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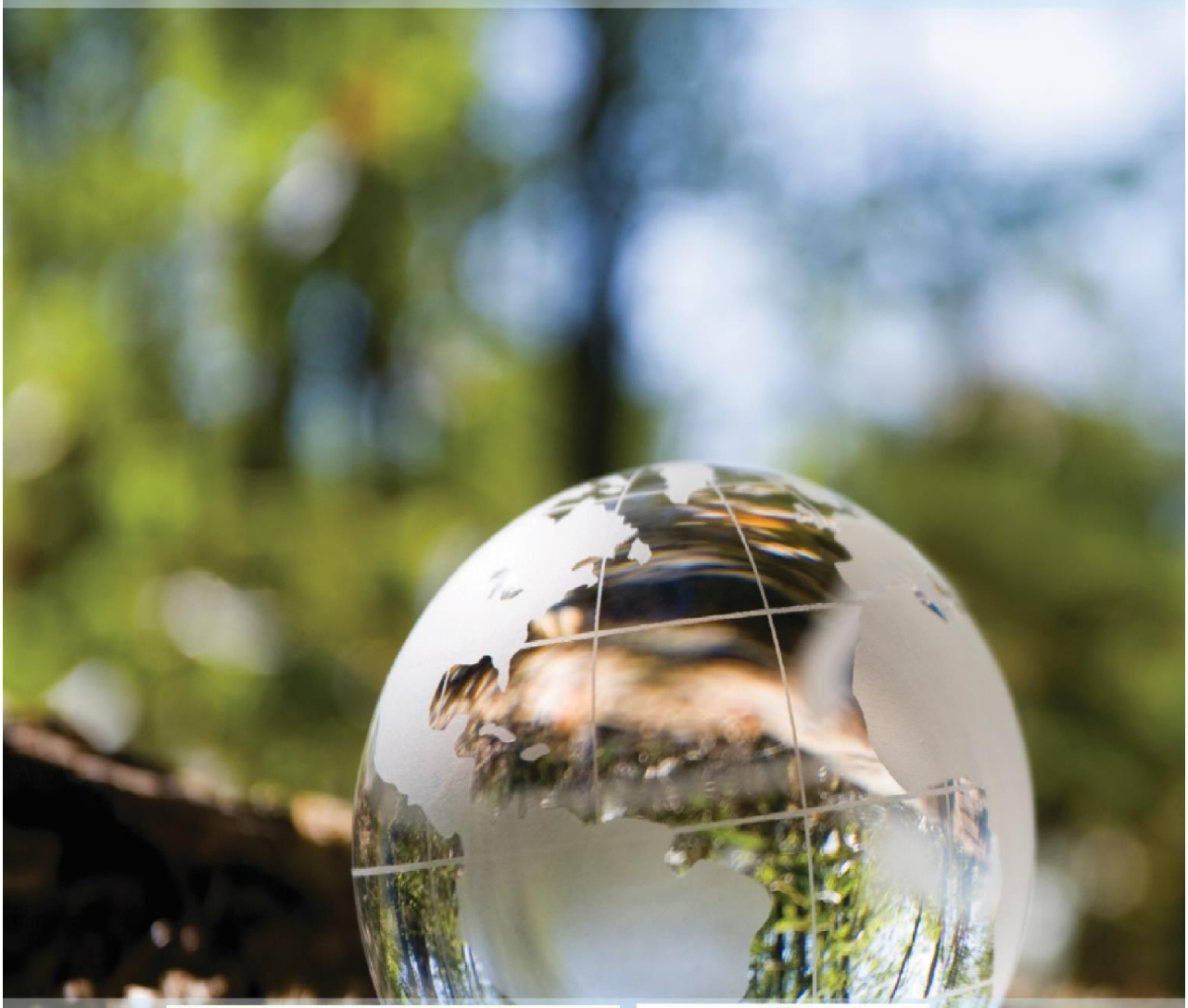

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Combating Climate Change: A SAARC Perspective

Owais Hasan Khan & Anwesha Pal*

Abstract

SAARC has taken numerous initiatives for environment protection and climate change. However, successes of these initiatives are severely contested for being rhetorical and inconsequential. This paper attempts to make an analysis of SAARC initiatives on environmental protection in general and climate in change in particular. And examine how far they have been successful in achieve their target.

