

## SUSTAINABLE DEVELOPMENT AND ENVIRONMENT PROTECTION IN INDIA: A CRITIQUE

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**Abstract:** The environment protection is needed for sustainable development and has been a challenge to the human community. The climate change due to unorganized development has led to an adverse impact on environment and human health. With increase in over consumption of natural resources through science and technology, has led to devastating environmental impacts in places across the world. Indian Legal system has introduced some laws and enacted tribunals like National Green Tribunal to deter the unwanted growth and protect the environment from degradation. However, due to lack of implementation of these laws they are questioned on their effectiveness and seriousness in relation to the environmental laws in the country. The Indian judiciary has also played a pivotal role in environment sustainability by giving landmark judgments and orders by invoking its powers under the Article 32. Our constitution through Article 21 has explicitly added the “right to live in a healthy environment” which is yet to be put in pith and substance. This paper explores various aspects of sustainable development and interrelation of various legal aspects for environment protection in India.

**Keywords:** Sustainable Development, Environment Protection, National Green Tribunal Act, Article 21.

### INTRODUCTION

With globalization the economic development of many developing countries like India is increasing in many folds. However a serious concern is regarding the environment degradation. The fundamental human rights have been given as economic well being as taken into the definition of sustainable development<sup>1</sup>. The doctrine of Sustainable Development has been defined as development that meets the needs of the present, without compromising the ability of future generations to meet their own needs. It contains two key concepts viz. “the concept of needs, in particular, the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.” This definition emanates from Our Common Future, which is a Brundtland Report published by World Commission on Environment and Development

in 1987<sup>2</sup>.

The development and environment protection are synonymous in nature and one cannot exist without the other. The development should take care of the environment protection by having a balancing concept with strategies to give development without causing harm to the environment<sup>3</sup>. India being a developing country has emerging industrial sector for social and economic development. The over exploitation of the natural resources to meet the demands of the industry has caused environment degradation. The Article 21<sup>4</sup> of the Constitution of India stands as the safeguard for citizen’s fundamental right against environmental pollution. The Article 21 includes “the right to live in a healthy environment, including environment free from health hazards due environmental pollution.” As environment includes water, air, land and the inter-relationship which exists among and between water, air, land, human beings, other living creatures, plants, micro

organisms and property<sup>5</sup>, the quality of environment is affected by the adverse impact on any of these components.

## PRINCIPLES OF SUSTAINABLE DEVELOPMENT

The Supreme Court explained the principles of sustainable development in *Vellore Citizens Welfare Forum v. Union of India (Tamil Nadu Tanneries Case)*<sup>6</sup>, as:

- Intergenerational equity
- Use and conservation of natural resources
- Environmental protection
- Precautionary principle
- Polluter pays principle

**Intergenerational Equity-** The natural resources cannot be exhausted in one generation as they are permanent assets of the society<sup>7</sup>. The concept of intergenerational equity is based on the foundation that the today's generation is having benefits from the cultural and natural inheritance of its preceding generations. The next generation should have the same right on the natural resources as the current generation. In *State of Himachal Pradesh v. Ganesh Wood Products*<sup>8</sup>, the Supreme Court stated that "the present generation has no right to imperil the safety and well being of the next generation or the generations to come thereafter."

The Rio Declaration Principle 3 states that the right to development should be achieved so as to rightfully meet developmental and environmental needs of current and next generations. The purpose of the principle is to make sure that the today's generation should not exploit the non-renewable resources so as to deny the next generation of its benefit.

**Use and Conservation of Natural Resources:** The natural resources should be used in a sustainable manner but it does not need that the whole resources should be reserved for next generations. Still the natural resources must be exploited to such levels which are required for economic growth. Under the Maltese Proposal at the UN General assembly of 1967, it has been accepted that the for the future generation benefits, the exploitation of natural resources should be at lowest level by the present generation. The unsustainable practices of

production and consumption should either be reduced or eliminated to attain sustainable development and a valuable life for all people. The principle of sustainable development is based on the use and conservation of natural resources is an essential aspect of the sustainable development<sup>9</sup>.

**Environment Protection:** The environmental protection is one of the integral part of the concept of sustainable development and without this it can never be achieved. Both go together and vice versa in nature. The development activities get the boost from the various activities of environment protection. The Environment (Protection) Act, 1986 is endorsed for the regulation of development activities and protection of environment from various unethical practices. The objectives of the Environment (Protection) Act, 1986, incorporate the execution of the most important resolutions made at the UN Conference on Human Environment, certifying sustainable development and environment protection. Both are approving to each other, development of one is not possible without paying due attention to the other.

In *Citizen, Consumer and Civic Action Group v. Union of India*<sup>10</sup> the Court held for progress in the society a balance is required between environment protection and development activities for sustainable development. The prosperity of the society depends upon development but not at the cost of environment. Similarly the protection of environment is required but not at the cost of the development of the society. The development and environment protection should be protected and regulated for better future. Hence the stability has to be achieved and administrative actions should be in accordance with each other and not against each other.

**The Precautionary Principle:** This principle as defined in Principle 15 the Rio declaration is one of the most important principle related to environment protection states that:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation in other words it means:

1. Environmental measures by the state government and the local authority must anticipate, prevent and attack the causes of environmental degradation.
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 to prove that his action is environmentally benign.”

Precautionary principle states that any matter or activity which risks the environment is to be prevented from harming the environment, even when there is no definite scientific proof of linking that particular matter or activity to environmental degradation”<sup>11</sup>.

