

I. Introduction

CENTURIES BEFORE the great Saint Tukaram puts it thus "trees and plants are the kith and kin of a man". Time in past has experienced the generosity of environment to cater to the need of human beings and their developments. Nature has played a vital role in influencing the design of custom, culture and civilisation. Perennially the environment has showered motherly affection on mankind. In the curse of time, mankind has not maintained the gratitude due to the environmental benevolence. Civilised passion for urbanisation and modernisation is apt, however, to be unmindful of environmental patronage. Modern civilisation in its wake has preferred standard of living at the peril of standard of nature's life. For a little at the peril of standard of nature's life. For a little artificial beauty, modernisation is tempted to inflict enormous cruelty on the nature. The momentary thrill of big game has abetted inhuman treatment to wildlife. Characteristically mankind could not foresee the impending danger. Now it stands between the devil and the deep sea. The crisis for the present generation is unassessable whereas for incoming generation, it would be a problem of survival. Unnatural death is slowly but

steadily approaching.

II. Legislative development

The last century did not sense the gravity of the incoming situation. Civilisation took formal legislative measures to deal with the environmental problems.

The Indian Penal Code, 1860 constituted spreading infection of dangerous diseases, fouling or corrupting water, making the atmosphere noxious to health, etc. as penal offences.

The Police Act, 1861 prevented slaughtering of animals at public places.

Indian Easement Act, 1962 recognised individual easementary right to air, light and access for beneficial enjoyment of land and building, to be enforced against another individual. This Act has, however, also recognised individual prescriptive right to pollute air and water.

Indian Forest Act, 1865 regulates matters in the forest.

Criminal Procedure Code, 1989 authorised the executive to remove public nuisance and to prohibit occupations injurious to public health.

These legislative measures were more contingent. They could not comprehend incoming danger or plan on a long term basis.

*Judge, Bombay High Court, Nagpur Bench, Nagpur, Maharashtra (India), Member, Executive Committee of the Indian Law Institute and Member, Organising Committee of the International Conference on Shaping Future by Law: Children, Environment & Human Health.

III. Pro First World War era

Till the first world war, the environment was more neglected than damaged. Pollution and environmental problems were mostly domestic. Battles and warfare were carried more under the shelter and with the support of environment. Besides sufficient damage to environment, industrialisation and automobilisation have been the gift of the first world war. This has surpassed the man-made pollution. Institutionalised and instrumentalised pollution has come into being.

Indian Forest Act, 1927 came into being by repealing and revitalising the Act of 1865.

Motor Vehicles Act, 1939 section 70 was introduced to regulate emission, smoke, visible vapour, etc. from the vehicles.

However, the provisions were not effectively implemented and the problem of vehicular pollution has become enormous in cities. In the quest of economic prosperity, environmental consciousness became more and more insignificant and has gradually disappeared. With this, mankind went ahead to meet the second world war.

IV. Pro Second World War era

The use of nuclear weapons intensified damage to the environment. The second World War opened an era of modernisation and urbanisation. Industrialisation, automobilisation, modernisation and urbanisation individually and collectively contributed substantially to pollute the environment. Natural environment has been replaced by the polluted one. To some extent, man acclimatised to co-exist with it. India took certain legislative measures after second World War.

Factories Act, 1948

Section 12 provides for regulation of disposal of waste and effluents from the factories.

National Forest Policy

On 12.5.1952, the Central Government, since generation has passed through two world wars, felt it expedient to declare the policy under the Forest Act, 1927.

Wild Life (Protection) Act, 1972

Wild life being an integral part of the forest, legislature showed a grave concern over their annihilation, which is one of the richest and varied national assets.

These stray legal provisions has less than marginal success in protecting the environment. Fortunately, till then, mankind did not meet with the third World War. But between the nations, occasions for warfare were not rare. That had added in worsening the environmental condition.

V. The Stockholm Declaration, 1972

World wide anxiety was for the first time created by the conference of the United Nations.

It has apprised the entire world regarding danger to mankind, due to the environmental problem.

The Declaration is a *Magna Carta* of Environmental conviction. It has declared environmental quality as one of the fundamental rights of human being. And it believes in the following:

- (i) to safeguard natural eco system by careful planning and ensure no irreversible damage to it and to safeguard and wisely manage heritage of wild life;
- (ii) to maintain capacity of earth to produce vital renewable resources, whenever practicable;
- (iii) to plan integrated programme to rationalisation of management of resources and coordinated approach to development.

To some extent, the Declaration had the desired effect. On the Globe, it could generate environmental consciousness. The Governments of various nations started paying heed to it.

VI. Major Indian legislative steps

Water (Prevention and Control of Pollution) Act, 1974

Having regard to the problem of pollution of river and stream, which has cropped up owing to growing industrialisation and urbanisation, the Act came into being. It is the first major step in the legislative history of India, having a concern with environment.

