

# Judicial Approach to Sustainable Development and Environment in India: A Brief Overview

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**Abstract**—Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It represents endeavor towards integration between environment and development which marked the debate on protection of environment in the early seventies and late eighties of the last century. The journey from Stockholm to Rio via Brundtland Report highlights the shifting focus on one and the other and final culmination into this harmonious integration. The Rio Declaration, unlike the Stockholm declaration, attaches greater importance to social environment over physical environment. It achieves a balance between the substantive requirements of sustainable development and procedural requirements for implementing environmental protection. With human rights as the focus of sustainable development, the Declaration attempts to create a harmonious and equilibrated world society. Justice, equity and fair play become key words in the present task of restructuring the world community on the basis of sustainable development.

In the above backdrop, the author of this paper has tried to evaluate the international endeavour to protect the environment including the sustainable development goals. A brief analysis of the various laws including the core principles ingrained in the Constitution of India has also been made in this paper. The Indian Judiciary has reiterated the doctrines of polluters pay principle and precautionary principle through its various epoch making judgments pertaining to protection of environment. Thus, it is observed that the environment-development symbiosis is a preferred social goal aimed at attaining social good and benefit of clean and healthy environment and economic growth for all. Environment protection is as much a facet of right to life as meeting the needs of all through development process.

**Keywords:** Sustainable development, environment, polluters pay principle, precautionary principle.

## 1. INTRODUCTION

Human beings live in both natural and social world. Our technological development has strong impacts on the natural as well as social components. Development cannot be perceived as development only for a privileged few who would have a high standard of living and would derive all the benefits. Development has to be visualised in a holistic manner where it brings to all, not only for the present generation, but also for the future generations. There is a need to inter link social aspects to development and environment.

While the United Nations Charter of 1945 marked the beginning of the regime of international human rights law, the Stockholm Declaration of 1972 is generally regarded as the starting point of the international framework for environmental protection.

## 2. MEANING OF THE TERM ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Environment means and includes the entire surroundings- the land, the water and the air. It includes both living and non-living elements of this planet. According to Encyclopaedia Britannica, the term environment means the entire range of internal influence acting on an organism, both the physical and biological and other organism, i.e. forces of nature surrounding an individual. Under Indian law, environment includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, planets, micro-organisms and property[15].

Sustainable Development is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs[8].

## 3. OBJECTIVES OF THE STUDY

The present study tries to analyse the concept of environment and sustainable development. The world community has witnessed that due to development there has been great adverse impact on the environment. To tackle this problem, the different initiatives that are being taken at the international as well as national level are also briefly discussed in this article. The author analyses some epoch making judgments pronounced by the Indian Judiciary wherein thrust has been laid down on the sustainable development.

## 4. METHODOLOGY

The methodology adopted while writing this paper is confined to secondary sources of data available in books, articles and internet materials. The author has also included primary authoritative sources, such as documents as well as landmark judgments pronounced by the judiciary.

## 5. PROTECTION OF ENVIRONMENT- THE UNITED NATION'S INITIATIVES

The United Nations have played very pivotal role in setting the legal framework for international resource management and for responses to environmental problems of the planet through the General Assembly, the Economic and Social Council, the UN Environmental Programme, the UN Development Programme, and the International Court of Justice, as well as specialist bodies. Though the leading norms in the field of international environmental law are many, foremost among these norms is Principle 21 of the Stockholm Declaration. It provides thrust on the right to use natural resources within the national jurisdiction without causing damage to the environment. One major statement made in this Declaration reads as, 'pollution must not exceed the environment's capacity to clean itself'[13].

Although the fear about unsustainable growth and development started in 1970's, yet a clear discussion on sustainable development emerged on an international level in 1992, in the UN Conference on Environment and Development, popularly known as the The Earth summit, held at Rio de Janeiro, Brazil. The Rio Declaration aims at a new and equitable global partnership through the creation of new levels of cooperation among states. Out of its five significant agreements, Agenda 21 proposes a global programme of action on sustainable development in social, economic and political context for the 21<sup>st</sup> century.[20]

Following are the key aspects of sustainable development-

Intergenerational equity which emphasizes that we should minimize any adverse impacts on resources and environment for future generations, that is, we should hand over a safe, healthy and resourceful environment to our future generations. This can be possible only if we stop over-exploitation of resources, reduce waste discharge and emissions and maintain ecological balance.

