

LAW AND SUSTAINABILITY

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This article examines the role of law in the field of environment protection and the need of sustainability which would help in present and future development of the country without prejudicing the capacity of the environment. For years and years the Indian Law had been negligent towards making law relating to environment but has now caught up with it but the pace remains slow. The progression was there with the inclusion of new article to the constitution i.e. Article 48A which explains the State as referred in article 12 of the Constitution shall endeavor to protect and improve the environment also the interpretation done by the Supreme Court of the article 21 where the right to life would include clean environment. But sustainable development still remains only a part of policy making and has not yet manifested to a proper law and the need of enforcement of detective principle of state policy. India has carefully crafted an extensive body of environmental jurisprudence. But this is not enough the development is to done on the ground level this can be done only with the help of the population. The need of the population is quite a lot the environment is not accustomed to cater the need thus there is a retaliation that is present in the environment.

INTRODUCTION

People all across the world are working to find the progressive ways of life by which the nature could provide adequately for the present population, without having any restraining it's capacity to provide with abundance for the future generations and at the same time to counter formidable environmental problems, these problems which has crept up through industrialisation and urbanization on the one hand and population explosion and poverty on the other. There is an urgent need for reforms which reduce the pollution which is eating away all of the natural resources of the Mother Nature, thus came the idea of sustainable development. Sustainable development is most commonly defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs[1]. Thus it can be said that it is a development that is sustainable. The development which should be done with the purpose of brings sustainability in the resources of nature which are important for the country, rather, the world this principle is recognized by almost all of the countries around the world.

Development here can also be defined as a collective process of change toward improvements in quality of life for human beings and their communities, and sustainability can be seen to refer to the need for development to be integrated, socially, economically and environmentally sound, oriented to the long-term, and hence, able to last. It is strategy that caters to the needs of the present without depriving the future generations of their right to available natural resources. The main aim of the principle is to seek harmony between development which may be industrial, economic or social, and right to healthy environment. For the CISDL, the concept of sustainable development, in international law, requires accommodation, reconciliation and integration between economic growth, social justice (including human rights) and environmental protection objectives, towards participatory improvement in collective quality of life for the benefit of both present and future generations.[2] To resurrect environment many commitment are being made at the national level and international scale at the same time a number of legislations and policies have been adopted. The measures are taken by the creation various authorities for the effective implementation of the policies which were created as the resultant.

THE CONCEPT:

The concept of sustainable development has gained the recognition just in the resent two decades is, was first illustrated in the Brundtland report. The report described sustainable development as the "development which aimed at meeting the needs of the present without compromising the ability a future generations to meet their own needs. Former President of the World Bank James D. Yolkenson has also made a comment on the matter of sustainable development stating that "it is for us to think as to what kind of world we want. Do we want to bequeath a world for our future generation a poorest world wherein innumerable people die of hunger, climate uncertainty, biodiversity at its lowest ebb and social conditions most unstable?" The description that is put forward by the President has the crux of the matter.

Sustainable development gained international recognition as a result of Brundtland Commission Report (1987) was and there after got an overwhelmingly support by all the nations. The principles of sustainable development were spelled out in the Rio Declaration, 1992 and Agenda 21. Similarly Kofi-Annan (former U.N. General-Secretary) had pointed various areas where the principles of sustainable development can be applied such as non renewable resources water, health, power and energy, Agriculture and Bio-diversity.

In Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment (2002) of the Northeast Pacific provides a

definition for 'sustainable development' in the article 3(1) (a) that says

“Sustainable development means the process of progressive change in the quality of life of human beings, which places them as the centre and primary subjects of development, by means of economic growth with social equity and transformation of production methods and consumption patterns, sustained by the ecological balance and life support systems of the region. This process implies respect for regional, national and local ethnic and cultural diversity, and full public participation, peaceful coexistence in harmony with nature, without prejudice to and ensuring the quality of life of future generations.”[3]

There are certain general principles which are enumerated in different international treaties and conventions that form the base for understanding the sustainable development these are:

1. to maintain production of goods and services for development and efficiency;
2. conservation and management of natural resources including preservation of bio-diversity and maintenance of biological integrity;
3. maintenance and enhancement of the quality of life adopting the principle of equitable distribution of wealth and material resources

The principles thus enumerated give a general idea on the matter and provide only the understanding on the superficial level. But there are more specific principles regarding sustainable development which has received international recognition as a result of Brundtland Commission Report (1987) and has gained overwhelmingly support by all the nations. Some of the salient principles which underlie the concept of sustainable development were spelled out in the Rio Declaration, 1992 and Agenda 21. Therefore, these principles have got to be necessarily followed in order to achieve the objective of sustainable development. These principles are as follows:

1. Inter-generational equity;
2. Use and conservation of natural resources;
3. Environmental protection;
4. The precautionary principle;
5. The 'Polluter Pays' principle;
6. Principle of liability to help and co-operate;
7. Poverty eradication; and
8. Principle of 'public trust'.

