

# Implication and Implementation of Sustainable Development for Protection of Environment in India

Dr. Anil Kumar Thakur\*

Assistant Professor, Department of Laws Panjab University, Chandigarh

**Abstract – India is one of the fastest developing countries in the world. In last few decades it has gone through various processes of urbanization and industrializations which is the need of the hour. However, in this process of development the Indian society has by and large ignored the cause of environmental protection. Being a developing country it has its own kinds of need and problems. Sometimes it is said that the problem of environmental degradation in India is not due to development but it's under development. However, fact remains which India and Indians cannot deny by thousands of fictions, that it is a question of development versus environment for which Indian society has to find answers. Both the issues are crucial neither the environment can be ignored nor the development. Development is needed for social and economic progress of the country while ecology is equally crucial for providing clean and healthy environment for the citizens. This has lead to peculiar and paradoxical situation in India, while India has been identified as having the mega biodiversity geographical area but at the same time due to growing economy, environmental condition is degrading at a faster pace. Economy is growing yet a large part of the population of this country is suffering from poverty at the same time. To maintain a balance between development and environment India has also adopted the principle of sustainable development. In this paper the researcher intends to examine the how the principle of sustainable development which emerged from the international law has been adopted in India.**

**Key Words: Sustainable Development, Environment Protection, Development and Environment**

-----X-----

Being a responsible member of the international community, India cannot remain aloof from the development which is taking place at the global level. Development regarding the international environmental law has not been an exception to this factor. Rather India has been an active participants at all the forums and has contributed to the development and shaping the international environmental laws. From Stockholm (1972) to Geneva (2009) in all the major international events regarding environment it has played an important role. This reflects the attitude of the Indian leaders regarding the environment at international forums which is worth appreciating.

However, if one wants to assess the issue of concern for environment protection in India one would come across a mixed kind of experience. Despite the fact the one can find the references.

Of significance of environment explained in various religious texts where it has been clearly explained that the human body is made of five elements of this very environment. Indian mythology is full of examples where various animal and plants have been associated with different Gods and

Goddesses.<sup>5</sup> The religious scripture of various religions explains the importance of various objects in the atmosphere for the existence of human being.<sup>6</sup> But with the passage of time probably we have forgotten the significance or the real meaning of those rationales of holy text and now the masses in India do not mind in polluting and degrading the environment in the name of religions. Some scholars have observed that how Indian masses are engaged in polluting the environment.<sup>7</sup> Taking into these facts in to account courts had to intervene many a times and made strong observation and recommendations regarding the menace of environmental pollution in the name of religious freedom.<sup>8</sup>

<sup>5</sup> For instance Lion is associated with Goddess Durga while Garuda (a bird) is considered to be the vehicle of God Vishnu.

<sup>6</sup> For instance religious text like *Athrvya veda* speaks about the purity of water.

<sup>7</sup> Paras Diwan as quoted in P. S Jaswal and Nishtha Jaswal, "Sustainable Development and the Law", in *Environment law Environment Protection, Sustainable Development and the Law*, 5 (2009).

<sup>8</sup> *Free Legal Aid Cell v. Govt. of NCT of Delhi*, AIR Del 455, *Moulana Mufti Md. Noorur Rehman Barkati v. State of West Bengal*, AIR 1999 Cal.15.

But to know the contemporary attitude regarding the environment protection one need to go beyond the religion and cultural ethos and examine the legal norms regarding the environment protection which are in force in independent India. It is pertinent to mention here that although there are so environment many specific statutes<sup>9</sup> which have been enacted by the legislatures in free India nevertheless the environmental jurisprudence basically developed in India via Constitutional interpretation by the judiciary especially by the Supreme Court of India.

