

SUSTAINABLE DEVELOPMENT AND LEGAL PROVISIONS : A CRITICAL STUDY

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Abstract: *Healthy environment, such as clean air and water are considered as public goods. Sustainable development aims economic progress and protection of the long-term value of the environment through integrating environmental policies and development strategies. This paper is an attempt to analyze the constitutional and legislative standards to conserve resources in achieving environmental sustainability and assess how far the existing system satisfies its objective and to suggest remedies in this regard.*

Key Words: *Development, Environment, Legislation.*

1. INTRODUCTION:

“All in this manifested world, consisting of moving and non-moving, are covered by the Lord. Use its resources with restraint; do not grab the property of others, distant and yet to come.”¹ Normally, development is often understood as a synonym for economic development or economic growth forgetting the above quoted principle. It was sustainable development that modified the international approach to development. But still the various reports highlight the inadequacy in handling development and environmental issues. This paper is an attempt to analyze the constitutional and legislative standards to conserve resources in achieving environmental sustainability and assess how far the existing system satisfies its objective and to suggest remedies in this regard.

Sustainable development- why and what?

Healthy environment, such as clean air and water are considered as public goods. It is up to the public sector to maintain the environment and nations have moved recently even towards the implementation of the market based mechanisms to internalize the complete costs of pollution and ensure long-term stability of the environment. This we can say in other words is to ensure sustainable development. It was in 1987 that the Brundtland Commission defined sustainable development as the “ability to make development sustainable—to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs” through its report, *Our Common Future*. It was an effort to link the issues of economic development and environmental stability.² Sustainable development aims to maintain economic progress while protecting the long-term value of the environment through the framework for the integration of environment policies and development strategies. Although many definitions are there, the most often used definition of sustainable development is that proposed by the Brundtland Commission.³ The idea of conserving resources for future generations is one of the major features that distinguish sustainable development policy from traditional environmental policy. The concept of Sustainable Development helps to maintain equilibrium between economic development and conservation of resources⁴. It is a response to the deeply held view that environmental degradation is the small price we pay to achieve progress; the price is not small, however, and environmental degradation prevents or threatens social and economic progress⁵. The key principle of sustainable development is the integration of environmental, social, and economic concerns into all aspects of decision making⁶. The objective of sustainable development is the long-term stability of the economy and environment. Many factors like economic, environmental, and social concerns may influence it. In order to maintain their commitments in this area, Governments are taking serious

¹ JOSEPH H. HULSE, *SUSTAINABLE DEVELOPMENT AT RISK: IGNORING THE PAST*, xv (Foundation Books 2007).

² United Nations General Assembly, Report of the world commission on environment and development: *Our common future*. Oslo, Norway: United Nations General Assembly, Development and International Co-operation: Environment, 43(1987).

³ P. Cerin, *Bringing economic opportunity into line with environmental influence: A Discussion on the Coase theorem and the Porter and van der Linde hypothesis*. *Ecological Economics*, 209-225 (2006).

⁴ V. G. Hegde, *Indian Courts and International Law*, 23 *Leiden Journal of International Law* 68, 53-77 (2010); Moumita Das and Padmini Singh, *Sustainable Development and Environmental Law: India-Australia Experience*, 45 *IJIL*, 243-256 (2005).

⁵ John C. Dernbach, *Sustainable Development as a Framework for National Governance*, 49 *Cas. W. Res. L. Rev.* 1, 3, 1-103 (1998). Available at: <http://scholarlycommons.law.case.edu/caselrev/vol49/iss1/3> accessed on 28 10 16.

⁶ Rachel Emas, *The Concept of Sustainable Development: Definition and Defining Principles*, Florida International University(2015). https://sustainabledevelopment.un.org/content/documents/5839_GSDR%202015_SD_concept_definiton_rev.pdf accessed on 26 10 16.

steps today like imposing cost of pollution upon those who are responsible for it. As per the polluter pays principle 'governments should require polluting entities to bear the costs of their pollution rather than impose those costs on others or on the environment'⁷. The Governments are guided by precautionary principles also in this regard. The precautionary principle directs that '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 measure to prevent environmental degradation'.⁸ So the burden of proving that this action will not cause significant harm lies upon the proponent of that activity. The responsibility of each nation to play their part on the issue of sustainable development was an explicit statement in the Rio Declaration. But urbanization as well as industrialization has led to enormous scale of the environmental problems and tackling these problems being an international commitment, a number of legislative and policy measures were adopted at all levels.

