

CHAPTER-IV

SUSTAINABLE

DEVELOPMENT AND POST

STOCKHOLM ENVIRONMENT

POLICY IN INDIA

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CHAPTER FOUR

SUSTAINABLE DEVELOPMENT AND POST-STOCKHOLM ENVIRONMENT POLICY IN INDIA

4.1 Introduction

Development is the need of the hour, but at what costs is the million-dollar question awaiting an answer. Sustainable Development is the international community's answer to the dilemma of environment versus development. Sustainable Development lies at the heart of the Earth Summit process. The journey toward sustainable development has not been straightforward and far from being achieved. In the last thirty years a whole series of events have brought us to the wide-ranging interpretation of sustainable development.

The concept of sustainable development dates back a long way but it was at the United Nations Conference on Human Environment, Stockholm 1972 that the international community met for the first time to consider global environment and development needs. The Conference led to the formation of United Nations Environment Programme (UNEP). The Stockholm Declaration and Action Plan, which were also produced, defined principles for the preservation and enhancement of the natural environment, and highlighted the need to support people in this process. The Conference indicated that "industrialized" environmental problems, such as habitat degradation, toxicity and acid rain, were not necessarily relevant issues for all countries. In particular, development strategies were not meeting the needs of the poorest countries and communities.

However it was the pending environmental problems that dominated the meeting and led to wider public awareness.

In the 1980's the United Nations set up the World Commission and Development, also called the Bruntland Report, which framed much of what would become the 40 chapters of Agenda 21 and the 27 principles of the Rio Declaration on Environment and Development.

The Summit brought environment and development issues firmly into the public arena. Along with the Rio Declaration and Agenda 21 it led to agreement on two legally binding conventions: Biological Diversity and the Framework Convention on Climate Change. It also produced a Statement of Forest Principles. The Earth Summit gave rise to a number of positive responses including the emergence of thousands of local Agenda 21 initiatives and an enhanced political profile of environmental issues.

The principle of Sustainable Development once evolved at the international level, we find shift in the environmental policy of India. Though earlier, that is long before Stockholm, in the scriptures we do find a concept similar to the concept of Sustainable Development as evolved at Stockholm⁵⁸, a new policy evolve immediately after Stockholm. The Five -Year Plans do reflect a care and attention to the environmental issues.

The role of the executive is to ensure proper environment protection management .The executive is an important organ of the Government in any democratic set up. The executive's basic function is to implement the law and the policies of the government. So it is the implementing Agency. In the Chapter on Environment

⁵⁸ Discussed in detail in Chapter Two

relating legislations, we have discussed the various executive bodies under various environment related legislations. On paper, we do find them to be armed with certain powers to execute the laws and policies. But the history has shown us that the executive has been ineffective in executing its functions properly, as a result of which the judiciary had to intervene. Executive inaction has resulted into judicial activism.⁵⁹

In this chapter, the researcher makes an attempt to analyze the concept of sustainable development in India and the environment policy in post Stockholm era in India.

4.2 Meaning and Origin of Doctrine Sustainable Development

The term Sustainable Development was used at the time of Cocoyoc Declaration on Environment and Development in the early 1970s. Since then it has become the trademark of international organization dedicated to achieving environmentally benign or beneficial development.⁶⁰

The concept of 'Sustainable Development' is not a new concept. The doctrine had come to be known as early as in 1972 in the Stockholm Declaration. It had been stated in the Declaration that:

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to

⁵⁹ The various judicial initiatives have been discussed on the Chapter on Judicial Interpretation

⁶⁰ Redelift Michael, Sustainable Development- Exploring the Contradictions, 32 (1987)

protect and improve the environment for present and future generation."

Some definitions of **Sustainable Development** are as follows:

In the opinion of Roe:

"....sustainable development is an oxymoron-not, however, because "development" is always unsustainable, but because sustainability cannot be "developed" the way many of its advocates suppose.⁶¹

Beyerlin has defined Sustainable Development as follows:-

"The notion of Sustainable Development, at least since the 1992 Rio Conference, is the focus of all debates on International environmental protection policy.... Nevertheless, the specific meaning and structure of development as well as the legal consequences flowing from it, if any are still far from clear".⁶²

According to United Nations Environmental Programme (UNEP):

"The present position of sustainable development is, the intensified and unsustainable demand for land, water, marine and coastal resources resulting from the expansion of agriculture and uncontrolled urbanization leading to increased degradation of natural ecosystems and erode the life supporting systems that uphold human civilization. Caring for natural resources and promoting their sustainable

⁶¹ Roe E.M., Sustainable Development and Girardian Economics In ecological Economics. (1996) p.93

⁶² Beyerlin U, The Concept of Sustainable Development. In R. Wolfrum (ed) Enforcing Environmental Standards : Economic Mechanisms as Viable Means Berlin 1996.p.95

use is an essential response of the world community to ensure its own survival and well being”.

According to **Malanczuk**⁶³ the meaning of Sustainable Development is:

“From a theoretical point of view, the concept of sustainable development suffers from serious flaws. While there is now a large degree of consensus on the utility of the concept of sustainable development as such, its precise meaning has remained obscure. It has been described as a “nearly magic word”, as the latest development catch phrase” and a “buzz word”. There is no agreement on its substance and the discussion has produced quite a variety of often-conflicting definitions. Although they have been reviews of the literature on sustainable development, a comprehensive and critical examination of the semantic and conceptual issue is still lacking.”

According to **Justice Kuldeep Singh Sustainable Development is a balancing concept between ecology and development**⁶⁴

But the concept was given a definite shape in a report by world commission on environment, which was known as ‘Our Common Future’. The commission, which was chaired by the then Norway Prime Minister, Ms. G.H.Bruntland defined ‘Sustainable Development’ as:

“Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.”

⁶³ Malanczuk P. ;Sustainable Development; Some Critical Thoughts in the light of the Rio Conference. In K.Ginther/E.Denters/P.J.L.M de wacert (eds) Sustainable Development and Good Governance, Dordrecht, London and Boston (1995 .a) p.25

⁶⁴ Vellore Citizens Welfare Forum v. UOI,AIR 1996 SC 2715 at p 2720

The Report popularly came to be known as the Bruntland Report. The concept of Sustainable Development had been further discussed under Agenda 21 of the UN conference on Environment and development held in June 1992 at Rio De Janeiro, Brazil.

In spite of all these definitions, **Sustainable Development can be said to be an admixture of sustainability and development. Sustainability means continuation while development means change that is taking place.** The yardstick of sustainable development includes the integrated consideration of economic and ecological development. Thus we can conclude that sustainable development means passing through an era of development

It has to be remembered that the problem of pollution and environmental imbalance is not a new one. What are new are the enormity, complexity and variety inherent in the problem and our own attitude and sensitization towards it. The concept of sustainable development has gained recognition in the law of many countries like France and Poland and in fact the entire European Union. The time has come to make sustainable development as a fundamental part of law to protect our existence and survival .The law is dynamic and ever changing and the need of the hour is to introduce sustainable development as the basic constituent of our legal system to provide for a healthy and economically secured life. Economists and free traders believe that trade policy goals and environmental policy needs, can be made largely compatible by ensuring that environmental resources are properly priced.

Various principles of Sustainable Development were evolved as the basic principles. They are discussed as under.

4.3. Salient Principles of Sustainable Development

The concept of "Sustainable development" has grown since its inception at the international level. It has acquired different dimensions in terms of economic growth, development and environment protection. However, some of the Salient Principles of "Sustainable Development" as culled out from Bruntland Report and other international documents such as **Rio Declaration** and **Agenda 21** are as under:

- 7. Inter-generational Equity
- 7. Use and Conservation of Natural Resources
- 7. Environmental Protection
- 7. The Precautionary Principle
- 7. The Polluter Pays Principle
- 7. Obligation to Assist and Cooperate
- 7. Eradication of Poverty
- 7. Financial Assistance to the Developing Countries.⁶⁵

4.3.1 Inter-Generational Equity

The Central theme of the theory of inter-generational equity is the right of each generation of human beings to benefit from the cultural and natural inheritance of the past generations as well as the "obligation" to preserve such heritage for future generations. Inter-generational equity requires conserving the diversity and quality of biological resources, and of renewable resources such as forests, water and soils.⁶⁶

⁶⁵ See *Vellore Citizen's Welfare Forum v. Union of India*, (1996) 5 SCC 647 at 658

⁶⁶ Rosencranz Armin, Divan Shyam and Mathal L. Noble, *Environmental Law and Policy in India*, 60 (1991)

The Principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1 of the Stockholm Declaration provides as under:

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, and he bears a solemn responsibility to protect and improve the environment for the present and future generations...