To begin with the Constitutional provisions it is interesting to note that at the time of the commencement of the Constitution there were no specific provisions devoted to the protection of the environment. However, subsequently some amendments were made in the Indian Constitution to reflect its commitments (international society) to the cause of environment. It was by way of 42<sup>nd</sup> amendment article 48 'A'<sup>10</sup> and 51 'A' (g)<sup>11</sup> was added in to constitution which imposes duties on the state and the all the citizens respectively to protect the natural environment. Nevertheless, it is interesting to note that even after 42<sup>nd</sup> amendments and the despite the fact that there are specific provisions even then as noted earlier that a large part of environmental jurisprudence has emerged by liberal and wide interpretation of the article 21<sup>12</sup> of the constitution. As it well known that article 21 confers right to life and personal liberty to all persons and the supreme court has interpreted the 'right to life' in such a fashion that it includes right to live in pollution free environment.

Environmental degradation most eminently will sooner or later imperil life of our current and future generations. It is important to note, the right to life has evolved in has grown in multidimensional ways It includes, *inter alia*, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood.

Right to life is one of the core fundamental right and the Supreme Court expanded article 21 by its innovative interpretations in many senses. For instance any law affecting personal liberty should be reasonable, fair and just.<sup>13</sup> At the same time the court recognised several unstated liberties that were implied by article 21.<sup>14</sup> It is by this by this innovative zeal that the Supreme Court interpreted the right to

life and personal liberty as integral to right to a clean and healthy environment.

This issue was also taken up by the the Supreme Court in the *Charan Lal Sahu Case*.<sup>15</sup> In 1991, the Supreme Court interpreted the right to life guaranteed by Article 21 of the Constitution to include the right to a wholesome environment. In *Subash Kumar*<sup>16</sup> the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life. Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also points toward that the Municipalities and a large number of other concerned governmental agencies could no longer run away from their responsibilities. They can't not escape and must be bound to take positive measures to get better the environment. The case concerned the worsening of the world environment and the duty of the state government, under Article 21, to guarantee an environment worth living. The Supreme Court pull up the union government to bring in the knowledge of the Court steps they have taken to realize this goal through national policy and to restore the quality of environment.<sup>17</sup>

As it has been observed in the previous paragraphs also that how apex court has interpreted the article 21 of the constitution of India which helped in evolution of the environmental jurisprudence and now it is very much clear that the right to wholesome environment is a fundamental right protected under Article 21 of the Constitution of India. However, the real issue is what should be environment protection regime at times when a large chunk of countries are still at their developing stage and development is one of the main factors for environmental degradation. To surmount the issue, the stakeholders throughout the world have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology.<sup>18</sup> It is pertinent mention here that the Indian judiciary has strike this balance between these two conflicting interest that is development and environment by using the concept of sustainable development.

<sup>9</sup> The Environment Protection Act (EPA), 1986 the Biological Diversity Act 2002 to provide for the conservation of biological diversity.

<sup>10</sup> 'The State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country.'

<sup>11</sup> 'To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.'

<sup>12</sup> No person shall be deprived of his life or personal liberty except according to procedures established by law.

<sup>13</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>14</sup> For instance right to privacy, to live in healthy environment etc.

<sup>15</sup> (1990) 1 SCC 613.

<sup>16</sup> (1991) 1 SCC 598.

<sup>17</sup> A Report on Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment 14-16 January 2002, Geneva: Background Paper No. 4) available at <http://www2.ohchr.org/english/issues/environment/envirop4.htm> as accessed on 19.07.2011.

<sup>18</sup> Surajit Bhaduri, "Sustainable Development - Achieving Growth without degrading the nature - Legal Perspective of India" in '22<sup>nd</sup> Skoch Summit, The India Decade Theme - Growth vs. Green Conundrum', at 6 available at [http://www.skoch.in/images/stories/knowledge\\_repository/Governance/Sustainable\\_Development\\_Achieving\\_Growth\\_Degrading\\_Nature\\_Surajit\\_Bhaduri.pdf](http://www.skoch.in/images/stories/knowledge_repository/Governance/Sustainable_Development_Achieving_Growth_Degrading_Nature_Surajit_Bhaduri.pdf) as accessed on 12.07.2011