Intragenerational equity which emphasizes that the development processes should seek to minimize the wealth gaps within and between nations.

Some of the important measures for sustainable development are as follows-

- a. Using of technology
- b. Reduce, reuse and recycle approach
- c. Prompting environmental education and awareness
- d. Reduce utilization as per carrying capacity

Sustainability of a system depends largely upon the carrying capacity of the system. If the carrying capacity of the system is crossed, environmental degradation starts and continues till it reaches a point of no return. Carrying capacity has two basic components, one is supporting capacity i.e. the capacity to

regenerate and the other is assimilative capacity i.e. the capacity to tolerate different stresses[9].

In order to maintain sustainability it is very important to utilize the resources based upon the above two properties of the system. Consumption should not exceed regeneration and changes should not be allowed to occur beyond the tolerance capacity of the system.

The General Assembly of the United Nations created the United Nations Environmental Programme (UNEP) further to monitor the environment and co-ordinate and encourages sound environmental practices. It also works with Governments, NGOs and other agencies. In march 2013, the United Nations general Assembly changed the UNEP Governing Council to the 'United Nations Environment Assembly of UNEP'. Apart from these, the Brundtland Commission Report[5], Rio Agenda 21[2], Earth Summit +5[4], Earth Summit+10[17]- all these initiatives are aimed at securing better environment for the mankind. On the basis of Brundtland Report and other International documents prepared at Earth Summit at Rio de Janeiro, the following have been accepted to be contents of sustainable development[3].

- A. Intergenerational and Intragenerational equity
- B. Use and conservation of Natural resources
- C. Protection of environment
- D. The precautionary principle
- E. The polluter pays principle
- F. Obligation to assist and co-operate
- G. Eradication of poverty
- H. Financial Assistance to developing countries

The Millennium Development Goals (MDGs) arose from Millennium UN Declaration 55.2, a resolution adopted in 2000. The Sustainable Development Goals(SDGs) were preceded by the MDGs. The MDGs were eight development goals while SDGs were seventeen development goals[6]. Out of these seventeen SDGs goal no. 6(clean water and sanitation), goal no. 11(sustainable cities and communities) and goal no. 17(partnership for the goals) primarily focus upon sustainable development and environment.

## 6. PROTECTION OF ENVIRONMENT- THE NATIONAL ENDEAVOUR

As a consequence of the Stockholm Declaration of 1972, the States were required to adopt legislative measures to protect and improve the environment[1]. Accordingly, Parliament of India inserted two Articles i.e. 48 A and 51A in the Constitution of India in 1976 [7]. Article 48 A of the Constitution rightly directs that the state shall endeavour to protect and improve and safeguard forests and wildlife of the country. Similarly, Clause (g) of Article 51A imposes a duty on every citizen of India, to protect and improve the natural

environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The cumulative of articles 48A and 51A(g) seems to be that 'state' as well as 'citizens' both are now under constitutional obligation to conserve, perceive, protect and improve the environment. The phrase 'protect and improve' appearing in both the Articles seems to contemplate and affirmative government action to improve the quality of environment and not just to preserve the environment in its degraded form.

Apart from constitutional mandate to protect and improve the environment, there are a plenty of legislations on the subject, such as The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Wildlife (Protection) Act, 1972; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981, The Environment (Protection) Act, 1986; Public Liability Insurance Act, 1991, The National Environment Tribunal Act, 1995, The National Environment Appellate Authority Act, 1997; The National Green Tribunal Act, 2010; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. All these Acts have given due importance for the protection of environment as a whole.