Title is indicative of the object. Besides, it aims to maintain and restore wholesomeness of water and to constitute Boards therefore. Pollution itself is a highly technical phenomena. In development, it is more faster than the human mechanism to control it. No definite and uniform standard can feasibly be laid down.

42nd Constitutional Amendment, 1976

In tune with Stockholm Declaration, this Amendment has incorporated Article 48-A and Clause (g) in Article 51, thereby directing the State to make an endeavour and to impose on citizens a fundamental duty to protect and improve the environment. Article 51 (g) fundamental duty is in tune with the Constitution of the socialistic countries. However, Article 48-A is the first of its kind in the world of constitutional history. These are more in the nature of a precept of morality than mandate. No mechanism is formulated to enforce the duty. This has been viewed as constitutional pity towards environmental derailment.

Forest (Conservation) Act, 1980

A legislative step to enforce Article 48-A of the constitution. Forest is most important part of the environment. It keeps balance

between oxygen and carbon dioxide. Forest operate as a device against pollution and ensures natural rains.

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

Having regard to:

- (i) problems growing due to industrialisation, coupled with tendency to congregate at the particular place of industrialisation,
- (ii) Stockholm Declaration,
- (iii) study report of National Engineering Environmental Research Institute, Nagpur emphasising integrated approach, this Act *inter alia* aims to preserve quality of Air.

This Act is in *pari materia* with the Water Act. It has entrusted its powers and functions for being exercised and discharged to the boards, which are constituted under the said Act. Both the Acts respectively define 'pollution' of air and water. 'Water Pollution' merely defines contamination or alteration of properties of water. It does not take within its sweep unsettling of water by an artificial measure. Reclamation of land under the sea has not therefore become impermissible.

The function of the Boards under both the Acts is mostly to advise, recommend, plan and supply data. However, they are not binding on the Government. On the contrary, directions of the Government are binding on the boards. Functioning of these Boards has become more a matter of rhetoric than of consequence to achieve the object of the Acts.

VII. International Conference on Environmental Education, New Delhi in December 1981

It focussed that attention on a measure other than law on environmental problem. The Conference gave substantial dimension

for the solution by going to the root.

More than 70% people in India are below the poverty line. They depend for their livelihood on the environment. Their life style has a direct relation with the environment.

It has been acknowledged that poor people live closer to the earth. They can adequately render support to the environmental programmes, if convinced of its beneficial values to them. Tangible beneficial results of such programme, would lend support to relevant laws.

To make the operation of law more purposeful and effective, well thought out consensus of the Conference relies more on environmental education. To improve environmental condition, dissemination of knowledge of nature has the first priority. Social forestry, for instance, is taking shape through such measure.

VIII. Affirmation of General Assembly of United Nations

On 28.10.1982, the General Assembly of United Nations affirmed:

- (a) mankind is a part of nature and life depends on natural system, which is also a source for energy and nutrients.
- (b) civilisation is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement.

It appealed to men:

- (a) to live with nature for best rest and recreation, and
- (b) they must acquire knowledge to maintain and enhance their ability to use natural resources in a manner which ensures preservation of eco system for the benefit of present and future generation.

Despite assertions by two World Conferences, environmental education programme has not effectively been planned

and carried out. To fight with environmental problems, efforts have mostly been directed towards legislative measures.

Sea is a majestic king in the environment. It contains water in abundant measure. It is unfit for human consumption since having very high percentage of salt. Still it is to be kept unpolluted to maintain life of fish, other creatures, and marine eco-system.

Most of the pollution in sea water was due to mercantile shipping. In 1954, International convention for prevention of the Sea by Oil expressed its serious concern over this matter.

On 18.5.1983 by incorporating Chapter XI-A to the Indian Merchants Shipping Act, 1958, prevention and containment of pollution of sea by oil and oily mixture has been provided. This is a measure in addition to those provided under the Water Act, 1974. More comprehensive legislative step, however, was still ahead:

The Environment (Protection) Act, 1986

The Act came being into being to adhere to:

- (a) The Stockholm Declaration, 1972 and
- (b) Affirmation of United Nations' General Assembly, 1982. Significantly it accords statutory recognition to the relation between environment and human beings and living creatures in tune with the affirmation of United Nations. This Act substantially covers the functions of water Act and Air Act since as defined, environment includes water and air.

'Environmental pollutant' as defined under Section 2 (g) means a substance with such degree of concentration as tends to be injurious to environment. The definition need not be as sacrosanct as enacted. It ought to be illustrative so as to take care of such contingencies which are not presently within the contemplation.

Unlike the Water Act and Air Act, this Act does not constitute Boards, but entrusts its functions and powers to the Central Government and has authorised the Government to frame rules relating to standard of quality of air, water and soil.

the significant feature of this Act is that Section 17 provides for cognizance of offences committed by the Departments of Government. Section 19 prescribed the manner in which any person may prosecute under the Act. Noteworthy it is that members of the public have hardly availed the device.