Keywords: *Environment, Climate, SAARC, Development, Convention.*

Introduction

Climate change is one of the most critical issues faced by humankind. It is the matter which impacts humanity as a whole and it could only be addressed through collective efforts. All international initiatives on climate change reiterate the same ideology. Foundational principles of UN Framework Convention on Climate Change, 1992 states

> "*The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity...*"[1]

On the same conceptual framework, regional association of South Asia i.e. South Asian Association of Regional Cooperation (SAARC), has taken numerous initiatives for addressing the climate change issues. From the very inception, SAARC as an organization has exhibited deep concern for environmental issues, with a special focus on climate change. One of the principal reasons for SAARC's proactive approach in protecting the environment can be attributed to the vulnerable ecological profile prevalent in the South Asian region.[2] South Asia Environment Outlook, 2009 prepared by UNEP in collaboration with SAARC and DA (Development Alternatives) highlights the South Asian susceptibility to climate change in following terms:-

> *"South Asia occupies about 5 per cent of the world's land mass, but is home to about 20 per cent of the world's population. This is expected to rise to about 25 per cent*

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[1] United Nation Framework Convention on Climate Change, 1992, art. 3.

[2] South Asia Environment Outlook 2009 prepared by United Nation Environment Programme in collaboration with SAARC and DA (Development Alternatives).

by 2025. Three-quarters of South Asia's population lives in rural areas, with one-third living in extreme poverty (on less than a dollar a day). Their well-being is further compromised by indoor air pollution, which is a severe health hazard. The report highlights that South Asia is very vulnerable to climate change. Impacts of climate change have been observed in the form of glacier retreat in the Himalayan region, where approximately 15,000 glaciers will likely shrink from the present total area of 500,000 km to 100,000 km by 2035. These glaciers form a unique reservoir, which supports perennial rivers such as the Indus, Ganges and Brahmaputra, which, in turn, are the lifeline of millions of people in South Asian countries."[3]

However, unfortunately this fragile ecology of South Asia has not been so well preserved and has been suffering from constant deterioration.[4] Such deterioration has been the result of both natural and man-made causes. One of the examples to highlight the same is that of land degradation, which is one of the formidable challenges of the South Asian agriculture-based economy, and is a consequence of natural causes like high rainfall and steep mountain ranges. In addition to the aforementioned, man-made causes like deforestation, excessive use of fertilizers, improper river basin management and so on, has contributed to the land degradation.[5]

Conscious of these peculiar and vulnerable situations, SAARC at successive summits reiterated and buttressed the cause of environmental protection; along with the need for further strengthening instrumentalities through which regional cooperation can be achieved for preserving and protecting the eco-system of the region from challenges posed by climate change. In pursuance of these aforesaid aims, since 1987[6], SAARC has undertaken numerous measures ranging from establishing norms for environmental protection to taking concrete steps in the form of SAARC action plans.[7] However, the success of these measures and action plans have been severely contested and criticized for being merely rhetorical and inconsequential. Political mistrust and lack of economic and political integration are few of the reasons for the repetitive

[3] SOUTH ASIA ENVIRONMENT OUTLOOK (2009).

[4] Report State of Environment Report India 2009 by Ministry of Environment & Forest, Government of India; Report, South Asia Environment Outlook 2009 by UNEP and SAARC Report, Restoring Nature's Capital: An Action Agenda to Sustain Ecosystem Services by World Resources Institute; Report, United Nation Environmental Programme Annual Report, 2013 by UNEP.

[5] Douglas Southgate, *The Causes of Land Degradation along Spontaneously Expanding Agricultural Frontiers in the Third World*, 66(1) J. LAND ECON. 93-101 (1990).

[6] With Third SAARC Summit (Kathmandu, 2-4 November 1987) which established regional study on causes and consequences of Natural Disasters and protection of environment.

[7] SAARC environmental protection norms and action plans are discussed in detail in a later part of this article.

underperformance of SAARC as an institution for regional cooperation. As has been quoted in a news article:-

> *"The SAARC members signed agreements on environment and services. It is important that the provisions under yet another declaration do not become inconsequential, as has happened through the history of SAARC."*[8]

However, **despite the criticism against SAARC's policies for** preservation and protection of environment its contribution cannot be downright undermined.