**Polluter Pays Principle:** Principle 16 of the Rio declaration states that: “the national authorities should endeavour 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 regard to the public interest and without distorting international trade and investment.” It not only get the compensation for restoring the environmental degradation from the polluter who pollutes the environment it also gives compensation to the victims. It is irrelevant whether the wrong was involved in the development process or not once he is proved guilty he is liable to pay the compensation.

The polluter pays principle regulates the compensation to be paid by the guilty who compromised the environmental protection. It acted as a deterrent for the wrong doer and protection to the environment. The compensation is paid to the affected party where an irreversible loss has been created. The principle ensured that the guilty is not doing any development activity which does not compromise future generation needs with the current generation needs in meeting their own needs.

In *Research foundation for Science, Technology and Natural Resources Policy v. Union of India and Another*<sup>12</sup>, the Supreme Court explained that the “Polluter Pays Principle” that the maker of goods or

other items must be held accountable for the cost of averting or dealing with any pollution that the process causes. It included the direct cost to the people or property for any loss along with the cost incurred in preventing pollution and not just cost related to redemify any damage. It also include the environment cost and not only those which are tangible in nature. But it does not allow the polluter to pollute and pay for it as it acts as deterrent for any act causing loss to the environment. The principle will differ from case to case and the nature and extent of cost will depend upon the case and the circumstances involved.

### ROLE OF INDIAN JUDICIARY

The role of the judiciary in environment protection and sustainable development cannot be ignored and has the greatest importance. At a national level the judiciary is explicating the law relating to sustainable development and environment protection case by case. With time there is an increase in environmental jurisprudence which is assisting judiciary in taking decisions related to environment protection. The role of judiciary is increased in deciding the cases relating to environment protection and is further guided by the exchange of judicial decisions, information and experience between jurisdictions. The right to wholesome environment has been included into the right to life and personal liberty by Supreme Court in its interpretation of various cases. The right to pollution-free atmosphere, clean environment and drinking water is included in sustainable development as interpreted by the Supreme Court in its various decisions. The writ jurisdiction as given under Supreme Court under Article 32 and High Courts under Article 226 of the Constitution is one of the most innovative parts of the Constitution which enforce the fundamental rights by moving to Supreme Court and High Courts. Under the writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, whichever is appropriate High Court or Supreme Court can issue orders for protection of environment and to prevent any damage to the environment. By taking suo-motto of the case the Supreme Court and High Court can issue such decree or make such judgements as are necessary for doing absolute justice in any cause or pending case before it. Such decree or order is binding on all courts within the territory of India. In there innumerable measures in

a series of their landmark judgements the courts have paid special attention to the environment protection by invoking its powers under the Article 32 and by giving effective guidelines to all the individuals involved with the matter<sup>13</sup>.

In *Calcutta Youth Forum v. State of West Bengal*<sup>14</sup>, the court stressed that the crisis of environmental dilapidation is a social setback and under the constitution of India, the state is indebted to take this problem with grave concern. Article 48-A as part of Directive Principles of State policy and Article 51-A (g) as fundamental duties made obligatory for the state and public to protect environment from degradation. Thus both state and citizen are to protect and improve the environment under Article 48-A and Article 51-A (g). Now the protection of the forests and wildlife of the country is mandatory under the constitution of India.<sup>15</sup>

### CONCLUSION

Environmental Sustainability cannot be exclusively attained by strategies, programs, plans, long-term goals etc. The law has to opt more efficient ways in order to certify that the conducts are actually implemented in actuality. The path to a sustainable economy will be a difficult one. It requires universal efforts of the whole humanity. We are living in the era where this path has the beginning but there is some temptation to decelerate or even turn back. It would be to the disadvantageous for future generations if it is revised back. Environmental sustainability must be ensured in decision making process and be enforced in the court at the policy making level with less environmental degradation. The environmental sustainability should be the integral part of human survival incorporating international agreements for sustainable development across the countries. It should

be incorporated as human right by all the nations under the legislation, as it makes judiciary to punish the wrong doer for any activity interfering with or inconsistent with the notion of environmental sustainability.

### Note

1. Article 2 of Declaration on the Right to Development, 1986, "The human being is the central subject of development and should be the active participant and beneficiary of the right to development. (UN General Assembly A/RES/41/128, 4 December, 1986, 97th Plenary meeting).
2. 'Our Common Future', United Nations General Assembly, 1987
3. *Indian Council for Enviro Legal Action v. Union of India*, (1996) 5 S.C.C. 281
4. No person shall be deprived of his life or personal liberty except according to the procedure established by law.
5. S.2(a) of The Environment (Protection) Act, 1986
6. (1996) 5 S.C.C. 647
7. *Kinkri Devi v. State*, A.I.R. 1988 H.P. 4
8. A.I.R. 1996 S.C. 149
9. Principle 8 of Rio declaration
10. A.I.R. 2002 Mad.298
11. Dr. Aparanjith S. Jaswal, Dr.Nishtha Jaswal, Vibhuti Jaswal, *Environmental Law*, Allahabad Law Agency, 4th Edn., 2015, P.139
12. (2005) 13 S.C.C. 156
13. Dr. P.J. Sudhakar, *Protection of Environment For Sustainable Development*, PIB, Bhopal, *Conservation of Biodiversity*
14. 1986 (2) C.L.J. 26
15. Article 48-A