Hazardous Waste (Management and Holding) Rules, 1989

Framed pursuant to sections 6, 8 and 25 of the Environment Act, 1986.

Laws are making solitary efforts to deal with the environmental problem. Still policy of environmental management has not been evolved. Now there has been a thinking to regulate and manage developments commensurating with the protection and improvement of environment.

IX. Sustainable development

Konkan Railway

The court viewed that adverse effect on environment is inevitable. No development is possible without there being such effect. High Court non-suited the environmentalists on the principle of comparative hardship and the balance between development and protection of environment.

The overloaded belief is that in progress and development, sufferance of environment is imminent. To protect environment is a pious preaching. Invariably the Judicature has upheld the executive action taken to protect the environment. In absence of a definite law and national policy, intervention of Judicature can hardly be craved for. Mankind cannot advance without develop-

ment and development in turn cannot be meaningful unless environmental quality is maintained. The present generation looks forward for a human mechanism of rationalisation between the need of development and obligation to maintain environmental quality.

Economic progress through industrialisation is inevitable. Technological advancement has, however, created a sense that man could be a master of the planet. He has developed a quest, which has the potential to destroy nature.

In this deteriorating situation, cordiality between development and environmental condition need no over emphasis. The developmental activities need to be regulated in a manner to be sustained by environment, its improvement and quality. The philosophy of Sustainable Development has a wide range of appeal. In absence of practical, congenial and workable mechanism, it has become more glittering.

X. Rural public health

Undisputedly, the environment has an intimate relation with the public health. Whatever legislative steps, they have mostly been directed to protect and improve the sinking environment. Public health has never been seriously viewed having regard to the environment.

Article 47 of the Constitution casts an obligation on the State to make endeavour for improvement of public health. The Legislature has, however, not adequately discharged the obligation. In furtherance thereof, the government has opened Primary Health Centres and undertaken other programmes. However, rural public health is grossly neglected.

Air pollution in rural area, no doubt, is comparatively less. Ill- health in rural India is mostly due to water-borne diseases, malnutrition, water pollution and grossly

neglected sanitation. Infectious diseases like tuberculosis and leprosy have always been on the higher side.

XI. Noise

Perhaps noise is a most hazardous element of the air pollution. In earlier century, it was not proved to be so injurious. Skill-ful activities were more in the form of cottage industry. Tools engaged in such activities were less technical. Noise could be by beating of iron by black smith, hammering by carpenter and due to such similar device of artisan or din at a public place. Components of noise are variable and have the subjectivity qua the man and material. Sound of music, if not of taste, becomes noise for the person. Now in modern cities, noise is mostly due to industrialisation and vehicular traffic. And virtually it is unbearable. It was considered to be a nuisance. Traffic noise has an adverse effect on public tranquillity.

Recent studies by various groups make a shocking revelation that noise is a slow agent of death. Noise impairs health, psychologically and physiologically. It makes man more irritable. Despite known and far reaching effect of noise on human health, behaviour and social order, 'Noise' was not held to be an air pollutant in the Act of 1981.

Amending Act No. 47, 1989

Includes 'Noise' within the ambit of 'Air pollutant'.

XII. Population

Nature and its resources have the adequate capacity to feed and bear the burden of requirement of mankind. Over-growth in world population has a direct impact on the environment. with explosion of population, need of man has increased by multiples. Man has mercilessly exploited the natural resources and reached a stage of insolvency. Never has man thought of adding to the natural

legend.

Family planning programmes could not adequately control over growth in population. It has posed a serious threat to environment. While making family control measures more stringent, masses need to be impressed upon to make minimum use of and add maximum to the environment.

While approaching to 21 st Century, mankind bears a concept of Global village. Population on various parts of the globe ought to have some degree of uniformity. International charter can be set up to permit and encourage migration of people from the thickly populated areas to a land where human habitation is in urgent need.

XIII. Earth summit at Rio, 1992

Legislative measures and other programmes to protect environment and public health have been proved to be non-consequential. The Summit has, therefore, focussed world attention on this uncontrollable situation and it has resolved for a concerted multi-dimensional action plan. For the first time in the world history, the Summit has achieved unanimity amongst leaders of all nations on the environmental crisis. But the problem took shape of devil in the air, demon on land and monster in the sea. Till the time, man finds a device to control, it goes far ahead. Summit has, however, brought a sense of oneness to deal with the problem.

XIV. Motto of the conference

Recent earthquake in the Maharashtra is sufficiently indicative of what environmental disaster could be. Incoming generation, which is now in its childhood, is innocently awaiting for the dark days.