2. ENVIRONMENTAL LEGISLATIONS IN INDIA - A HISTORY:

It was in the second half of the 19th century that marked the beginning of an organized forest management in India with some steps taken to conserve forest and Birds⁹. To respond to the industrial revolution and to regulate the industrial activities the Factories Act was enacted as a part of occupational safety¹⁰. Most of these at the stage of their infancy did not make it mandatory to conduct environmental impact study before setting up of an industrial establishment. It was the common law principle in tort helped the people to initiate civil proceedings for want of damages under the basis of *ubi jus ibi remedium* and thereafter this remedy is considered as a part of environmental jurisprudence in India.¹¹ Initially, the Constitution of India did not contain a specific provision for the protection and preservation of the environment. India was an active participant in the Stockholm Declaration (UNCHE) and signatory to almost all MEAs, which are soft law in nature that envisioned a broad legislative and institutional framework for the protection of the environment. Mrs. Indira Gandhi, the Prime Minister of India that time had actively participated and stressed the importance and need for environmental protection.¹²

Prior to 42nd amendment there were no specific laws for environmental protection, management and conservation. However, realizing the significance and commitment of the UNCHE, in 1976, the 42nd Amendment to the Constitution introduced new Article 48- A to the Constitution. Article 48 - A declares the duty of the state to protect and improve the environment. Similarly, Article 51(A) (g) also prescribes similar duty of every citizen to protect and improve the natural environment. Thereafter in late 1980s, to make a collective and coordinated approach the Parliament enacted environmental Protection Act¹³. Insertion of Article 48-A and 51A (g) does not confer upon citizen a right to clean environment¹⁴. The environmental statutes are regarded as beneficial legislation and the courts have to adopt interpretation favoring ecological preservation¹⁵.

3. THE PRESENT LEGAL STRUCTURE IN INDIA:

The present legal structure in India includes a number of important legislations dealing with environmental protection as follows. The Environment (Protection) Act 1986 authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds. The objective of Hazardous Waste (Management and Handling) Rules passed in the year 1989 is also to control the generation, collection, treatment, import, storage, and handling of hazardous waste. The Public Liability Insurance Act and Rules and amendment, 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance. The Municipal Solid Wastes (Management and Handling) Rules, 2000 apply to every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes. The Noise Pollution (Regulation and Control) (Amendment) Rules, 2002 lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion. The Indian Forest Act 1927 (and amendment in 1984) which is one of the many surviving colonial statutes was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest

⁷ John C. Dernbach, *Supra* n.5 at 58.

⁸ United Nations Conference on the Human Environment, Rio Declaration on Environment and Development. Rio de Janeiro, Brazil: United Nations (1992).

⁹ The Indian Forest Act, 1927, Act No. 16 of 1927 and World Birds and Animal Protection Act, 1912, Act No. IV of 1912.

¹⁰ Factories Act, 1948, Act No. 63 of 1948

¹¹ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf on 26 10 16.

¹² Prime Minister's Address to Legislators, 'Protect Environment to Secure Future', Times of India, 1 May, 1982

¹³ Act No. 29 of 1986.

¹⁴ V. S. Mani, *Environmental Law in South Asia- An Overview* 30 BAN. L. J. 25, 15-38 (2001)
Ashok A. Desai, *Constitutional Accountability towards Environment*, 42 JILI. 167, 160-170 (2000).

¹⁵ SHYAM DIVAN AND ARMIN ROSENCRAZ, ENVIRONMENTAL LAW AND POLICY IN INDIA 59 (2nd ed. 2008).

produce. The Factories Act of 1948 and amendment in 1987 also express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes.