Principle 2 of the Stockholm Declaration further provides:

The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

These principles have been recognized in several International Covenants and Treaties. In fact several proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations or appointing an Ombudsman to take care of rights of the future against the present.⁶⁷

The satisfaction of human needs and aspirations is the major objective of development. Meeting the essential needs depends in part on achieving full growth potential, and sustainable development clearly requires economic growth in places where such

⁶⁷ See A.P. Pollution Control Board v. M.V.Nayudu, (1999) 2 SCC 718 at 739

needs are not being met. The Bruntland Report has defined the sustainable development as that development which meets the needs of the present without compromising the ability of future generations to meet their own needs.⁶⁸

Principle 3 of the Rio Declaration of 1992 states:

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. It has to remember that the natural resources, land, air and water on the planet Earth cannot be exhausted by the present generation to meet their needs.

The present generation is under an obligation to leave something for the future generation. This is what can be termed as an inter-generational equity.

Economic growth and development obviously involves changes in the physical ecosystem. Renewable resources like the forests and fish stocks need not be depleted provided the rate of use is within the limits of regeneration and natural growth. As far as non-renewable resources like fossil fuels and minerals are concerned, their use reduces the stock available to the future generations. But this does not mean that such resources should not be used. According to the **Bruntland Report**, the rate of depletion should take into account the criticality of those resources, the availability of technologies for minimizing depletion and the likelihood of substitute being available.⁶⁹

⁶⁸ Our Common Future-The World Commission on Environment And Development, 43 (1987)

⁶⁹ Our Common Future- The World Commission on Environment And Development, 45-46

4.3.2. Use and Conservation of Natural Resources

In order to meet the needs on sustainable basis, it is absolutely necessary to use Earth's natural resources carefully. The natural resources must be conserved and enhanced. It is part of our moral obligation to other living beings and future generations. The resources must be conserved and enhanced to meet the needs of growing populations.⁷⁰



The idea that the benefit of the future generations, present generations should be modest in their exploitation of natural resources has found widespread international approval since the Maltese Proposal at the UN General Assembly of 1967, which contended that there was a common heritage of mankind and that this also required legal protection by the international community.⁷¹

Principle 8 of the **Rio Declaration** states that to achieve high quality of life for all people, the States should reduce and eliminate unsustainable pattern of production and consumption. **Principle 23** of the Rio Declaration specifically says that the environment and natural resources of people under oppression, domination and occupation shall be protected. Thus use and conservation of natural resources is an essential principle of Sustainable Development.

4.3.3 Environment Protection

Another Salient Feature of Sustainable Development is **environment protection**. For Sustainable Development it is very essential to protect the environment. The strong environment policies complement and reinforce Sustainable Development.

⁷⁰ *Ibid* at 57

⁷¹ See Meinhard Schröder : Sustainable Development- A Principle for Action and an Instrument to Secure the Conditions for Survival for Future Generations."

In **Citizen Consumer and Civic Action Group v. Union of India**⁷², the 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 development activities, which are essential for progress. There can be no dispute that the society has to prosper, but it shall not be at the cost of environment. It is also to be remembered that the development of the society also has to take place. But again it shouldn't be at the cost of environment. Development and Environment are supplementary and complementary to each other and a harmonious relation should exist between the two. They should co-exist and go hand-in-hand. Therefore, a balance has to be struck and administrative actions ought to proceed in accordance there with and not *de-hors* the same.

4.3.4 The Precautionary Principle

The Supreme Court in **Vellore Citizens Welfare Forum** puts it thus that the Precautionary and Polluter Pays principles are the part of environmental law of the country. The main purpose of the "Precautionary Principle" is to ensure that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage.⁷³

1. Environmental measures by the State Government and the local authorities must anticipate, prevent and attack the causes of environmental degradation.

⁷² Citizen Consumer and Civic Action Group v .UOI AIR 2002 Mad. 298

⁷³ Singh Gurdip , Environmental Law- International and National Perspectives, 212 (1995)

2. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
3. The onus of proof is on the actor or the developer/ industrialist to show that his action is environmentally benign.⁷⁴

The uncertainty of scientific proof led its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Declaration of 1992. In **Vellore Citizen's Forum** case the Supreme Court referred to these changes to the precautionary principle and the new concept of burden of proof.

4.3.5. Polluter Pays Principle

So far as the Polluter pays Principle is concerned in **Indian Council for Enviro -Legal Action v. UOI** ⁷⁵ The Supreme Court has observed:

"We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected areas, to the soil and the underground water and hence they are bound to take all

⁷⁴ See *Vellore Citizens' Welfare Forum v. Union of India*, (1995) 5 SCC 647

⁷⁵ *Indian Council for Enviro Legal Action v. UOI* AIR 1996SCW1069

necessary measures to remove sludge and other pollutants lying in the affected areas.”

Under this principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be shift the financial burden of the pollution incident to the taxpayer.⁷⁶

In 1972, the member countries of Organisation for Economic Co-operation and Development (OECD) agreed to base their environmental policies on a Polluter Pays Principle.⁷⁷

Principle 16 of the Rio Declaration of 1992 also enunciates ‘Polluter Pays Principle’. It provides that national authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should in principle, bear the cost of pollution with due regards to the public interest and without distorting international trade and investment.

The Polluter Pays Principle has been held to be a sound principle by the Supreme Court in the **India Council for Enviro- Legal Action- Union of India**⁷⁸. Here the Court observed as under:

Once the activity carried on in is hazardous or inherently dangerous, the person carrying on such activity irrespective of the fact whether he took reasonable care while carrying on his

⁷⁶ Shelbourn Carolyn , “ Historic Pollution –Does the Polluter pay”. Journal of Planning And Environmental Law (1974)

⁷⁷ Our Common Future – The World Commission on Environmnet And Development, 221 (1987)

⁷⁸ Shelbourn Carolyn , “ Historic Pollution –Does the Polluter pay”. Journal of Planning And Environmental Law (1974)

activity. The rule is premised upon the very nature of the activity carried on.

Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water hence they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. The polluter pays principle as interpreted by the Hon'ble Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also cost of restoring the environmental degradation. (Remedying) the damaged environment is part of the process of Sustainable development and as such the polluter is liable to pay the cost to the individual who suffers as well as the cost of reversing the damaged ecology.

4.3.6. Obligation to Assist and Co-operate

Today the concern over environment has assumed global dimension. Environment Protection has become the need of the present world. And all the countries of the world have to tackle this problem in cooperation. Because it is one such problem where the survival of the whole humanity is dependent. And hence to tackle this **Principle 9** of the Rio Declaration provides that the States should co-operate to strengthen indigenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation diffusion and transfer of technologies including new and innovative technologies. **Principle 10** of the Rio Declaration further provides that environmental issues are best handled with the participation of all concerned citizens at the relevant level. Similarly **Principle 12** of the Rio Declaration

provides that the States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. And finally **Principle 27** of the Rio Declaration expects the people and the States to co-operate in good faith and in the spirit of partnership in the further development of international law in the field of sustainable development.

4.3.7 Eradication of Poverty

Population explosion gave birth to poverty and that in turn generated pollution and environmental degradation. Bernard Shaw, with a penchant for paradox, put it rightly: "The greatest of evil and worst crime is poverty." Poverty has been a basic cause of ecological deterioration. Poor people have unequal access to resources. They are constrained to over exploit the same to satisfy their basic needs. The poor communities are not capable of taking necessary measures to prevent degradation.⁷⁹

The Sustainable Development has to address the problem of the large number of people who live in absolute poverty and who cannot satisfy even their basic needs. At the Stockholm Conference in 1972, our former Prime Minister Mrs. Indira Gandhi said: "**Of all the pollutants we face, the worst is poverty.**" The Bruntland Report has rightly pointed out that poverty reduces people's capacity to use resources in a sustainable manner and hence it intensifies pressure on the environment.⁸⁰ Not only India but also many developing countries of the world are facing the problem of

⁷⁹ - Souvenir of World Conference 1972, Indian Law Institute.,65

⁸⁰ Our Common Future – The World Commission on Environment And Development, 49-51(1987)

poverty. And hence eradication of poverty becomes an important issue as quality of environment and poverty has a close nexus.

4.3.8. Financial Assistance to Developing Countries

Most of the developing countries are suffering from the stress of poverty. It has been seen that the people in developing nations strain their natural resources and over exploit them to meet their basic needs. Due to lack of finances, the developing countries do not have modern technology. Financial assistance to such nations is very essential, so that they can invest those funds into modern technology and protection of environment and achieve the goal of sustainable development.

In **Chapter 33 of the Agenda 21** it was provided that the provision to developing countries of effective means, *inter alia*, financial resources and technology, without which it will be difficult for them to fully implement their commitment, serve the common interest of developed and developing countries and of human kind in general, including future generations. It was further provided that Agenda 21 will require the provision to developing countries of substantial new and additional financial resources.