## 7. JUDICIARY'S ROLE TOWARDS SUSTAINABLE DEVELOPMENT AND ENVIRONMENT

Indian Judiciary has historically played a pioneering role in environmental law enforcement and compliance. The Constitution of India enables Courts to play a proactive role. Article 226 provides power of judicial review of every action of the State or its instrumentality. Under Article 32, the Supreme Court can enforce the Fundamental Rights of individuals and can issue any corresponding writ, direction or order to rectify official action that is illegal, in contravention of procedure, unreasonable, irrational or mala fide. The Supreme Court of India can exercise *suo moto* jurisdiction meaning 'on its own', or through Public Interest Litigation, another important concept. The efforts of the Indian Judiciary resulted in enactment of the National Green Tribunal Act, 2010 by the Parliament, that proposes to efficiently and expeditiously dispose of cases relating to environmental protection and conservation of forest and natural resources including enforcement of legal rights relating to environment and giving relief and compensation for damages to persons and for matters enumerated therewith or incidental thereto. Thus the Indian judiciary developed the concept of 'Environmental Jurisprudence'.

The Supreme Court has held that Article 21 covers a plethora of rights, some of which are implicit, while others are expressly mentioned as fundamental rights. Through Supreme Court's and High Courts' creative interpretation, the fundamental right to life and personal liberty guaranteed under Article 21 has been expanded to include environment protection[14].

In *M.C. Mehta v. Union of India* [12] the apex court while relying on Article 48A of the Constitution directed the Central Government and the State Governments and various local bodies and Boards under various statutes to keep appropriate measures for the protection and control of pollution of water. In *M.C. Mehta (2) v. Union of India*[10] the Supreme Court of India held that under Article 51 A(g), it is the duty of the Central Government to introduce compulsory teaching of lessons of at least for one hour in a week on protection and improvement of natural environment in all the educational institutions of the country. In the Bhopal Gas Leak Tragedy, *M.C. Mehta v. Union of India*[11] the Supreme Court ordered a privately owned company, that had permitted the emission of noxious gases, to compensate the victims of the gas leak and thereby evolved the doctrine of absolute liability.

In *Vellore Citizen Welfare Forum v. Union of India*[19], the apex court observed that the sustainable development is a balancing concept between ecology and development. The court has elaborately discussed the concept of sustainable development which has been accepted as a part of the law of the land. However, the Precautionary Principle[16] and Polluter Pays Principle are essential features of sustainable development[18]. The Precautionary Principle was emphasized in the Principle 15 of the Rio Declaration 1992. The Precautionary principle in the context of municipal law means,

- a. Environment measures should be taken by the state governments and the statute should attack the causes of environmental degradation.
- b. Where there threats of severe and irreversible damages, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- c. The onus of proof is on the actor or the developed industrialists to show that his action does not affect environment.

The Polluter Pays Principle means the absolute liability to harm to the environment extends not only to compensate the victims of pollution but also at the cost of restoring the environmental degradation. Remediation of the damaged caused to the environment is a part of the process of sustainable development and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. This Principle in view of the Rio Declaration also envisages the 'Environment Impact Assessment'.

These decisions demonstrate the judicial acumen in gradual expansion of the ambit of Article 21 to increase the state's responsibility towards its citizen's total well-being, a fundamental goal of our Constitution. The expansion of locus standi has also contributed in giving momentum and achieving the goal of socio-economic justice in India.

## 8. CONCLUSION

Undoubtedly the creative role of the Judiciary is laudable filling the statutory void and inviting environment assessment. Judicial craftsmanship is especially noticeable when the court ordered state to take appropriate measures for sustainable development and to prevent environmental pollution. The ecology is not confined within a national boundary. The world's original forest cover has been reduced and as a result the maintenance of healthy ecosystem has been disturbed. After the Stockholm Declaration and onwards there is hardly any State that has not paid attention to environmental issues. Thus, it is the high time to take proper environmental planning and management not only by policy makers, legislators and judiciary, but also by all to fulfil the objectives as per the Principle 21 of the 1972 Declaration that the natural resources of the earth and especially representative samples of natural ecosystem must be safeguarded for the benefit of present and future generation.

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