This principle of sustainable development has also been adopted and implemented by both legislature as well as judiciary. India being a responsible member of international community our Parliament has been very pro active in adopting and implementing the international principle. At the same time our superior courts have also been very creative in interpreting those laws to suit the doctrine of Sustainable Development'. Environmental jurisprudence has mainly developed through judicial craftsmanship. They were rather created from lawyers and activists from other available resources. In fact participation of people access to judicial and administrative machinery has also been emphasized in even principles of international environmental law.<sup>19</sup> It is also to interesting to observed that a large number of the environmental cases have reached to the court through public interest litigation or judicial activism.<sup>20</sup>

There are number of instances where the Supreme Court has applied the principle of sustainable development to resolve the question of conflicting interests of economic development and environment. In Rural Litigation and Entitlement Kendra Dehradun v State of Uttar Pradesh<sup>21</sup>, famous as valley case, in this case with regard to denuding of hills as consequence of illegal mining. The Supreme Court applied the principle of sustainable development and ordered immediate ban on mining and held that the right of the people to live in healthy environment with minimal disturbance of ecological balance is fundamental to right to life.

However in 1991, in the Rural Litigation and Entitlement Kendra v. State of U.P.,<sup>22</sup> the Supreme Court allowed a mine to function till the pendency of the termination of lease as exceptional case on condition that land taken on lease would be subjected to afforestation by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lakhs to the fund of the monitoring committee. This has been directed on the principle of 'polluter pays'.

<sup>19</sup> Principle 10 of Rio declaration, 1992 states that: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

<sup>20</sup> Saroj Gupta, "The Role of Judiciary in Promoting Sustainable Development: Need of Specialized Environment Court in India", in Journal of Sustainable Development Vol. 4, No. 2; April 2011, (249-253) at 250 available at [www.ccsenet.org/journalindex.php/jsd/article/download/10184729](http://www.ccsenet.org/journalindex.php/jsd/article/download/10184729) as accessed on 19.05.2011.

<sup>21</sup> AIR 1985 SC 652.

<sup>22</sup> AIR 1987 SC 1037.

Again in case of *State of H.P. v. Umed Ram*,<sup>23</sup> it was held that even right to livelihood is also part to right to life. So much so that even right to earn livelihood is also considered as a part of right to life under Article 21 of the Constitution.

Again in the case of *Vellore Citizens' Welfare Forum v. Union of India*,<sup>24</sup> the court applied the principle of sustainable development In this case dispute arose over some tanneries in the state of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was the main source of drinking water in the state. Once again the apex court reaffirmed the precautionary principle and polluter pays principle are part of the environmental jurisprudence in India.

The court further observed as such polluter is liable to pay the cost of reversing the dent made on environment. In the same case, in view of various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential features of 'Sustainable Development' such as 'Precautionary Principle' and the 'Polluter Pays Principle' are part of the Environmental Law of the Country. Again it was reaffirming that there shall have to be both development and proper environment and as such, a balance has to be found out and administrative actions ought to proceed in accordance therewith. This approach was adopted in *Indian Council for Enviro- Legal Action v. Union of India*,<sup>25</sup> where the Apex Court affirmed held that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed. In a famous case *Tarun Bhagat Singh v. Union of India*,<sup>26</sup> a PIL filed in the apex Court that the state government of Rajasthan although empowered to make rules to protect environment, but ironically it allowed mining work to continue within the forest area. Therefore, the apex Court directed that no mining work or operation could be continued within the protected area.

However from the above decisions it should not be inferred that the courts always inclined towards environment without giving any importance to the development aspect whenever the question regarding the environment and development came before the court. In *M.C.Mehta v. Union of India*,<sup>27</sup> the Supreme Court issued directions towards the closing of stone crushing units in and around Delhi.

However, looking into the problem relating to livelihood of displaced labour in the stone crushing

<sup>23</sup> AIR 1986 SC 847.

<sup>24</sup> (1996) 5 SCC 647.

<sup>25</sup> (1996) 3 SCC 212.

<sup>26</sup> 1994 Supp (2 ) SCC 342.