4.4 Industrial Development and Sustainable Development

According to **World Commission on Environment and Development**⁸¹ the goal of economic and social development must be defined in terms of sustainability in all countries-developed and developing, market oriented or centrally planned. Interpretations will vary, but must share certain general features and must flow

⁸¹ World Commission on Environment and Development (1987) p.43

from a consensus on the basic concept of sustainable development and on a broad strategic framework for achieving it.

In this modern age, science and technology symbolizes growth and development. The scientific inventions led to setting up of various industries. The Industries lead to development. It provides employment a large number of individuals etc. However, this is only a side of the coin. It has another side too. Industry extracts material from the natural resources base and inserts both product and pollution in the human environment. It has the power to enhance or degrade the environment. It invariably does both.⁸²

Now here we are faced with the real dilemma that environment at the cost of development or development without environment. But now the mankind has tried to find out a via media and that is to strike a balance between environment and development. Sustainable Development can be said to be development up to the permissible limits. And this limit is to be determined by the mankind itself.

Environment protection is the need of the hour. During recent years, we find increase in the awareness of environmental protection. We find a rise in the litigations filed for the protection of the environment. And also we see an active judiciary awarding judgements in favour of environment protection in case of polluting industries. This approach of the Supreme Court is in consonance with the concept of sustainable development.

The Supreme Court in **M.C.Mehta v. Union of India**⁸³ delivered a historic judgement. Bhopal catastrophe is only a manifestation of

⁸² Our Common Future- The World Commission on Environment And Development, 206 (1987)

⁸³ M.C.Mehta v. UOI AIR 1987 SC 965

the potential hazards of all chemical industries in India, none of which are amenable to effective regulation.⁸⁴ Another glaring case after Bhopal is **Shriram Gas Leak** case⁸⁵ Here we see the Supreme Court relaxing the procedural rules. Here, the Supreme Court unconnected cause of action to be urged, without requiring amendments to the petition. The original petition sought the closure of Shriram's hazardous industrial plant and its relocation away from Delhi's populated localities. While the petition was pending Oleum gas escaped from the plant and harmed some persons, who filed applications for compensation in the original 'closure and relocation' writ petition. Shriram urged the court not to decide the issue arising from the compensation claim, since no such claim had been made in the original petition, nor had the petitioner amended the petition to incorporate the compensation plea. The Court overruled this objection, stating that a 'hyper technical approach' that defeated the ends of justice was inappropriate in Public Interest Litigation cases.

This attitude of the judiciary towards protecting the environment is really laudable. We find an entire new environmental jurisprudence being evolved as a result of the judicial intervention. The judiciary evolved principles like Polluter Pays' and 'Precautionary Principle' which form essential principles of Sustainable Development.

Development and pollution can be said to be the two sides of the same coin. They are directly proportional. Sustainable Development intends to strike a balance between its two faces. In fact the goal of sustainable development is neither solely nor primarily related to environmental concerns.

⁸⁴ .Agrawal, P.S. Environmental Law ,126 (2003)

⁸⁵ M.C.Mehta v. UOI AIR1987 SC 1086

4.5. Urbanisation and Sustainable Development

The industrial revolution brought along with it one major problem. No doubt the industrial revolution is the signpost of human development. But as it is said we get everything at a cost. So this success of humanity was dealt to be at the cost of nature. We found that the industrial growth disturbed the village structure in the country. It made the youth engaged in small –scale industries jobless. Hence this unemployed youth rushed to the bigger cities in search of employment. And urbanization has its own problems. And the demand today is to strike a balance between urbanization and Sustainable Development.

The rapid increase in urban population has adversely affected the facilities needed for an adequate human life such clean water and air, sanitation, schools and transportation. Now days the protection of the environment is the “mantra”. It is made very clear that development cannot be at the cost of environment. The Supreme Court in one of the judgement has reinforced the concept that when there is a question as to what is to be chosen between ‘amenity’ and ‘necessity’, the Court has affirmatively answered that amenities cannot substitute necessities. The Court in **Bangalore Medical Trust Case** held this. The decision of the Court is laudable. The case is discussed in detail below.

A landmark judgement was delivered in **Bangalore Medical Trust v. B.S.Muddappa**⁸⁶. In this case the real focus was on the interpretation of “necessities” and “amenities”. The issue involved in this case was the conversion of a Public Park into a Private Nursing Home. And hence the residents of the area filed a petition. The

⁸⁶ Bangalore Medical Trust v.B.S.Mudappa (1991) 4 SCC 54

Sections 2 (b).and 19(4) of the **Bangalore Development Act** were under challenge. Whether a Private Nursing Home is an amenity under the Act was to be decided.

The facts of the case are that a park of the locality was converted into a Private Nursing Home. This when challenged by its residents, the Court held that a Private Nursing Home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The Court held that the exercise of the power of conversion of Public Park into private nursing home was contrary to the purpose for which it is conferred under the statute. Here R.M.Sahia J. in his concurring judgement observed as under:

Public Park as a place reserved for beauty and recreation was developed in 19th and 20th Century. And is associated with the concept of growth of equality and recognition of importance of common man. Earlier it was the prerogative of the aristocracy and affluent, either as a result of royal grant or as a place reserved for private pleasure. But now it is a gift for people from themselves. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is its objective. Its utility may not be undermined but a park is a necessity and not a amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving a space for it. Emphasis on open air and greenery has multiplied and the City or town planning Acts of different State require even private house owners to leave open space in front and back for lawn and fresh air. In 1984, the

Bangalore Development Act itself provided for reservation of not less fifteen percent of the total area of the lay out in a development scheme for public parks and play grounds sale and disposition of which is prohibited under section 38 A of the Act. Absence of open space and Public Park in present day when urbanization is on the increase, rural exodus is on a large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted oblivious of true character of the two and their utility.

Here the Supreme Court highlighted the importance of public parks and open spaces in urban development in the following words.

Rejecting the plea of discretion of the authority to covert the site of Public Park into a private nursing home, the Court observed:

.....the legislature never intends its authorities to abuse the law or to use it unfairly.....The power of conversion was taken for granted. Amenity was defined in S.2 b of the Act to include road, street, lighting, drainage, public works and other such conveniences as the Government by notification may specify to be an amenity for the purpose of this Act. The Division Bench found that since no notification was issued including private nursing home as amenity it could not be deemed to be including in it."

Commenting on the exercise of discretion by the authority, the Court held as:

"The executive or the administrative authority must not be oblivious that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exercise of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved."

4.6 Environmental Policy and Sustainable Development

Policy is the sum total of the values which a person or an association of persons or institutions- legal, governmental and social –consider it as important in their relation with one another.⁸⁷

During recent period of human history there is strikingly high rate of resource utilization. There has been an increase of industrialization and urbanization resulting in more and more exploitation of the nature. Heavy demands on nature are generated particularly from the industrially advanced countries in the North and the industrial enclaves in the South. Actually, the increasing dependence of the industrialized societies on the resources of nature, through the quick spread of energy and resource intensive production technologies, has been accompanied by the spread of the myth that increased dependence on modern technologies means lesser dependence on natural resources.⁸⁸

⁸⁷ Leelakrishnan P. "Law and Policy Relating Environment" in Paras Divan ed Environment Protection, Deep and Deep, New Delhi (1987) p. 115; see also Vohra, "Environmental Protection : Little Room for Hope". The Hindustan Times, August 15, 1990, p III

⁸⁸ Bandopadhyaya J. and Shiva Vandana, "Environmental Conflicts and Public Interest Science", Economic and Political Weekly, January 11 1986. p.84

Environmental Policy under the Five Year Plans after 1972 is discussed below as the year 1972 marks a dividing line in the history of evolution of environmental jurisprudence. The year 1972 marks a watershed in the history of environmental management in India. Prior to 1972 environmental concerns such as sewage disposal, different federal ministries dealt with sanitation and public health and each pursued these objectives in the absence of proper coordination system at any level. In the year 1972, when the 24th UN Conference on Human Environmental Conditions was to be held, it called three reports from all the member nations on the state of environment in their country. So in India a Committee on the Human Environment under the chairmanship of Pitambar Pant, member of Planning Commission was set up to prepare India's report. It prepared report on:

0. 'Some Aspects of Environmental Degradation and its control in India'
0. 'Some Aspects pf Problems of Human Settlement in India'
0. 'Some Aspects of Rational Management of Natural Resources'.

With the help of these reports the impact of the population explosion on the natural environment and the existing state of environment was observed.

In the year 1972, the first UN Conference to consider global environmental conditions was held at Stockholm wherein Heads of State and high government officials from 113 countries participated in the deliberations, which culminated in the adoption of a Declaration and an Action Plan. India was represented by it's the then Prime Minister Mrs. Indira Gandhi. She placed before the world India's stand on environment in her Address at the United Nations Conference on the Human Environment⁸⁹.