Art. 32 and 226 also provide appropriate remedy for environmental related matters. Apart from the laws mentioned above, writ petitions can be filed to the Supreme Court under Art.32 and the High Court under Art.226 in the case of a violation of a fundamental right and the right to a wholesome environment has been recognized as an implied fundamental rights. The writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus is issued to command action by a public authority when an authority is vested with power and wrongfully refuses to exercise it. The writs of certiorari and prohibition are issued when an authority acts in excess of jurisdiction, acts in violation of the rules of natural justice, acts under a law which is unconstitutional, commits an error apparent on the face of the record, etc. In *Rampal v State of Rajasthan*, mandamus was issued against a municipality that fails to construct sewers and drains, clean street and clear garbage. A writ of certiorari will lie against a municipal authority that permits construction contrary to development rules or acts in excess of jurisdiction or in violation of rules of natural justice. The integration of the international principles of environmental law into the Indian legal framework is an important consequence of the emergence of Public Interest Litigation in the realm of environmental law. The application and re-interpretation of international legal principles in the Indian context resulted making hazardous industrial enterprises responsible towards environmental concerns.

4. INTERNATIONAL LEGAL STRUCTURE:

The first major global conference on the environment is the Stockholm conference 1972 and produced a worldwide rising of consciousness about the environment and reinforced national responsibility for environmental protection and led to the adoption and implementation of environmental laws in many countries. It is generally regarded as the foundation of modern international environmental law. During the 1980s, it became more evident that development was imposing massive economic, human and environmental costs.¹⁶ The United Nations General Assembly formed the World Commission on Environment and Development to examine the relationship between development and the environment. The Commission, which was headed by Norwegian Prime Minister. Gro Harlem Brundtland issued its report, 'Our Common Future' in 1987 and the Commission concluded that developmental inequity and environmental degradation are inexorably linked¹⁷.

The 1992 United Nations Conference on Environment and Development, commonly referred to as the Rio Conference or Earth Summit, succeeded in raising public awareness of the need to integrate environment and development and it was a response to 'Our Common Future' and an effort to synthesize and integrate environment and development issues. Through this for the first time, the international community endorsed sustainable development which changed the prior approach to development calling for peace and security, economic development, human rights and supportive national governance, by adding a fifth element, protection of the environment. The Earth Summit influenced subsequent UN conferences, including Rio+20 and set the global green agenda. Even the World Conference on Human Rights focused on the right of people to a healthy environment and the right to development. It led into Agenda 21, a comprehensive international 'plan of action' or blueprint for sustainable development which is a broad and detailed commitment by nations around the world to take actions to further sustainable development. It is divided into four sections and a total of forty chapters. The sections concern social and economic issues, conservation and management of natural resources, the role of major groups, the means of implementation etc. Though the Agenda 21 commitment is not binding in international law, it does represent a political commitment. The basic point is that governments have a responsibility to ensure certain minimum conditions for the well-being of their citizens. The market by itself cannot fulfill that role, nor can any other institution¹⁸. Major outcomes of the conference include the United Nations Framework Convention on Climate Change (UNFCCC) —a climate-change agreement that led to the Kyoto Protocol, Agenda 21, the United Nations Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD). It also created new international institutions, among them the Commission on Sustainable Development, tasked with the follow-up to the Rio Conference and led to the reform of the Global Environment Facility

Ten years later, Earth Summit 2002 informally nicknamed Rio+10 was held in Johannesburg, South Africa with the goal of again bringing together leaders from government, business and NGOs to agree on a range of measures toward similar goals. At Rio+10, sustainable development was recognized as an overarching goal for institutions at all levels. The need to enhance the integration of sustainable development in the activities of all relevant UN agencies, programs

¹⁶ JESSICA TUCHMAN MATHEWS, *Introduction and overview, in preserving the global environment: the challenge of shared leadership* 24 (Jessica Tuchman Mathews ed., 1991).

¹⁷ World commission on environment and development, *Our common future* 37 (1987).