<sup>27</sup> (1992) 3 SCC 256.

industry it also passed directions for allotment of sites in the new 'crushing zone'. That is how court tried to strike a balance between issue of environment and livelihood.<sup>28</sup>

In the case of *Narmada Bachao Andolan v. Union of India*,<sup>29</sup> the Supreme Court explained the theory of Sustainable Development by observing that, 'A balance is required to be maintained in the development and protection of environment. Every aspect of development should be based upon sustainability'.

The Supreme Court in *M.C. Mehta v. Union of India*,<sup>30</sup> which is also famous as CNG case uses the concept of sustainable development and looking into the gravity of vehicular pollution in Delhi and other cities it fixed a time limit for some cities to switch over from diesel vehicles to CNG vehicles with in specified time limit. The apex Court in a number of cases has emphasized that ecological factors undeniably are very relevant considerations in construing a developmental process such as town planning etc. It also highlighted the need of specialist judges having sensitivity towards environment and Sustainable Development, so that it may help the speedy and required justice in environmental cases. It has to be remembering that the growth and development of industrial activity has always been dependent upon the availability of sources of energy. It is true that you cannot run machines unless you also provide power to make them run.<sup>31</sup>

Environment and development are two sides of the same coin; none of these can be sacrificed for the other. On contrary, both are equally important for our better future. Thus the responsibility judiciary to deal with these cases with all cares and caution. So that we can fulfill our responsibilities by securing a pollution free developed country for our next generation.<sup>32</sup>

In a case of *Maharashtra Land Development Corporation v. State of Maharashtra & Anr.* It was observed by the apex court that a fine balance must be struck between environment and development. It was observed as follows:<sup>33</sup>

Since Independence, Indian economy has grown manifold. We need further progress and industrialization to achieve a better quality of life. But

this development cannot and should not be at the cost of environment. It is the greed of the mankind which has brought environment degradation and pollution. Preservation of the eco-system is an undisputable duty of state as well of all citizens under the Constitution. India is known its biodiversity. However; they are under the constant threat of environmental degradation because of human lust for quick money.

Again it was observed by the Supreme Court in the case of *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* that the sustainable development is pre condition for the use of environment. The court observed:<sup>34</sup>

The concept of equality, a necessary condition for achievement of justice, is inherent in the concept of national development that we have adopted as a nation. The ambit and sweep of our egalitarian ideal inheres within itself the necessity of inter-generational equity. Our Constitutional jurisprudence recognizes this and makes sustainable development and protection of the environment a pre-condition for the use of nature. The concept of people as a nation does not include just the living; it includes those who are unborn and waiting to be instantiated. Conservation of resources, especially scarce ones, is both a matter of efficient use to alleviate the suffering of the living and also of ensuring that such use does not lead to diminishment of the prospects of their use by future generations.

The Court further held that in the same case<sup>35</sup> that Time has now come, therefore, to suspend mining in the above Area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. Environment and ecology are national assets. They are subject to inter-generational equity. Time has now come to suspend all mining in the above Area on Sustainable Development Principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India.

One basis of above discussion it emerged that environment and development are two connected issues and are sides of the same coin. Both are equally important rather without one, other is valueless. On contrary, both are equally important for our better future. Here it is also to be highlighted that sustainable development and the right to development are complementary and supplementary to each other.

<sup>28</sup> Soura Subha Ghosh, "Sustainable Development and Indian Judiciary", available at <http://legalserviceindia.com/articles/jud.htm> as accessed on 26.07.2011.

<sup>29</sup> (2000)10 644 at 727.

<sup>30</sup> (1998)9 SCC 589.

<sup>31</sup> *Supra* note 14 at 13.

<sup>32</sup> *Id.*, at 15.

<sup>33</sup> *Maharashtra Land Development Corporation v. State Of Maharashtra & Anr.* Dated -11/11/2010 at 22 available at <http://Judis.Nic.In/Supremecourt/Imgs.aspx> as accessed on 12.06.2011.

<sup>34</sup> *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, 205 -206 available at <http://judis.nic.in/supremecourt/imgs.aspx> as accessed on 07.05.2010.

