana*, (2006) 6 SCC, p.543

In *C. Uma Devi v. govt. of Andhra Pradesh*³⁶, the municipal corporation had converted a park into the garbage dumping yard. The court deprecated the action of the Corporation and directed the Corporation not to dump the garbage in park and restore lost glory of the park. The Court also directed to the State Pollution Control Board to monitor maintenance of the park.

In *Ajay Singh Rawat v. Union of India*³⁷, the Supreme Court directed that the vehicular traffic on the Mall road, Nainital has to be controlled and the plying of heavy vehicles stopped so that Nainital could regain its unsoiled beauty and attract tourists.

Thus from the above mentioned incidences it is quite clear how with the coming up of more and more urbanisation, the overall development has not been on a rise but on a decline, since every natural resource is in a dilapidated situation and deplorable condition. We have to understand that the development has to be two folded and not one phased as it will lead to only destruction and devastation in the future. the condition in the present times is already running from bad to worse, we have to take steps to improve and enhance the quality of the natural resources we are surrounded by or else the devastation of the mankind will approach and none of our developments will help.

It is not that people have not responded to the environmental calls but it is just that the working of only few will not lead to a major change but when we have already devastated the natural forces in our own exotic ways, it is time for everyone to come out of their comfort zones and make a change. The appended cases will describe how people have actually worked for the betterment of the environment and listened to the mother nature who is in danger. People have responded well to the environmental crisis caused by the indiscriminate quarrying, mining, stone crushing near the populated areas or near the National highways and felling of trees resulting in the deforestation and other environmental degradation.

In *A.R.C Cement Ltd. v. State of U.P.*³⁸, the Supreme Court did not permit the ceent factory to run in the Doon Valley area where the mining operation had been stopped in order to restore the Doon valley to its original character it was directed to be declared as non industrial. However, the government was asked to provide an alternate site for shifting the cement factory of the petitioner.

³⁶ AIR 2000 Cal., p.84

³⁷ AIR 1993 Ker.,p.297

³⁸ 1993 Supp. (1) SCC, p.57

In *Consumer Education and Research Society v. Union of India*³⁹, the Supreme Court accepted the recommendations of the expert body that mining operation should not be allowed within 2.5 km beyond the boundaries of Narayan Sarovar Wildlife Sanctuary. The Supreme Court also noted with concern the operation of certain mining industries in blatant violation of environmental laws and has directed for their closure.⁴⁰

In *State of A.P. v. Anupama Minerals*⁴¹, the authorities had the power to grant the renewal of the mining lease as per the terms of the lease. However, after the coming into operation of Forest Conservation Act, 1980, the mining lease fell within the reserved forest area and hence the authorities refused to grant the renewal of the lease. It was held that the refusal by the authorities was proper because exercise of power by public authority is coupled with duty to fulfil the conditions for such exercise.

While dealing with the effects of the mining activity in the area up to 5 km from Delhi to Haryana border and also in the Aravalli Hills, the Supreme Court in *M.C. Mehta v. Union of India*⁴² has pointed out that mining operation is hazardous in nature. It impairs the ecology and people's right to natural resources. The entire process of setting up and functioning of a mining operation requires utmost good faith and honesty on the part of intending entrepreneur. The regulatory authorities have to act with utmost care in ensuring compliance with safeguards, norms and standards to be observed by such entrepreneurs.

In *Golden Granites v. K.V. Shanmugam*,⁴³ it was held that for grant of lease for quarrying minor minerals, prior approval of the Central Government is mandatory under the Forest Conservation Act, 1980. Therefore, the lease granted by the authority subject to grant of approval of the Central Government is illegal.

In *Sabia Khan v. State of U.P.*⁴⁴, the petitioner claimed that the directions issued in the Forest Conservation Case, were not judicial verdicts but were ad-hoc orders. The petitioner further submitted that these orders were violative of the Fundamental Rights of the citizen under Article 19(1)(g) of the Constitution to operate saw mill. The Supreme Court rejected the

³⁹ (2005) 10 SCC, p.185

⁴⁰ See *Goa foundation, goa v. Union of India*, (2005) 10 SCC, p.559-564

⁴¹ 1995 Supp (2) SCC, p.117

⁴² (2004) 12 SCC, p.118

⁴³ AIR 1998 Mad., p.150

⁴⁴ AIR 1999 SC, p. 2284

contention of the petitioner with the costs of Rs. 10,000 and further held that the petition was an abuse of the process.