⁸⁹ Address by Mrs. Indira Gandhi at UN Conference in August 1972

Mrs. Gandhi in her speech talked about sustainable development. She was also aware about the grave poverty in the country. And she made it clear that environment cannot be improved in the condition of poverty. But at the same time clean air and water are necessary. Eradication of poverty is necessary but it cannot be done without the use of science and technology. She said:

The ecological crisis should not add to the burdens of the weaker nations by introducing new considerations in the political and trade policies of rich nations. It would be ironic if the fight against pollution were to be converted into another business out of which a few companies, corporations or nations would make profit. It has been my experience that people who are at cross-purposes with nature are cynical about mankind and ill at ease with themselves. Modern man must reestablish an unbroken link with nature and with life.

4.6.1 Fourth Five-Year Plan

It was in the fourth five- Year Plan (1969-74) when environmental issues were given high priorities and were highlighted in the following words:

It is an obligation for each generation to maintain the productive capacity of land, air, and water and wildlife in a manner, which leaves its successors some choice in the creation of a health environment. The physical environment is a dynamic, complex and inter-connected system in which any section in one part affects others. There is also the inter-dependence of living things harmonious development recognizes this unity of nature and man. Such planning is possible only on the basis of a comprehensive appraisal of environmental issues, particularly

economic and ecological. There are instances in which timely, specialized advice on environmental aspects could have helped in project design and in averting subsequent adverse affects on the environment, leading to loss of invested resources. It is necessary, therefore, to introduce the environmental aspect into our planning and development. Along with effective conservation and rational use of natural resources, protection and improvement of human environment is vital for national well being.⁹⁰

4.6.2 Fifth Five-Year Plan

The Draft Fifth Five Year Plan (1974-79) laid emphasis on having close association of the National Committee on Environmental planning and Co-ordination (NCEPC) with all important industrial decisions so that environmental goal could be achieved. The NCEPC will co-ordinate efforts to develop standards for the emission of pollutants and other facilities to monitor them. To provide research schemes have been funded by the NCEPC. In the context of protection and improvement of environment, the plan stressed that there should be a dynamic programme to develop forestry sector and strengthening of State Forest Departments. As regards industrial development and environment the plan states:

It has to be ensured that the pursuit of developmental goals does not lead to reduction in the quality of life through deterioration in environmental conditions. It is therefore necessary that in the rational development of industrial activity and in the utilization of natural development of industrial activity and in the utilization of

⁹⁰ See Government of India , Planning Commission , Fourth Five Year Plan (1969-74) , Chapter Six

natural resources, due weight is given to the impact of such activity on the environment.⁹¹

Also under this plan, the programmes such as rural health and nutrition, drinking water, provision of housing sites, slum improvement and rural education were implemented on priority basis so as to minimize environmental pollution and degradation throughout the country and reduce poverty levels.

4.6.3 Sixth Five-Year Plan

There was a separate chapter on 'Environmental Planning and Coordination in the Sixth Draft Five Year Plan (1978-83) in which dire need for environmental protection was felt and it considered environmental conservation as the basis of all development. The sixth five year plan document has highlighted the causes of environmental deterioration and stressed for a need to control these as follows:

As long as human numbers were limited and the capacity of the environment to withstand its over-utilisation was not stretched to a point of no return as it were, man neglected the environmental impact of economic activities. However, with the discovery of residues of toxic chemicals (including pesticides and detergents) in human and animals, the increasing incidence of diseases attributable to man-made pollutants and appearance of signs of irretrievable damage to natural life supporting systems like the soils, waters and the air, showing up for eg in problems of water logging and salinisation accompanying irrigation projects, siltation of reservoirs etc. realization began to dawn

⁹¹ See Chapter on ' Environmental Planning and Co-ordination ' in the Draft Five Year Plan (1974-79)

that human activities which impinge upon the natural environment , need to be controlled.⁹²

This Plan provided environmental guidelines to be used by administrators and resource managers when formulating and implementing programmes, and lay down an institutional structure for environmental management by the Central and State governments.

4.6.4 Seventh Five-Year Plan

The need for sustainable development has been highlighted in the Seventh Five-Year Plan. The plan called for the government and voluntary agencies to work together to create environmental awareness, because improving the quality of the environment required the involvement of the public. The Seventh Plan recognized that in the economic growth and well being the protection of the environment must be taken care of.

The **Seventh Five Year Plan** states as under:

The degree to which the nation can prosper depends upon its productivity, which is the efficiency with which it is able to utilize the resources of the environment to satisfy human needs and expectations. If the gains in productivity are to be sustained, resources must also continue to be available for current needs, the resources base be managed so as to enable Sustainable Development.⁹³

⁹² Draft Sixth five Year Plan (1978-83) p 117

⁹³ Planning Commission , Government of India, The Seventh Five Year Plan (1985-90) Vol II 1985 p 385

The direct goals relating to the environmental protection according to the **Seventh Five Year Plan** are: institutionalizing, the process of integrating environmental management and development; inducing organizations at the Central, State and local levels to incorporate environmental safeguards in their plans programmes; securing greater participation of the public in environmental management; establishing a strong base for environmental research and development, demonstration and extension activities; strengthening mechanisms for ensuring corrective action with regard to environmental degradation that has already taken place. Further, the plan documents the need of systematic review and updating and amending the legislation related to environment enacted in the past in India, is felt and it is proposed to establish a mechanism for continuous review of environmental law. Finally it has been ensured that full efforts would be made to utilize the available infrastructure in an integrated manner to environmentally sound development.

4.6.5 Eighth Five-Year Plan

The Eighth Five –Year Plan (1992-97), because of the uncertain political situation in India, came out in 1992 rather than in 1990. It gave an important place to the environment by moving it to the fourth category of subjects examined in the text. The **Plan stated:**

Systematic efforts have been made since the Sixth Plan period to integrate environmental considerations and imperatives in the planning process in all the key socio-economic sectors. As a result of sustained endeavor, planning in all sectors like industry, science and technology, agriculture, energy and education includes environmental considerations.

The Planning Committee set up an expert Committee to formulate long-term sectoral (including environmental and forest) policies. It also noted that many environmental problems were continuing to cause serious concern, for example the loss of topsoil and vegetative cover, the degradation of forests, continuing pollution by toxic substances, careless industrial and agricultural practices, And unplanned urban growth. It acknowledged that environmental degradation was seriously threatening the economic and social progress of the country and that 'Our future generations may discover that life support systems have been damaged beyond repair.'

4.6.6 Ninth Five-Year Plan

Under the Ninth Five Year Plan (1997-2002) we find special funds allocated for protection of environment and forest. Scheme entitled 'Assistance for Abatement of Pollution" was one of the features pertaining to environment in the Ninth Five –Year Plan. The policy statement for abatement of pollution laid down action points. It stated that grants would be provided to the State Pollution Control Boards/UT Pollution Control Committees, Environment Departments, Central /State Research Institutions, and other governmental agencies/organisations with the aim of strengthening their technical capabilities to achieve the objectives of the Policy Statement.

Greater emphasis was laid on severely polluted areas, low and no waste technologies, chemicals, small-scale industries and other innovative schemes for control of pollution for which technical studies are needed. In this Plan, to further bridge the gap, technical facilities were improved. Grants assistance was given for studies related to environment management in the critically polluted areas

and river stretches, urban areas, health related studies including contamination of ground water from chemicals. Provision was also made for establishing computerized database for upgrading administrative and scientific capabilities of the scientists through training in CSIR, IIT and IIM.

The objective of the Policy Statement on Abatement of Pollution was to involve the public in decision-making. In order to identify the sources of pollution and creating awareness relating to environment, the NGOs were to be provided for material support to develop basic infrastructure like setting up of laboratories and equipment.

Thus we find positive action oriented approach towards environment protection in the Ninth Five-Year Plan.

4.6.7 Tenth Five – Year Plan

The Tenth Five-Year Plan is for the period between 2002-2007. In the Tenth Five –Year Plan special emphasis has been laid on preservation of the forests and the environment. The mantra of sustainable development has once again been the guiding principle. For a better world to live in we need pure water, nutritious food, healthy environment and greenery around us. The rapid increase in the green house gases in the atmosphere, land degradation, increasing floods and droughts, advancing deserts and deteriorating conditions of fragile ecosystem, deforestation, loss of biodiversity and environmental pollution have become subjects of concern. While natural assets have shrunk, demands have grown resulting in overdraw being unsustainable.