Child is the choicest gift of Almighty. His future is bleak owing to deteriorating human health, which is in turn, due to massive degradation of environmental condition. Having inspired by the Earth Summit, this

Conference is on a mission to re-establish relation and revamp cordiality between human being and environment through law.

XV. Law

In ancient time, law was held to be a king of all kings. The kings has to submit to its command . The law had a religious or meta-physical sanction. Disobedience has a tremendous fear from unknown. Society bore minimum laws, but they had a maximum obedience.

To democratic society, law is a discipline. But democracy is being looked at as nothing more than a political format of the government society. Still democratic society has no mental bent to submit to the supremacy of law. Law is being viewed as an intruder in a free society. Law itself has been subjected to numerous challenges theoretical as well as practical. To deal with the global crisis, would itself be a tremendous task before law.

To sustain execution of law, conditioning of society would be the first necessity. Such conditioning could be attained by public sanction. Penal provisions would hardly be a measure in that direction. Preaching and precept of law have to reach the doors of people. Generating public awareness of preciousness and emphasising on beneficial need of environment and its protection would be a step towards conditioning of a society. Mostly people are illiterate over repercussion of environmental destruction. Environmental literacy will be a drive towards preventing erosion and destruction of environment.

XVI. Suggestions

In a multi-dimensional concerted plan as envisaged by the Earth Summit, comprehensive and definite legislative action could be one, but not the sole measure to deal with environmental challenge. Some of the suggestions, need to be incorporated in the

Constitution of India, are thus:

Article 21 : as a corollary to protection of life and liberty, protection of quality of environment with minimum guarantee needs to be incorporated.

Article 38 : State's 'commitment to strive to promote welfare of people by securing social order, need to be complemented "by securing quality of life of citizen by guaranteeing environmental order."

Article 43-A : akin to workers' participation in management, a Clause envisaging participation of public in environmental development programme needs to be added.

Article 47 : akin to commitment to improve public health, State needs to be charged with an obligation to raise standard of environment.

Article 48 : akin to State's endeavour to organize agriculture, a Clause to organize and improve the environment on scientific basis needs to be added.

Boards under Water and Air Acts : need to be autonomous with an authority to implement their planning and programmes.

"Water" - a subject on the State List needs to be brought in Concurrent List Seventh schedule to the Constitution of India to facilitate effective control on pollution as well as for uniformity in distribution.

Similar Boards need to be statutorily constituted on Municipal Corporation and (*Zilla Parishad*) level district council. Discretion of the state governments to withdraw application of these Acts to a particular area needs to be eliminated.

Section 24 of the Act imposes prohibition on use of steam or well for disposal of polluting matter. Specific individual rights are, however, exempted from such prohibition. This needs to be eliminated or at least minimised.

Nuisance is one of the incidents of air

pollution. However, 'Water Pollution' does not include 'disturbance in water'. Reclamation is, therefore, permissible. The definition, therefore, needs a recasting.

Prescriptive easementary right to pollute air and water, having regard to the present conditions, needs to be eliminated from the statute book.

Need of health education programme and social preventing medicine programme to be intensified.

Need to spread over-professional environmental education with knowledge of nature and ecology by all possible means.

Programme for environmental public auditing.

Environment to be treated as a part of social science and to be included in syllabus as one of the disciplines at secondary and university level.

Development of rural based eco-system.

To find out device for re-utilisation or best possible utilisation of industrial waste and effluents.

The cost of equipments for testing treatment and preventing pollution is very prohibitive. Advanced countries in the interest of planet, need to come forward to supply to other countries such equipments on subsidized rates.

On the international level, migration of people from thickly populated land, needs to be devised to accomplish the concept of global village.

Inter-governmental cooperation and joint action formula are indispensably essen-

tial to evolve any global policy of environmental management. Thus it is aptly said :

All governments should develop a foreign policy for the environment as one major way of improving the international coordination of national environmental policies.

But in the long term perspective, and here we think the World Commission could have an important message. It will be politically sound and wise to get support from the NGOs to prepare for changes that have to take place anyway sooner or later. So it would be politically wise to look into that in a much broader way than what has been done so far.¹

The commitment to faith of oneness in relation to earth, environment and human being is essential for the survival of planet and all the living creature.

Nevertheless, genuine implementation of the principle of sustainable development is the need of the hour and thus it demands the reconciliation between commerce and human spirit on the one hand and economics and commerce on the other. It has direct challenge from population explosion. Therefore, the doctrine, in turn, demands ensuring of sustainable level of population, to whom the nature can adequately provide an opportunity for intellectual, moral, social and spiritual growth, as envisaged by the Stockholm Declaration. Law may not be able to deal with this aspect singularly. Law might be omnipotent, but still it has some limitation and sometime being looked as an intruder and an impediment in the progress of man and his natural habitat.



1. See statement, Mats Segnestam, "Our Common Future", *World Commission on Environment & Development* 315 (1987).