These principles not only provide preventive actions but also measures bestow for liability. Indian has also adopted these features through the legislations and

amendment to the constitution and the by landmark judgments of Supreme Court of India, these principle help in the Government in shaping the environmental policies. Recently the odd and even scheme was introduced in the Capital which dealt with the problem of environmental pollution, though the scheme did not have quantifiable results but it did address the elephant in the room. There is an urgent need for these kinds of programs with this trial and error we might just stumble to the solution to the problem.

INTERNATIONAL PERSPECTIVE:

It can be considered an interstitial norm, which serves to reconcile other conflicting norms related to the environment, the economy and social development (including human rights),⁶ and also simply the object and purpose of many international treaties and legal instruments. Sustainable development has been recognized by any international treaties being the part of object or the purpose of many of the United Nations conventions:

- Convention on Biological Diversity (1992) and its Cartagena Protocol (2000),
- Convention on Climate Change (1992) and its Kyoto Protocol(1997)
- Convention to Combat Desertification and Drought (1994)
- Convention on the Law of the Sea,
- Cotonou Partnership Agreement (2000) which was between the European Union and the African Caribbean and Pacific countries
- International Treaty on Plant Genetic Resources for Food and Agriculture (2001)

The World Trade Organisation as established in 1994 by Marrakesh Agreement also recognises sustainable development has been a specific objective among many of its objectives. The Preamble establishes that:

“Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development...”

This was later confirmed in the 2001 Doha Declaration which stringently declares that all the members of the WTO: "We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement." [4]

The International courts and tribunals had also given sustainable development legitimacy by facilitating the reconciliation and integration of other norms concerning socio-economic development and protection of the environment. The International Court of Justice in *Gabcikovo-Nagymaros Case* has held that: "Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development." [5]

Similarly the Permanent Court of Arbitration also reaffirmed this reasoning that balanced environmental protection against socioeconomic development in its *Arbitral Award the Iron Rhine ("Ijzeren Rijn") Railway (Belgium v. Netherlands)* (May 24, 2005) referring to the sustainable development stated that: "environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment, there is a duty to prevent, or at least mitigate such harm. ... This duty, in the opinion of the Tribunal, has now become a principle of general international law. This principle applies not only in autonomous activities but also in activities undertaken in implementation of specific treaties between the Parties." [6]

INDIAN PERSPECTIVE

Indian perspective towards the environment and sustainable development can be categorized in to three time periods where the importance given to the concept has been on a rollercoaster from the ancient time where it was of prime importance to the time where foreign peoples made sustenance and environment a secondary problem and finally after the time after independence where the significance has been given to the matter but the needs prevail it.

History of Environmental Importance in Ancient times:

The association environment and Indian culture go way back to the ancient scriptures where in the 'Slokas' of Atharva Veda it is shown that the mother earth is the source of sustenance and prosperity for mankind and all the creatures because it is full of natural resource and it is further also stated that we should restrict ourselves to our own share which is given to us by the environment and leave the rest of the resources for the use of the others. Thus it can be said that the Indians were introduced to the subject of environment very early. At that time the natural resources were in abundance and yet the concept of sustainability was predominant. Thereafter with the population explosion and progression towards industrialisation changed the whole scenario and has caused substantial amount of damage to the environment. The impact of all these years of exploitation has cumulatively caused scarcity of resources for the population. It has been rightly said by Mahatma Gandhi that 'the Earth can only satisfy the needs of the people but not the greed of anyone'. This approach has been part of the Indian culture for a very long time.