Forests play an important role in environmental and economic sustainability. They provide numerous goods and services and maintain life –support systems essential for life on earth. Some of

these life support systems are of major economic and environmental importance. An Action Plan is proposed in the Tenth Plan in order to achieve the objects of sustainable forest management. Various measures have been listed in the Tenth Plan it speaks about the various initiatives needed to be taken in the field of development of forest area, medicinal plants, and productivity of forest plantations. The measures required for the efficiency of forest-based industries are high lighted in the Tenth Five Year Plan. It also has chalked out Greening India Programme. Out of the 328.27 m ha total geographical area of the country; around 300 m ha is the available productive land. The actual forest cover is 63.73 m ha of which only 37.73 m ha has good forests. About 20 m ha is covered under tree plantations (agro- forestry, farm forestry, social forestry and other plantations) Thus in order to bring one-third area under forest /tree cover, $(100-37.73-20=42.27)$ 43 m ha should be covered under the greening programme over 10 years.⁹⁴

Continuous and sustainable development of forestry would depend on research inputs in crucial areas, solving problems and expanding knowledge. The Plan emphasizes that the Indian Council of Forestry Research and Education (ICFRE) should promote research in areas:

- Identification of elite clones of agro –forestry species and their mass propagation
- Market information in respect of important forest products
- Policy research on Joint Forest Management, bamboo and medicinal plant development
- Forest product research for value addition, new products and standards.

⁹⁴ See Chapter IX on ' Forest and Environment' in the Tenth Five- Year Plan

- Increasing forestry contribution in meeting human needs and welfare.

4.6.7.1 Strategy for the Tenth Plan

The Tenth Plan states that the national development must recognize the necessity of protecting the long-term ecological security. The following are the initiatives necessary for the ecological security of our natural heritage:

- I. Strengthening and enhancing the Protected Area network
- II. Effective management of Protected Area
- III. Conservation of wild and endangered species and their habitat
- IV. Restoration of degraded habitats outside Protected Areas
- V. Control of poaching and illegal trade in wild animals and plant species

Apart from the above mentioned specific measures certain ongoing schemes under the eight and ninth plan have been continued under the Tenth Plan like Industrial Pollution Abatement through Preventive Strategies (Ninth Plan) Hazardous Substance Management (Eight Plan). In the area of Hazardous Waste Management, apart from older schemes under the Eighth Plan, certain new initiatives have been introduced.

- The scope of the Common Effluent Treatment Plants schemes will be enhanced to cover assistance for modernization and capacity expansion of existing plants.
- Scheme with International Cooperation- More number of new schemes would be taken up during the Tenth Plan under eco-restoration, watershed management, water and energy

sectors, biodiversity, climate change, ozone layer protection, land degradation etc. with the financial and technical help from India, Canada Environmental Facility (ICEF), Global Environment Facility (GEF), Indo-German Technical Cooperation etc. which are having schemes since Ninth Plan.

- Schemes under the Clean Development Mechanism (CDM): Direct measurement of temperature as well as other visible effect like rise in sea level has confirmed that a change in climate is taking place which is going beyond the normal limit of change and can be put under the category of effectively irreversible over the many human life times.....Presently, Netherlands has shown interest in CDM projects in India. With Kyoto Protocol coming into force, more countries will like to take up CDM projects in the country.
- Six projects mainly of non-conventional energy sources having been selected for funding from Netherlands under the CDM
- The State of Environment Scheme: The central aim of the scheme is assessment of physical parameters, sensitization of development planners and introduction of corrective measures in mainstreaming environmental concerns. State of Environment Report would be prepared for States / Union Territories.⁹⁵

The continuing decline in the quality of the environment, together with the tragedy at Bhopal in which a leak from a pesticide factory killed more than 2500 people and injured several thousands, has

⁹⁵ See Chapter IX on 'Forest and Environment' in the Tenth Five-Year Plan

spurred the Central Government and a few State governments to adopt stronger environmental policies to enact fresh legislations and to create, reorganize and expand administrative agencies.

Environment protection is, in fact, just one of many social policies affecting trade; two other examples are antitrust policy and labour standards. The nature of environmental problems exacerbates the valuation problems and thus tension between environmentalists and free traders arises.

The Policy Statements in themselves are not enforceable in the Courts of law. However, these Statements represent a broad political consensus. It also shows a pointer towards the measures taken up by the Government in furtherance of the Directive Principles of State Policy. The judge may refer to the policy statements as an aid for interpreting environmental statutes or for spelling out the obligations of government agencies under environmental law. For example, in **State of Himachal Pradesh v.. Ganesh Wood Products** ⁹⁶ the Supreme Court relied upon the National Forest Policy and the State Forest Policy of Himachal Pradesh to invalidate a decision taken by the State industrial project authority. The authority approved the establishment of units, which manufactured 'katha' from the scarce khair tree without considering factors such as availability of khair trees and the adverse impact on the forests in the State. The Court held that the policy of economic liberalization has to be understood in the light of the National Forest Policy and Forest Laws enacted by the forest policies and warned that disregard of these policies would imperil government decisions.

⁹⁶ Himachal Pradesh v. Ganesh Wood Products AIR 1996 SC 149

Since 1991 India has adopted new economic policies to spur development. In an effort to integrate the Indian economy with global trade, the government has reduced industrial regulation, lowered international trade and investment barriers and encouraged export- oriented enterprise. Some commentators fear that liberalization will exacerbate environmental problems and increase inequities.⁹⁷

4.7 Development at Whose Costs? An Environmental Impact Assessment

Development and better life is the natural instinct of man. The environment gives all the good things that are useful to a man. We take things from nature and we dump waste products as garbage in the nature. This in turn results in the deterioration of the quality of environment by the exploitation of environment. And development and pollution can be said to be the two sides of the same coin. Hence it becomes important to ask the question, Development, at whose costs? Definitely it cannot be at the cost of mankind. Hence it is important to evolve a mechanism that will assess the impact of various development projects on environment.

The system of impact assessment was introduced in India in 1978. It is a pointer to the environmental capability of a project in terms of its location, sociality of technology, efficiency in resource utilization and recycling. It covers projects like:

⁹⁷ R. Sudarshan , Liberalisation and the Environment, The Hindu, New Delhi, 19 April 1996 and A. Kothari. Environment and New Economic Policies, Economic And Political Weekly, 29 April 1995, p. 924

- Industries, mining, thermal power, river valley, atomic power, communication projects, new towns air ports posts and harbors, rail, road, highways and bridges.
- Those, which require the approval of the Public Investment Board/Planning Commission/ Central Electricity Authority.
- Those referred to the Ministry of Environment and Forest by other ministries;
- Those which are sensitive and located in environmentally degraded areas;
- Public sector undertakings of the Centre where the projects costs more than 50 crores.

In January 1994, a notification was issued by the Central Government, which makes Environmental Impact Assessment Statutory for 29 categories of developmental projects under various sectors such as industrial, mining, irrigation, power, transport, tourism, communication and so on.

The environmental impacts of some projects are mentioned below.

- ❑ Industrial Projects: Major environmental impacts of industrial projects include: air, pollution, water pollution disposal and utilization of solid waste concept of recycling, reuse and adoption of clean technologies is increasingly becoming pre-dominant.
- ❑ Thermal Power Projects- Major environmental impacts of thermal power projects include: air pollution; water pollution; deforestation; rehabilitation and land degradation. Gases emerging from stacks containing sulphur dioxide, oxides of nitrogen, carbon monoxide and so on are detrimental to human beings and vegetation. Water pollution from thermal stations can be due to release of slurry, which is a mixture of fly ash and water.

- ❑ Mining Projects- Major environmental impacts of mining operations are: degradation of land, pollution of surface and ground water resources, pollution of air, deforestation, loss of flora and fauna, rehabilitation of affected population including tribal, impacts on historical monuments and religious places.
- ❑ River Valley Projects- Major environmental impacts are: degradation of catchments area, command area development, rehabilitation of affected persons, increased incident of water borne diseases, reservoir induced seismicity and deforestation including loss of flora and fauna including gene pool reserves.
- ❑ Nuclear Power Projects- Major environmental impacts are: radio-active contamination of air, water and soil, thermal pollution due to discharge of cooling water, deforestation and loss of flora and fauna, rehabilitation and radio active waste disposal. Exposure to radioactive radiation in excess of the prescribed limits is detrimental to human beings, aquatic life, flora and fauna.
- ❑ Transportation Projects- This includes railways, roadways, airways, bridges, ports and harbors. Major environmental impacts are: air pollution, land degradation, water pollution and deforestation.

8.7 People's Movement for Environment Protection

Since long, India's policy –planners have ignored environmental costs. The price of this ignorance has been savage environmental degradation, which has affected every Indian today. It is now imperative that future development efforts must be sensitive to environmental consequences. Presently, those in Union Government

who are responsible for environment protection are institutionally separated from those responsible for promoting development. But the real world of interlocked economic and ecological systems will not change; the policies and institutions must.⁹⁸

Public participation in environmental decision-making renders reasonable and effective opportunity to all the interests, affected or likely to be affected, to present their case. The most significant contribution of the nascent environmental movements in India has been to bring into sharp focus the vital connection between growing poverty of vast numbers of marginalized people and the accelerating environmental degradation and the need to involve the people especially affected in the protection of the natural resources like forests, rivers and grazing lands.