<sup>35</sup> *Ibid.*



## REFERENCE

1. Nature and Causes of wealth of Nations, (1776) (Book 1, Chap. X) Para 82
2. Case no. 15/2009 order dt. 22.03.11 (CCI)
3. Monopolies and Restrictive Trade practices Act, 1969
4. (1976) 46 Comp Cas 495 (MRTPC)
5. For instance Lion is associated with Goddess Durga while Garuda (a bird) is considered to be the vehicle of God Vishnu.
6. For instance religious text like Athrva veda speaks about the purity of water.
7. Paras Diwan as quoted in P. S Jaswal and Nishtha Jaswal, "Sustainable Development and the Law", in Environment law Environment Protection, Sustainable Development and the Law, 5 (2009).
8. Free Legal Aid Cell v. Govt. of NCT of Delhi, AIR Del 455, Moulana Mufti Md. Noorur Rehman Barkati v. State of West Bengal, AIR 1999 Cal.15.
9. The Environment Protection Act (EPA), 1986 the Biological Diversity Act 2002 to provide for the conservation of biological diversity.
10. 'The State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country.
11. 'To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
12. No person shall be deprived of his life or personal liberty except according to procedures established by law.
13. Maneka Gandhi v. Union of India, AIR 1978 SC 597.
14. For instance right to privacy, to live in healthy environment etc.
15. (1990) 1 SCC 613.
16. (1991) 1 SCC 598.
17. A Report on Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment 14-16 January 2002, Geneva: Background Paper No. 4) available at <http://www2.ohchr.org/english/issues/environment/envir/bp4.htm> as accessed on 19.07.2011.
18. Surajit Bhaduri, "Sustainable Development - Achieving Growth without degrading the nature - Legal Perspective of India" in '22nd Skoch Summit, The India Decade Theme – Growth vs. Green Conundrum', at 6 available at [http://www.skoch.in/images/stories/knowledge\\_repository/Governance/Sustainable\\_Development\\_Achieving\\_Growth\\_Degrading\\_Nature\\_Surajit\\_Bhaduri.pdf](http://www.skoch.in/images/stories/knowledge_repository/Governance/Sustainable_Development_Achieving_Growth_Degrading_Nature_Surajit_Bhaduri.pdf) as accessed on 12.07.2011
19. Principle 10 of Rio declaration, 1992 states that: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.
20. Saroj Gupta, "The Role of Judiciary in Promoting Sustainable Development: Need of Specialized Environment Court in India", in Journal of Sustainable Development Vol. 4, No. 2; April 2011, (249-253) at 250 available at [www.ccsenet.org/journalindex.php/jsd/article/download/10184729](http://www.ccsenet.org/journalindex.php/jsd/article/download/10184729) as accessed on 19.05.2011.
21. AIR 1985 SC 652.
22. AIR 1987 SC 1037.
23. AIR 1986 SC 847.
24. (1996) 5 SCC 647.
25. (1996) 3 SCC 212.
26. 1994 Supp (2 ) SCC 342.
27. (1992) 3 SCC 256.
28. Soura Subha Ghosh, "Sustainable Development and Indian Judiciary", available at <http://legalserviceindia.com/articles/jud.htm> as accessed on 26.07.2011.

29. (2000)10 644 at 727.
30. (1998)9 SCC 589.
31. Supra note 14 at 13.
32. Id., at 15.
33. Maharashtra Land Development Corporation v. State Of Maharashtra & Anr. Dated - 11/11/2010 at 22 available at <http://Judis.Nic.In/Supremecourt/Imgs.Aspx> as accessed on 12.06.2011.
34. Reliance Natural Resources Ltd. v. Reliance Industries Ltd, 205 -206 available at <http://judis.nic.in/supremecourt/imgs.aspx> as accessed on 07.05.2010.
35. Ibid.

---

#### Corresponding Author

**Dr. Anil Kumar Thakur\***

Assistant Professor, Department of Laws Panjab University, Chandigarh

[anil.pu@gmail.com](mailto:anil.pu@gmail.com)