Pre Constitution Era:

During the reign of different invaders the resources were used till the curb of exhaustion. The whole idea of British invasion was to gain excess to the vast variety of natural resources which were present in India. The spices and textile crops which were produced in profusion were used to the extent that they were not available for the general population who was the one who was producing them for years. After certain period of time India started to import these products at higher costs instead of making the same products in abundance which still continues. *Laissez faire* to a certain extent made development plans but did not affect or bring about any valuable change. With the advent of the 19th Century new legislations were enacted such as Easement Act, 1882, The Indian Forest Act, 1927, and World Birds and Animal Protection Act, 1912, Factories Act, 1948 the aim of the acts was the protection of environment at the same time the protection of the owner of the land as well as the safety of the population. The common law principles were also applied in the cases where *maxim 'ubi jus ibi remedium'* was given importance.

Post Constitutional development:

Former Prime Minister of India Smt. Indira Gandhi had categorically stated in her address at the Stockholm Conference, 1972 that water, air, land, soil, plants, trees and living organisms must be preserved because they are

valuable natural resources for the benefit of the future generations.

There are many efforts made by the Indian government and the Parliament after the independence to recover from the very loss that was caused by the foreign invasions this loss is left to be repaired we still are recovering but at a very slow pace the concepts which were introduced to the Indian culture are now intervened to the roots of it. The term of is introduced to us as an alien phenomenon instead. The thing which was once the part of the daily affairs is now part of a global incentive. Thereafter the independence plenty of legislations are passed with the view to curb the problem in the most efficient way as possible. But before going to them first the perspective has also been touched in the Indian Constitution through Directive principles and Fundamental Rights and their interpretations done by the Honorable Supreme Court.

Directive principles of the State Policy

The DPSP are the guidelines with which the State must endeavor to make legislations. The 42nd amendment to the Constitution was brought about in the year 1974 makes it the responsibility of the State Government to protect and improve the environment and to safeguard the forests and wildlife of the country. The certain articles of the constitution deal with the environmental protection are as follows:

1. **Article 47** provides The State's responsibility with regard to raising the level of nutrition and the standard of living and to improve public health which can be done with the improvement of the environment
2. **Article 48-A** "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country" which provides the State's responsibility with regard to environmental protection has been laid down under of our Constitution.

At the same time the it shall be the fundamental duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures under Article 51-A(g) of Indian Constitution.

Fundamental Right:

Article 21 of the Constitution is a fundamental right which reads as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." The Indian Higher judiciary has interpreted the exiting constitutional provisions to

address the evil of environmental pollutions in the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh [7]* where Supreme Court held that the right of the people to live in a healthy environment with minimal disturbance to ecological balance shall be safeguarded. Then there is Article 32 which provides the Supreme Court the power to issue writs for the infringement of the right to have clean environment.

Schedule 7

The Schedule 7 of the Constitution provides exclusive power and domain to the Union as well on the State to make laws the subjects relating to environment and natural resources and to regulate the environmental pollution.

Union List deals with matter relating to:

Industries Regulation and development of oil fields and mineral oil resources, Regulation of mines and mineral development, Regulation and development of inter-State rivers and river valleys, Fishing and fisheries beyond territorial waters which are the part of the natural resources

State List deals with matters such as Public health and sanitation, agriculture, protection against pest and prevention of plant diseases, land, colonisation, fisheries, regulation of mines and mineral development.

At the same time the constitution has given the contemporaneous power to the Union and the state through Concurrent List such as matters relating to: Forests, protection of wild animals and birds, economic and social planning, population control and family planning. Article 246 provides that Union enjoys a primacy over States in that it's legislation in the Union and the Concurrent List and also provides that the Parliament will have the residual powers in the matter which are ancillary there to. The Constitution has quite significantly managed the matter. There are certain other acts enacted to tackle the associated problems and bring a holistic legal framework for the protection and improvement to the environment. Some of the legislations are:

- The Electricity Act, 2003
- The Forest (Conservation) Act, 1980
- Environmental (Protection) Act, 1986
- Air (Prevention And Control Of Pollution) Act 1981
- Water (Prevention & Control) Act 1974
- Wildlife Protection Act, 1972
- The Biological Diversity Act, 2002

- Hazardous Wastes (Management And Handling) Amendment Rules, 2003
- Ozone Depleting Substances (Regulation And Control) Rules, 2000
- Indian Easements Act, 1882
- The Indian Fisheries Act, 1897
- The Indian Forest Act, 1927
- The Factories Act, 1948

Some of these acts are date before Indian independence and are still working effectively for the conservation of the environment.