The evolution of the ecological, sustainable and equitable utilization of natural resources in an alternative development strategy will also be resisted by the vested interests that benefit from the existing reductionist, unsustainable and inequitable utilization pattern. This process has already been initiated in India. On one hand, people's attempt at redefining development through sustainability and justice is resisted by the introduction of a false dichotomy between 'development' and 'ecology', which covers up the real dichotomy between environmental protection and unsustainable economic growth.

4.8.1 First movement for Environment Protection

The first forest movement in modern India, against indiscriminate felling of trees was probably organized in 1730, under the leadership of Amrita Devi in Jodhpur area of Rajasthan. She along

⁹⁸ Our Common Future : Report of the World Commission on Environment and Development (1987). p. 310.

with her 362 followers protested against the felling of Khejori trees and the contractors and their band of workers axed them to death. After this incident, the Rulers of Jodhpur banned the felling of trees. Whether Amrita Devi and her band of followers were conscious of the environmental aspect of felling of trees or not cannot be said precisely but it can be said with certainty that they regarded trees part of their life.

Industrialisation, opened a vista for large-scale commercial exploitation of forest resources. This came in direct conflict with the ecological functions of the forests as well as the satisfaction of the basic needs of forest products for the local people. The destruction of the material basis for survival of the people through the impact of commercial forestry created Chipko movement first time in the Himalayan area of the State of U.P. and later in the areas like the Western Ghats, the Aravallis and the Vindhya.

The movements for the protection of forests to ensure survival of the tribal people have been the main characteristics in the Central India. Notable among these movements are those of the Singbhum and the Bastar regions. These movements were aimed against the conversion of mixed natural forests to monoculture of commercial species like teak or tropical pine since this process of conversion ensures the destruction of the material base for survival of a large population of tribal people.⁹⁹

4.8.2 Chipko Movement for Environment Protection

The Chipko movement is really, the most widespread and well-known people's movement for environmental protection in India. It is also known as the tree hugging movement. It is a movement of

⁹⁹ Shiva V. and Others, " Social , Ecological and Economic Impact of Social Forestry in Kolar". IIM Bangalore, 1984

those people who are living in and around the forests that sustain their lives. All the economic activities connected with the livelihood of these people are based on forest resources, which play a very vital role in the stabilization of the soil and water systems and thus maintain fertility of the land. These forest people are also dependent on the forest for basic necessities like fodder, fuel, green manure, fruits, nuts etc. With the introduction of modern forest management, the British transformed common sources like forests that have high ecological significance and local value into commodities.

This movement started in 1972. It was lead by women of Advani village in Tehri Garhwal district. These ladies not only tied the sacred thread around the trees, they actually hugged the trees and hence the name Chipko. And they prevented tree felling. In February 1978 they faced police firing and later on courted arrest for this cause. Shri. Sunderlal Bahuguna presented the plans of Chipko Movement for the protection of soil and water through ban on tree felling in the Himalayas at the United Nations Environment Programme Meeting held in London in 1982. Sri. Bahuguna , along with his team, visited almost all over India .In an exhibition , organized on June 5 in Stockholm, Sweden to mark the world environment day, the following statement was written about Chipko movement.

"A powerful environmental movement has grown up on the slopes of mountains of Himalayas. Villages have created an effective non-violent way to stop the devastation by the forest industries. When the axe-man comes, the people from ring (circle) around trees and they embrace the trees. This has given the movement its name "Chipko Andolan", the tree hugging movement."

Apart from this, there are several movements ongoing in the country for the protection of environment. Like, Narmada Bachao Andolan, Tehri Dam in the north, Sirsi in the south, Koel –Karo on the east and Inchampalli in Central India. These movements are against destruction of forests and agricultural land by these big dams. The development projects like big dams are threatening these resources of land and forests by submersion or colonization for urban settlements.

India ranks among the most important dam building nations. It began building large dams' shortly after independence. Large scale river development began in 1930 with the Mettur dam on the Cauvery . Other important dams are the Bhakra Nangal dam and Hirakud projects.

These dams are the cornerstone of large scale multi purpose river valley projects intended to meet regional needs for irrigation, hydro electric power and flood control. Since the 1950s, the government has promoted building of dams. Today all the big rivers are either dammed or in the process of being dammed.

However, these dams, which are seen to be the symbols of progress have invited the ire of the people as it, may pose a serious threat to environment. The core issue of process has been rehabilitation of the people who may be displaced by these large projects. By the year 1990, an estimated 21 million people, primarily indigenous, had been displaced over the years by large projects. Of these only 25 percent have been rehabilitated¹⁰⁰. By the year 1999, according to W.Fernandes of the Indian Social Institute who has studied

¹⁰⁰ Interview given to Armin Rosencranz and Shyam Divan by W.Fernandes , Director (Tribal Studies) Indian Social Institute; Down to Earth , 15 February ,1999

displacement issues the number of displaced persons had risen to 30 million¹⁰¹. Also, the structural design of these dams built in earthquake prone areas have also drawn the attention of the people.

The question here is when there is so much risk to man and nature, to whom are these dams really useful to? And what are the benefits that they accrue. Often the benefits go to large number of urban populations downstream and not to the people who pay for the dam with their land and at times lives. In addition funding for dams, often in the form of loans from other countries or multilateral development banks, raises international issues of responsibility and fault for unmitigated human and environmental damage.

It is argued that large dams are often ecologically unsound and economically unjustified if environmental health costs are fully accounted for. These costs include the loss of forests and wild life, water logging, siltation, loss of arable land and increase in water borne diseases. Today, large dams are India's one of the most controversial issues.

4.8.3 Silent Valley Project

In the late 1970s, the Silent Valley stirred up a hornet's nest in India's first major 'environment versus development' controversy. The proposed project, now abandoned, was to dam the Kuntipuzha River in Kerala's Palghat district. As it flows through the valley, the Kuntipuzha drops 857 meters, making the valley an attractive site for generating electricity. Those promoting the project claimed that it would produce 240 MW of power, irrigate 10000 hectares of land and provide over 2000 jobs. Environmentalist, on the other hand,

¹⁰¹ *Ibid.*

asserted that as home to one of the few remaining rain forests in the Western Ghats, the valley ought to remain pristine. They further contended that with over 900 species of flowering plants and ferns and several endangered species of animals and birds, Silent Valley was one of the world's richest biological and genetic heritages.

The adverse effects from the conversion of the Silent Valley into a hydroelectric project were listed thus: first, the deforestation was bound to affect the climatic conditions in the state and even outside, by depriving the state of its legitimate share of rain during the Monsoon; second the preservation of the forests was needed for conducting research in medicine, pest control, breeding of economic plants and a variety of purposes, and the third that deforestation was bound to interfere with the balance of nature as between the forest land on the one side and arable and other types of lands on the other.

In the campaign to save Silent Valley, legal strategies played a peripheral role. The environmentalists' success was due to a combination of several other factors, including the grass-roots campaign led by the Kerala Sastra Sahitya Parishad (KSSP); intense lobbying by several non-governmental organisations and influential environmentalists within and outside government; and international pressure exerted on the then Prime Minister, Mrs. Indira Gandhi.

4.8.4 The Tehri Dam Project

The Tehri Dam a joint venture of the Government of India and State of Uttaranchal, is on India's Bhagirathi River, the main tributary of the Ganges, is one of the world's largest and most controversial hydroelectric projects. As a part of a larger plan to trap the waters of the Upper Ganga basin, a three billion dollar, rock fill dam is

being constructed at the confluence of the Bhagirathi and Bhilangana , close to the Garhwal town of Tehri. Under construction since 1978, the final phase of reservoir filling was scheduled to start by December 2002. The lake created by the dam will extend up to 45 kms in the Bhagirathi Valley and 25 kms in the Bhilangana Valley with a water spread area of 42.5 sq. kms. It will submerge nearly 100 villages, including Tehri, a historical capital. The estimate was that within six months the homes and lands of around 100000 people would be submerged. And the development aspect was that it was to generate 2400 MW of electricity, create irrigation facilities for 270000 hectares of land and create a supply of 500 cusecs of water to New Delhi.

From its inception in the year 1978, the dam has been opposed due to the concerns over its environmental and social impacts. The Tehri Dam Project has evoked controversies on the following issues.

- The completed dam will displace many people and submerge several towns, among them the town Tehri; the region is vulnerable to earthquakes and the dam may be structurally incapable of withstanding them or may perhaps even cause them. It is designed to withstand earthquakes of up to 7.2 on the Richter scale although experts predict that earthquakes of the magnitude 8.5 or more could strike this region.
- The possible failure of the dam could kill hundreds of thousands of people and destroy downstream towns of immense religious significance.
- Particular concerns are the inhabitants of the downstream of the Hardwar and Rishikesh.