While we live in the city there are people, who live in the forests too. What about them? In India there is a large amount of population of tribes which is scattered in almost every part of the country. They live in the forest and use forest as their habitat. In fact, tribes and forests are closely related to each other. They earn their livelihood from the forests. They depend on forests for almost everything. They protected the forests and the forests protected them. They had a dual way relationship with each other.⁴⁵ Over the years the tribal communities have emerged which are no longer amenable to the traditional tribal disciplines. It is merely because the environment in which they used to live have been totally devastated by people like us for our luxuries. Forget about the animals and other species, we humans have forgotten to respect our other fellow human beings. The tribal people have become victims of the plainsmen who are responsible for the forest destruction on a massive scale. Therefore, it is necessary that programmes in forest protection should be designed taking into consideration the tribal's and ensuring their involvement. The National Forest Policy of 1988 has realised the need to associate tribals in forest development. This says that taking into consideration the symbiotic relationship of the tribal people and the forests, the forest men appointed by the government should be amicable to them and protect them against every possible disaster to their home and survival.

However, special attention is necessary to the following :-

- (i) One of the major causes for degradation of forests is illegal cutting and removal by contractors and their labourers. In order to put an end to this practice, contractors should be replaced by the institutions such as co-operatives, labour co-operatives government corporations etc. as early as possible.
- (ii) Protection, regeneration and optimum collection of minor forests produce along with the institutional arrangements for the marketing of such produce.
- (iii) Development of forest villages at par with revenue villages.
- (iv) Family oriented schemes for improving the status of the tribal beneficiaries.

⁴⁵ B.R. Jindal, K.L. Toky and P.S.Jaswal, Environmental Studies, 1997, p.316

(v) Undertaking integrated development programmes to meet the needs of the tribal economy in and around the forest areas, including the provision of the alternate sources of domestic energy on subsidised basis, to reduce pressure on the existing forest areas.

It does not mean that the court suggests a modern man to become like an Adivasi or fall to the level of Adivasi, nor it says that transport all the adivasis to the modern or urban areas, it just focuses on a balance between the two. It says to bring about a change, the change needs to be permanent and this is why it will take time. Bring the adivasi community to the level of an urban man. this process will take time. The court does not however mean to say bring them to the level of urban man so that we can exploit the resources more, bu just to uplift their social status and introduce them to the world full of culture and tradition different from theirs. The Judiciary in India has also shown a concern towards them which is reflected in the case of Pradip D. Prabhu v. State of Maharashtra⁴⁶, a public interest litigation was filed on the behalf of the Adivasis occupying the forest land in the State of Maharashtra since 1978, claiming regularisation of their possession in terms of the government instructions. The court directed the State Govt. to appoint responsible officers in different districts to examine the claims of such Adivasis for regularisation of their possession of the forest land. Till finalisation of the cases of such adivasis, they were not to be dispossessed from the land in their possession.

From the perusal of the above case it is evident that the judicial attitude in India has been for protecting the traditional rights of the Adivasis but not at the cost of environment and development. It is based on the principles of sustainable Development. Hence, we can say that the Indian Judiciary in every environmental case they solve, they do it completely on the basis of Sustainable Development however, the judgements depend on the case to case basis. Indian Judiciary has taken every possible step to protect the environment, In fact it has reached its own unique Environmental Jurisprudence following the path of Sustainable Development. It is now on our individual part, to complete the dreams that our ancestors have seen, to achieve the goal of sustainable development. It is evident that every good thing takes time but we need to consider this concept for our own benefit, so that in the last we accumulate every small effort to make a big one and the change finally occurs.

⁴⁶ 1995 Supp (3) SCC, p.450