SAARC Initiatives on Environmental Protection and Climate Change:

South Asian Association for Regional Cooperation was established by seven south Asian nations[9] with the intention of securing all-round cooperation involving various areas of concern. One of the **areas** to which SAARC has given enormous importance is the environment and the threat which has been posed by climatic change, world around.[10]

The first step in **the** area of environmental protection was taken by SAARC in the **Third SAARC Summit** held in Kathmandu during the 2nd till the 4th of November 1987. One of the major areas of focus in this summit was the initiation of regional study **which was eventually** a basis of SAARC action plans. With this intention the Summit established the "Regional Study on the

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[8] Shravani Prakash & Pallavi Kalita, *SAARC must get serious on climate pact* , ECONOMIC TIMES, May. 4, 2010, http://economictimes.indiatimes.com/articleshow/5888033.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[9] Presently Member nations to SAARC are eight in number with India, Pakistan, Bangladesh, Nepal, Bhutan, Maldives and Sri Lanka as the founding members. Afghanistan later joined the association in 2005. Along with members-nations, SAARC also have 9 observers-nations.

[10] There are **sixteen areas of cooperation** under SAARC which are as follows:-

a) Agricultural and Rural Development.
b) Biotechnology
c) Culture
d) Economic and Trade
e) Education
f) Energy
g) Environment
h) Finance
i) Funding Mechanism
j) Information, Communication and Media
k) People-to-people Contacts
l) Poverty Alleviation
m) Science and Technology
n) Security Aspects
o) Social Development
p) Tourism.

Causes and Consequences of Natural Disasters and the Protection and Preservation of the Environment"[11] which submitted its report in 1991. A similar kind of regional study was also **initiated** during **the Fourth SAARC Summit**[12] **titled** "Greenhouse Effect and its Impact on the Region"[13] which submitted it recommendations in 1992.

For the purposes of implementing these **recommendations** made by the regional studies, a **Technical Committee** was established in the same year with the mandate of identifying measures for immediate actions.

Parallel to the regional studies, since 1992, SAARC Environment Ministers **have** also been periodically **deliberating** for taking concrete actions towards environmental protection. One of the major **successes** in this regard has been the adoption of SAARC Environment Action Plan during the Third meeting of SAARC Environment Ministers on October, 1997 at Malé. The purpose of the action plan has been to set out the parameters and modalities for regional cooperation for environmental protection.[14] Consequential to the adoption of the environment plan, SAARC Coastal Zone Management Centre (SCZMC) was established in Malé in 2004 and SAARC Forestry Centre was established in Thimphu in 2007.

One of the most prominent steps taken by SAARC in respect of climate change is **SAARC Action plan on Climate Change**[15] adopted in SAARC Ministerial Meeting on Climate Change on 3rd July, 2008 at Dhaka. The action plan purported to achieve the following three fold objectives:-

i. *To identify and create opportunities for activities achievable through regional cooperation and south-south support in terms of technology and knowledge transfer.*
ii. *To provide impetus for regional level action plan on climate change through national level activities.*
iii. *To support the global negotiation process of the UNFCCC such as the Bali Action Plan, through a common understanding or elaboration of the various*

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[11] *Regional Study on the Causes and Consequences of Natural Disasters and the Protection and Preservation of the Environment*, SAARC, http://www.saarc-sec.org/userfiles/Large%20Publications/CCNDPPE/index.php.

[12] Held at Islamabad, 20-21 December, 1988.

[13] *Regional Study on Greenhouse Effect and Its Impact on the Region*, http://www.saarc-sec.org/userfiles/Large%20Publications/RSGEIOR/index.php (last visited Oct. 11, 2014).

[14] *Area of Cooperation-Environment*, http://saarc-sec.org/areaofcooperation/cat-detail.php?cat_id=54, (last visited Oct. 11, 2014)

[15] *SAARC Action Plan on Climate Change*, http://saarc-sdmc.nic.in/pdf/publications/climate/chapter-2.pdf, (last visited Oct. 12, 2014)

negotiating issues to effectively reflect the concerns of SAARC Member States. [16]

This SAARC action plan has identified seven thematic areas of cooperation on which planned actions **are** to be undertaken. These include adaptation to climate change, climate change mitigation, technology transfer, finance & investment, education & awareness, management of impacts & risks due to climate change, and capacity building for international negotiation. The action plan envisaged that implementation responsibility shall be primarily on the national governments of the **SAARC member States** and it shall be done in cooperation with other SAARC member nations.