- Landslides are common on the steep slopes above Tehri's reservoir. A major landslide could cause a huge wave, which could overtop the dam and cause massive damage downstream.

Both the resettlement policies and the structural flaws of the dam have provoked civil protests; lawsuits and international attention have repeatedly stalled the project.

The Tehri Dam has met with popular resistance. In the year 1978, a Committee to oppose the Tehri Dam popularly known as the Tehri Bandh Virodhi Sangharsh Samiti (TBVSS) was formed. TBVSS succeeded in pressurizing the authorities to review the project on several occasions.

The project was abandoned in the mid 1980s after being sharply criticized on environmental grounds by a government appointed review Committee.

In 1987, the Project was again referred to a committee of the Ministry of Environment to assess its safety and environmental and social impacts. This Committee unanimously ruled against the project but the Indian Government overruled its findings and restated the project.

Sunderlal Bahuguna, a Gandhian activist and long time opponent of the dam went on a hunger strike for 74 days. This area is very earthquake prone. And if the earthquake occurs then it shall cause great loss to man and property. Hence, he forced the government to set up a review of the seismic, environmental and rehabilitation aspects of the project. The Hanumantha Rao Committee submitted its report and recommendations in 1997. The Government has

failed to implement most of the committee's recommendations, especially concerning rehabilitation.

Although land acquisition started in 1979, resettlement of affected people is far from complete. There is no master plan for rehabilitation or even a clear estimate of the number of people affected. According to the 2002 Status Report of the Public Works Department of Tehri, the Dam will displace 12547 families. Among those officially recognized, only half of the fully affected and very few of the partially affected families have been resettled. In most of the cases the land allotted is of poor quality or with multiple ownership claims.

4.8.5 Narmada Bachao Andolan

The Narmada is India's largest westward-flowing river and is of immense religious and cultural importance. It is also the subject of the largest river development project in the world, the Narmada Valley Project, which envisages the construction of thirty large and hundreds of small dams along its length.

Although the Narmada Valley Project was conceived in 1946, final planning and work on it commenced only after the Narmada Water Disputes Tribunal passed its final orders in 1978. This tribunal was established under India's Inter-State Water Dispute Act, 1956 to resolve the dispute on river water sharing among the riparian states of Madhya Pradesh, Gujarat and Maharashtra. The tribunal also laid down conditions regarding resettlement and rehabilitation of the people to be displaced by the submergence.

The Narmada Valley Project when completed will rank as the largest irrigation project ever planned and implemented as a single unit

anywhere in the world. By the year 2040, the project authorities hope to complete 31 major dams (1 on the Narmada and 20 on its tributaries) Two of the largest proposed dams, Sardar Sarovar and Narmada Sagar are already under construction, the former supported by a US \$ 450 million loan from the World Bank. Between them the dams will displace 300000 people, largely poor peasants and tribal, and cause immense ecological damage through the inundation of forests, including prime habitats of rare species. There is not the remotest prospect that the displaced people, the 'ousted' ,will be adequately resettled, nor that the ecological damage can be compensated for.

There are also real doubts borne out by the experience of large dams elsewhere in India, that the dams will yield their projected benefits of hydropower, irrigation and drinking water. The fear is that this project is set fair to become another human and ecological development tragedy.

The Narmada Bachao Andolan (NBA) is the people's movement that mobilized itself against this development in the mid-and late 1980s. This movement is lead by Medha Patkar, an activist working for the cause of environment and Baba Amte, a great social activist. It has succeeded in generating a debate across the sub-continent which has encapsulated the conflict between two opposing styles of development: one massively destructive of people and the environment in the quest of large scale industrialisation; the other consisting of replicable small -scale activities harmoniously integrated with both local communities and nature.

The NBA was of the view that the rehabilitation arrangements made were inadequate. And hence, the NBA had also filed a writ petition in the Supreme Court challenging the arrangements made for

rehabilitation of the affected people. It presented a comprehensive review of the project and requested that no further submergence or displacement takes place. Initially, a stay was granted citing the questionable rehabilitation process in 1995.

However, after four years of investigation and mounds of further litigation, the Supreme Court issued an interim order in 1999, which permitted the resumption of construction on the dam up to a height of 85 m. On theme of the major reasons the Court allowed work to resume was based on an affidavit provided by the states of Maharashtra and Gujarat that all oustees had been fully rehabilitated and indicating that arrangement had been made for those to be displaced by the increase of 3.5 m in dam height. Overall, the Court disregarded a great deal of the information prepared by the NBA. Instead it used the Government data as a base for deliberations. Although the court did not allow work to continue, it also recognized a three member "Grievance Redressal Authority", an independent committee appointed by Gujarat, which was to investigate two issues:

(i) Whether the rehabilitation of the resettled oustees had been completed in a satisfactory manner, in accordance with the NWDT award and other government policies and

(ii) Whether the preparations to resettle individuals who would be displaced if the height were to be raised to 90 m. were adequate. This Committee was to report on the state of the displaced in mid-April when the Court would entertain the motion of raising the height of the dam to 90 m.

Although the Court did state in its decision that all those displaced by the increase to 85 m. needed to be adequately rehabilitated,

what type of signal the decision gives to those displaced, which now face the sudden and immediate threat of submergence.

Much of the recent controversy and litigation is in response to allow building up to a height of 90 m. The proponents of the dam argue that the benefits will not accrue till the height is raised up to 110 m. If completed as planned, the opponents say that 320000 people will be displaced.

The NBA is not against development. It is against the destruction of environment. Hence it has an alternate strategy in place of these huge development projects. They call for an energy and water strategy based on improving dry farming technology, watershed development, small dams, lift schemes for irrigation and drinking water and improved efficiency and utilization of the existing dams.

4.8.6 Environmental Movement in Karnataka

For over eight years, the Samaj Parivartan Samudaya (SPS) has been actively associated with two people's movement, viz., the one against pollution of Tungbhadra river and air by two industries, Harihar Polyfibres and Gwalior Rayon; and the other for reclaiming of large tracts of common lands given to a joint sector company, called the Karnataka Pulpwood Limited (KPL), whose sole purpose is to grow eucalyptus and other fast growing species on 75000 acres of common lands in six districts for captive consumption of Harihar Polyfibres (HPF) , thereby depriving over five lakh of people of their basic needs, like fodder, fuel, small timber, green manure, raw materials for artisans and fruits. In addition, SPS has also played an important role in coordinating the environmental movement at the State level, the now well known movement called "Save Western Ghats March" (SWGM) and the Kanyakumari March and facilitating

dialogue on common lands through symposia and seminars where the affected people, government officials and urban experts are brought face to face.¹⁰²

The systematic movement against pollution of Tungbhadra River is a major lifeline of Karnataka. This movement for the protection began in 1983. The approach evolved for SPS included: formation of Village Environment Committees in all affected villages with priority for fisher folk, shepherds, etc, who are most affected. This Environmental organization called the Tungabhadra Prasara Samitis, which is now the forefront of the movement against pollution and makes all decisions about people's actions in environmental protection.¹⁰³

The SPS basically plays a supporting role. It coordinates with the people and helps in the organizing of environmental camps and jathas, conduct scientific studies of the pollution and common lands, and file public interest litigation in the Courts.

The people's participation in the movement against pollution grew steadily from padayatra in the affected villages, the environmental camps, and dialogue with the management of the factory and the Karnataka Pollution Control Board Officials and Satyagraha in front of factories. Hence, the basic approach of the SPS on the issue of common lands has been the same as in the case of the movement against pollution.

¹⁰² Hiremath, S.R. "People's Participation in Protection and Sustainable Use of Environment", The Special Number on Environment and Administration, The Indian Journal of Public Administration, July – Sept. 1989, p. 390

¹⁰³ Hiremath S.R., "People's Participation in Protection and Sustainable Use of The Environment", The Special Number on Environment and Administration, The Journal of Public Administration, July-Sept, p. 390

Similarly, the destruction of the life support system through the introduction of water logging and salinity has been resisted by the farmers' movements in various parts of the country particularly in Karnataka and Madhya Pradesh. Another significant people's movement based on conflicts over natural resources has evolved around the threat to marine resources as well as to the survival of the millions of people belonging to the indigenous fishing communities posed by the reckless over fishing by mechanized boats and ecological destruction caused by trawling.¹⁰⁴

4.8.7 Movements in Gujarat

There are a few ongoing movements in Gujarat in protection of environment who are contributing handsomely in the field of Environment. The notable amongst them are "Paryavaran Mitra", "Centre for Environment Education" and "Center for Social Justice". These organisations are doing notable work in environment protection. A few years ago, "Paryavaran Mitra" had filed a writ petition challenging the inadequacy of the procedure of public hearing in environmental matters. Also it regularly publishes a journal entitled "paryavaran Mitra", which deals with issues pertaining to environment.

A former head of the Indian Institute of Management, Ahmedabad, heads the Center for environment Education initiated in Ahmedabad. They do remarkable work in environment education.