¹⁸ John C. Dernbach, *Supra* n.5 at 102.

and funds was highlighted. Major outcomes of that conference include the Johannesburg Declaration and almost 300 international partnership initiatives meant to achieve the Millennium Development Goals.

Next step was the (Rio+20), United Nations Conference on Sustainable Development held in Rio de Janeiro in June 2012 and it's the main outcomes was the agreement by Member States to launch a process to develop a set of sustainable development goals (SDGs). It was the third international conference on this aiming at reconciling the economic and environmental goals of the global community. Organized by the United Nations Department of Economic and Social Affairs it resulted in a focused political document designed to shape global environmental policy. The Rio+20 outcome document, *The future we want*, inter alia, set out a mandate to establish an Open Working Group to develop a set of sustainable development goals for consideration and appropriate action by the General Assembly at its 68th session. It also provided the basis for their conceptualization. The Rio outcome gave the mandate that the SDGs should be coherent with and integrated into the UN development agenda beyond 2015. Rio+20 did not elaborate specific goals but stated that the SDGs should be limited in number, aspirational and easy to communicate. The goals should address in a balanced way all three dimensions of sustainable development. A 30-member Open Working Group (OWG) of the General Assembly is tasked for that. It was stipulated that the OWG will decide on its methods of work, including developing modalities to ensure the full involvement of relevant stakeholders and expertise from civil society, the scientific community and the United Nations system in its work and final report was completed in July 2014.

5. CONCLUSION:

The basic point of Agenda 21 was for a better environment and action at the national level. Starting from it we have now 17 Sustainable Development Goals (SDGs) or Global Goals, which are universal call to action to end poverty, protect the planet and enable all people to enjoy peace which necessitates national level participation¹⁹. It is true that domestic implementation of international norms is better achieved through voluntary means than through coercion. Voluntary compliance occurs when states have internalized the norms on which the international rules are based.²⁰ If they are simply imposed from outside, it cannot be internalized and understood²¹ and so sincere steps must be taken in this regard. Sustainable development is intended to provide a third choice for both developed and developing countries that blends environmental protection and equity.²² So it demands the full cooperation of countries and participation of people wholeheartedly. This further follows that the national legislations should be changed in tune with international norms. With regards to India, for example, the Pollution Control Boards need to be more powerful to prevent pollution. Now the Boards do not have power to punish the violators but can launch prosecution against them in the Courts which ultimately defeat the purpose and object of the Environmental Laws due to long delays in deciding the cases. Similarly social awareness is to be created from below, not laws from the above. Law will not work smoothly unless the interaction is voluntary. Educating people about the environmental issues through various people-oriented programs will be good. The influence of international environmental law is growing and there has been a close interaction between international environmental law and municipal law in India. It appears that growth of Indian environmental law has often been co-extensive to the growth of the environmental law under international law²³. The judicial activism also has led to incorporation of certain international environmental principles under domestic law whose legal status is still open to question under international law. It affirmed the principle of sustainable development, precautionary principle and polluter pays principle as 'customary international law' and made them as part of the Indian domestic law²⁴. This process is still going on resulting in the progressive integration of the Indian environmental law with the international environmental law²⁵.

¹⁹ <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html> on 2 10 16.

²⁰ Harold Hongju Koh, *Why Do Nations Obey International Law?* 106 YALE LJ. 2599, 2645 (1997).

²¹ John C. Dernbach, *Supra* n.5 at 6 .

²² John C. Dernbach, *Supra* n.5 at 20.

²³ Shailendra Kumar Gupta, *Principles of International Environmental Law and Judicial Response in India*, 19 [www.bhu.ac.in/lawfaculty/.../11_Dr.%20S.K.%20Gupta%20-Artical%20on%20Int'l%](http://www.bhu.ac.in/lawfaculty/.../11_Dr.%20S.K.%20Gupta%20-Artical%20on%20Int'l%20) on 4 11 16.

²⁴ *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647.

²⁵ Shailendra Kumar Gupta, *Supra* n.23 at 20.