It requires the member states to undertake activities to promote advocacy programs and mass awareness on climate change; cooperation in capacity building including the development of Clean Development Mechanism (CDM) projects and Designated National Authorities (DNA) and on incentives for removal of Green House Gases (GHG) by sinks, and exchange of information of best practices, sharing of the results of research and development for mitigating the effects of climate change and undertaking adaptation measures, and for enhancing south-south cooperation on technology development and transfer, as per established SAARC norms; and to initiate and implement programs and measures as per SAARC practice for adaptation for dealing with the onslaught of climate change to protect the lives and livelihood of the people.

The entire SAARC had been envisaged **on** the idea of cooperation at various levels between the member nations. The ideological underpinning of the action plan of climate change happens to be that of the south-south cooperation. As opposed to the much debated North-South Divide on the globe that deals with the political, economic and social divide, the South-South Cooperation is more positive that deliberates on the idea that developing countries work together to find solutions to common development challenges. This is especially true for the South Asian countries that are linked by similarities in their development contexts and challenges, and therefore have been increasingly active in sharing knowledge, exchanging technologies, and forming common agenda and collective actions. [17]

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[16] *Id*, p. 22

[17] South-South Cooperation, United Nations Development Program (Oct. 13, 2014), http://www.undp.org/content/undp/en/home/ourwork/povertyreduction/focus_areas/focus_development_finance/south-south_cooperation.html.

The present action plan harps at the very idea of harmonization of the proposed plans with the national strategy and infrastructure of the member States at the national level for an effective implementation.

The reasons behind the adaptation mechanisms have been based on the philosophy that the environmental contexts and situations are not similar throughout the entire South Asian region, which is why customized approaches to the various climatic conditions existing in various regions throughout the terrain is important keeping in mind the realities of such geographical areas and the mandates that could be reasonably achieved keeping them in mind. To have a sound transfer of technology and to encourage meaningful research and development, sufficient resources are required which can be calculated by assessing the barriers to technology development for adaptation and mitigation options.[18] The SAARC aspires for full cooperation with regards to the access to resources for carrying out technology development programs. A similar trend is visible in the mandate in the Article 4(5) that talks about the commitments in the United Nations Framework Convention on Climate Change, that talks about the developed country Parties and other developed Parties helping other Parties, particularly developing country Parties, to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how thereby enabling them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties.[19] Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies. This can be interpreted as a North-South cooperation among other things.

To ensure and review the implementation of SAARC action plan on climate change, Sixteenth SAARC summit adopted the Thimphu Statement on Climate Change, 2010. The Thimphu statement further outlines the immediate actions which are required at national and regional level to advance the cause of environmental protection against the perils of climate change. It also established the Inter-governmental Expert Group on Climate Change (IGEGCC) which works on

[18] SAARC Action Plan on Climate Change, 2008.
[19] United Nations Framework Convention on Climate Change art. 4(5).

the objective of monitoring, reviewing and facilitating the recommendations made under different SAARC initiatives.

The Thimphu statement which is also known as the 'Thimphu Silver Jubilee Declaration-Towards a Green and Happy South Asia'' emphasized the importance of reducing dependence on high-carbon technologies for economic growth.[20]

SAARC Initiatives on Climate Change: An Appraisal

SAARC initiatives on climate change have severely been criticised as being just rhetorical and having a negligible contribution in combating climate change. The prominent reason for SAARC's underperformance is its weak organisational structure which is further marred by political distrust and hostility amongst the member nations.