4.8.8 Movement in Uttaranchal

The Rural Litigation and Environment Kendra, Dehradun is also an important Organisation. We see that because of their initiative

¹⁰⁴ The resistance of fishing communities are analysed in John Kurien and Sebastian Matthew , " Technological Change in Fishing : its impact on Fisherman" (Monograph)Centre for Development Studies (Trivendrum) 1982

many landmark principles were derived in the environmental jurisprudence.¹⁰⁵

The limestone quarrying case, wherein we find the first indication of right to healthy environment as a fundamental right, this case was filed by the Rural Litigation and Environment Kendra, Dehradun and a group of citizens, who wrote to the Supreme Court against the progressive mining which denuded the Mussourie hills of trees and forest cover and accelerated soil erosion resulting in land slides and blockage of underground water channels which fed many rivers and springs. Here the Court had observed:

This is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussourie Hill range... but also in their implications to the welfare of the generality of people living in the country.¹⁰⁶

4.8.9.M.C.Mehta Foundation

M.C.Mehta, a name in the environmental area has become an institution in itself. M.C.Mehta is an advocate by profession and a public-spirited individual by nature. He is an active environmentalist who has brought to the fore several environment related cases. The M.C.Mehta Foundation is a non-profit, non governmental organisation. The object of this Foundation is to work nation wide for the protection of environment.

¹⁰⁵ See R.L.&E Kendra , Dehradun v. State of U.P (1991) 3 SCC 348. And R.L.&E Kendra, Dehradun v. State of U.P., AIR1985.SC 1259.

¹⁰⁶ *Ibid* at 653

4.8.10 The Environment Society of Chandigarh

In the Information Age the media has a vital role to play. And when it comes to combating the evils in the society, they have a greater role to play. They can spread the right message and really bring about a change in the existing scenario. And the problem relating to environment is also one such problem wherein; the role of the media becomes very important. For sensitizing the issue of environment, the media can make certain efforts and it can spread the message of environment awareness.

Several NGOs have been formed and are working for the environment protection. The Environment Society of Chandigarh is one of them. It was founded by Mr. S.K.Sharma, Assistant Director of Epidemiological Services, Chandigarh, and Administration long back even when the concept had not assumed importance at the national level.

The society undertakes certain activities for creating environmental awareness. It celebrates Van Mahostav every year by planting trees in and around Chandigarh, wild life week and Bhopal Day. It also celebrates Basant Panchami every year. Also, every year the society holds reception to migratory birds at the Sukhna Lake, Chandigarh.

They create environmental awareness by hosting various competitions on environment and various exhibitions on environment protection. The society in collaboration with the Environmental Public Health Department of Chandigarh Administration has introduced an innovative Environment / Health Education Programme for school children in all the schools of Chandigarh. Every Saturday is observed as school Environment Day. Environment Committee consisting of teachers and students also has been formed which monitors all the activities. The school

authorities also have been asked to start compost pits, nurseries and flower trees in their premises.

Every year the society honors persons who have distinguished in environmental and nature conservation. It has so far honoured dignitaries like, Padma Vibhushan Dr. Salim Ali, Mr. P.R.Mishra, Padma Shri Nek Chand and Ms. Madhu Sarin. The Society has decided to establish Environment Society at each district HQ, town and has addresses letters to experts to form committees at village / Mohalla level for nature conservation.¹⁰⁷

4.8.11 Law School Efforts in Protection of Environment

The various law schools have also contributed their share. The National School of Law of India University has established a special Environment Protection Cell. It is called as the CEERA i.e Center for Environmental Education and Research Action. This Center is more engaged in imparting training in environmental protection.

4.9. Environmental Impact Assessment

Environmental Impact assessment (EIA) is an effort to anticipate measure and weigh the socio-economic and bio-physical changes that may result from a proposed project. It is useful to the decision makers in considering the proposed project's environmental costs and benefits. Where benefits sufficiently exceed the costs, the project can be viewed as environmentally viable. EIA requires a multi disciplinary approach. An environmental impact statement (EIS) for a dam, for example, might include inputs from geologists, forestry experts, wild life experts, anthropologists, economists, agricultural scientists and social scientists.

¹⁰⁷ "Environment and Conservation – A Tribune Supplement", The Tribune December 18, 1986.p9.

Prior to 1994, EIA in India was carried out under administrative guidelines which required the project proponents of major irrigation projects, river valley projects, power stations, ports and harbors etc. to secure a clearance from the Union Ministry of Environment and Forests (MEF). The procedure required the project authority to submit environmental information to the MEF by filing out questionnaire or checklists. The environmental appraisal was carried out by the ministry's environmental appraisal committees. These Committees held discussions with the project authority and on the basis of the deliberations, either approved or rejected the site. When approved, the project clearance was generally made conditional on specified safeguards.

On 27 January 1994, the MEF notified mandatory EIAs under rule 5 of the Environment (Protection) Rules of 1986 for 29 designated projects the notification made it obligatory to prepare and submit an EIA, an Environment management Plan (EMP) and a project Report to consult a multi-disciplinary committee of experts. Under the January 1994 notification any member of the public was to have access to a summary of the project report and the detailed EMPs. Public hearings were mandatory. This represented India's first attempt to a comprehensive EIA scheme.

On 4 May 1994 the MEF issued an amending notification substantially diluting the January 27 notification. The amendment was introduced, without any pre publication of the draft. With these changes, the project proponent was no longer required to submit a 'detailed 'Project Report (as was the requirement under the January notification) Also the requirements of EIA and EMP were diluted. Also the prerequisite of obtaining environmental clearance from Central Government before taking any measures at the site was

weakened by the introduction of the expression 'construction', thereby restricting the prohibition to building activities. Another significant change brought in was in the Explanatory note, which restricted public access to "Executive Summary" of the environmental Impact documents and further narrowed access to bona fide residents located at or around the project site of displacement or alleged adverse environmental impact. Further, the comprehensive Environment Impact Assessment report requirement was narrowed to a single season report, termed as rapid Environment Impact Assessment report.

Thankfully, all these regressive changes were undone by the notification of April 1997 and it restored public hearings. According to Ashish Kothari, a leading environmentalist who served on the Environmental Appraisal Committee (EAC) for river valley and hydro-electric projects is not satisfied with the efforts of EIA .He regards the procedure to be seriously flawed. He criticizes the practice of issuing 'conditional' clearances which result in most major projects receiving rubber stamped approval, whether or not they pass muster on ecological considerations. The principal flaw in the method is that the MEF has an inadequate machinery to monitor whether or not the conditions are met. Kothari complains that there is not a single case of a violation of conditions where an environmental clearance was withdrawn or the concerned official prosecuted.¹⁰⁸

The people's movement has contributed actively in protecting the environment. Today the people's movement is emerging as a major pressure group in the area of environmental protection. However, more persistent efforts are still needed. Here the researcher has studied the environment policy in India after Stockholm Declaration.

¹⁰⁸Divan and Rozencranz , Oxford. 2001. interview conducted by Shyam Divan of Ashish Kothari.

The major observations are:

Despite of elaborate planning of policy matters in environment, it remains only on paper. The probable reasons may be lack of proper implementation of all the well-detailed schemes. Second can be lack of proper appropriation of funds for environment protection.

The researcher has a few suggestions on this.

- The lethargic attitude of the executive in environmental programmes can be removed by making the programmes time-bound.
- For the purpose of proper implementation of all the environmental schemes, it may be first of all properly monitored and secondly handed over to specialized agencies to ensure efficacious implementation of environment protection schemes.
- The special units empowered with powers to punish on failure of implementation of the policies on time are created which the Minister of Environment shall head. There should be less bureaucratic hurdles.
- More schemes encouraging environmental awareness need to be introduced.
- The NGOs working for the environment protection be extended full cooperation.

- The Executive in collaboration with the leading law schools in the country chalk programmes to ensure sustainable development.
- The Executive should ensure that the enforcement officers are the people with high integrity and social commitment.
- The Executive should play an active role in dealing the environmental issues. Today environment is one of the subjects compulsorily to be studied at school level. Special schemes should be introduced in schools to encourage the children to keep their environment clean. And to develop an environmental culture. Children are the future of our country and also valuable asset of the country. And another important thing is that the mind of the children being very impressionistic, the right things if imbibed at the right time in their minds, it can have the desirable effort. And once the children of the country are properly groomed in environmental matters, they can prove to be an important instrument in maintaining Sustainable Development.

In the words of Medha Patkar¹⁰⁹:

"If the vast majority of our population is to be fed and clothed, then a balanced vision with our priorities in place of the Western models is a must. There is no other way but to redefine 'modernity' and the goals and between people and nature of development, to widen it to a sustainable, just society based on harmonious, non-exploitative relationships between human beings and between people and nature."

¹⁰⁹ www.google.com