Judicial Approach

This isn't to say that the Indian Judiciary has been silent on the matter, not only has it been verbal on the matter but also applied the principles as stated in the Rio Declaration, 1992 and Agenda 21 into various cases *K. M. Chinnappa v. Union of India*[8] the Supreme Court has said that "It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as necessity to maintain the environment. Where the commercial venture or enterprise would bring in results, which are far more useful for the people, difficulty of a small number of people has to be by-passed. The balance has to be struck between the two interests." The movement is not at all against development but the balance must be found but what cost are we willing to pay of the accomplishing it.

Similarly in the case of *M.C. Metha v. Kamal Nath and Others*[9] the Supreme Court applied the 'polluter pays' and held that pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology in addition also addressed the Public Trust Doctrine.

Supreme Court explicitly recognised the precautionary principle Justice Kuldeep Singh in *Vellore Citizens case* laid down the following rules with regard to precautionary principle :-

1. The State Governments and local authorities are supposed to anticipate and then prevent the cause of environmental degradation. They are supposed to check the activity which is damaging for environment;
2. Merely because there is a lack of scientific knowledge as to whether a particular activity is causing degradation, it should not stand in the way of the Government;

3. The onus of proof is on the actor (i.e. person who does the activity) or the developer/industrialist to show that the action was environmentally friendly.

And lastly the Court of in the case of *M.C Mehta v. Union of India*[10] also devised the doctrine of "Absolute liability" which provides liability on the part of the person whether he has been negligent or not the liability without any fault.

CONCLUSION:

Environment, the place we live in, the place which has brought us to existence which is in jeopardy due to our deeds. There is an urgent call for action mere legislation could not do the job. Severe compliance is what is needed to be done. Constitution of India in its directives imposes duty to the state and citizens to make measure on conservation of resources towards environmental sustainability but the problem comes as the DPSP are not enforceable on the citizens. Now it is high time for the bring obedience to all the policies made by the government the mandate should not only be followed by the authorities but the general public as well. This can be done through educating and making them familiar with the problems which are lurking around and are undermined. India has already given environment top priority in the policy making. In 1988, the Ministry of Environment and Forests (MoEF) had constituted an expert committee for recommending a plan of action for the conservation of resources. There after many policies are made through the recommendations made by the committee.

In 2006 National Environmental Policy was made with a view to organize the approach towards the environmental pollution and following are certain specific actions would be taken as described[11]:

1. Institutionalise a holistic and integrated approach to the management of environment and natural resources;
2. Identify emerging areas for new legislation, due to better scientific understanding economic and social development, and development of multilateral environmental regimes, in line with the National Environmental Policy;
3. Review the body of existing legislation in order to develop synergies among relevant statues and regulations, eliminate obsolescence, and amalgamate provisions with similar objectives, in line with the National Environmental Policy;
4. Encourage and facilitate review of legislation at the level of State and Local Governments with a

view to ensuring their consistency with this policy;

5. Take steps to adopt and institutionalise techniques for environmental assessment of sector policies and programmes to address any potential adverse impacts, and enhance potential favourable impacts; and
6. Ensure accountability of the concerned levels of Government in undertaking the necessary legislative changes in a defined time-frame, with due regard to the objectives and principles of National Environmental Policy, in particular, ensuring improved access to the necessary environmental resources.

In 2016 the Ministry of Environment and Forests (MoEF) has draft National Forest Policy, to replace the one crafted in 1988 which includes consequences of climate change, plantations, growing trees outside forest lands, wood industry the national goal of a minimum of one-third of the geographical area under forest or tree cover. But the problem remains pertinent the rural areas is not adequately well development to even deal with the matter where the basic needs are not fulfilled the concept remains alien. The judiciary and legislature has to some extent done the jobs now the torch is in the hands of the people and the executive to ignite the idea to eradicate the menace (Ravana).

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http://www.cep.unep.org/services/nepregseas/Convention_English_NEP.doc

[4] See Ministerial Declaration, Ministerial Conference - Fourth Session, Doha, Qatar (14 November 2001), WTO Doc. WT/MIN(01)/DEC/W/1, at para. 6. In the Dworkinian sense, such an 'objective' can also be called a 'policy'. R. Dworkin, Taking Rights Seriously (London: Duckworth, 1977) at 22, where he argues that a policy is "that kind of standard that sets out a goal to be reached, generally an improvement in some economic, political or social feature of the community (though some goals are negative, in that they stipulate that some present feature is to be protected from adverse change)."

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[7] AIR 1985 SC 652

[8] AIR 2002 SC 724

[9] (2006) 6 SCC 213

[10] AIR 1987 SC 1086

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