SAARC Charter[21] under Article X excludes bilateral and contentious issues, which have been deeply criticised in the words of Sri Lankan Foreign Minister[22]

> *"In our wisdom we said that bilateral disputes should not be discussed before the SAARC forum. But when conflict confronts us do we turn a blind eye? Could we not evolve a new mechanism where at every meeting at Foreign Minister's level we have informal close door meetings where we could air our views candidly? This will provide an opportunity to discuss issues and problems between and among us. SAARC must not end up as a deaf, dumb and blind association. If we brush issues under the carpet because they are unpalatable, we will be taking the first step in crippling SAARC."*

The organization is weak and structurally and politically unsuited to its ambitious role.[23] It has been alleged at numerous occasions that SAARC is just 'a magnificent paper tiger'[24] which has

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[20] Ashok Tuteja, *SAARC Summit Thimphu, April 28-29 Consensus on climate change*, TRADE THE TRIBUNE, Apr. 30, 2010, http://www.tribuneindia.com/2010/20100430/main2.htm.

[21] *Available* at, http://saarc-sdmc.nic.in/pdf/charter.pdf, (last visited Oct. 14, 2014).

[22] KRISHAN GOPAL, GEOPOLITICAL RELATIONS AND REGIONAL COOPERATION: A STUDY OF SOUTH ASIA 260-261 (1996).

[23] WANG AND LEAN, ASIA'S RESPONSE TO CLIMATE CHANGE AND NATURAL DISASTERS: IMPLICATIONS FOR AN EVOLVING REGIONAL ARCHITECTURE (2010).

[24] PROMOTING ECONOMIC COOPERATION IN SOUTH ASIA: BEYOND SAFTA (Sadiq Ahmed, et al. eds., 2010) where it has been quoted that "*an array of literature calls SAARC "ritualistic", "suffocatingly slow", "a magnificent paper tiger", "political white elephant", "a regional pastime"* among other things, to describe SAARC's inconsequential summits and ineffective declarations.

failed to achieve its objectives in all three accounts which were those of promoting peace, development and economic cooperation. It remained confined to holding summits from time to time and to pledges made by the leaders of South Asian countries to develop the region into a potential economic market.[25] If the trade data alone are analyzed it will show that inter-SAARC trade is less than 5% of the region's total gross domestic product.[26]

Strategic imbalances, alleged hegemonic role of India over other South Asian member nations, protracted border confrontation between India – Pakistan and political mistrust amongst the members are few of the reasons which have hindered the development of SAARC as a regional, political and economic union.

These impediments also have their adversarial impact on environmental protection initiatives of SAARC. Despite the numerous SAARC declarations on environmental protection and climate change, which are signed by the representatives of member nations, attitudes towards climate change varies within SAARC.[27] The United Nation's (UN) Intergovernmental Panel on Climate Change (IPCC) in its report released in April 2014[28] emphasized the need for concerted efforts to tackle the threat posed by climate change. And predicted a gloomy future for South Asia where climate change may lead to regional armed conflicts amongst the member nations in areas like river water sharing.[29]

In this regard R.K Pachauri, Chairman of the UN's Intergovernmental Panel on Climate Change observed, *"The world has all kinds of drivers of stress and drivers of conflict. With the climate change, these are likely to get accentuated further."* [30]

The lack of cooperation amongst SAARC nations regarding climate change is evident from recent floods in Punjab, Pakistan and Jammu & Kashmir, during September 2014. Although SAARC Action Plan on Climate Change[31] obliges the member nations to share data on climate change but

[25] Mahmood, Tehmina, *SAARC and Regional Politics*, 53(4) PAKISTAN HORIZON 7-21(2000).
[26] SAARC Group on Statistics. Available at http://saarcstat.org/content/welcome-saarcstat.
[27] *Supra* 23, at 51.
[28] Report was released by R.K Pachauri, the Chairman of UN's IPCC in Yokohama, Japan in April 2014.
[29] Vishwa Mohan, *South Asia needs to unite on climate change*, THE TIMES OF INDIA, Apr. 2, 2014, http://timesofindia.indiatimes.com/home/environment/global-warming/South-Asia-needs-to-unite-on-climate-change/articleshow/33097177.cms.
[30] *Id* .
[31] SAARC Action Plan on Climate Change, 2008 under the head priority action plan requires the exchange of information on disaster preparedness and extreme events along with exchange of meteorological date.

there is still no system in place for exchange of real-time hydrological data between the two countries.[32]

Similar obligation also arises from World Meteorological Organization (WMO), of which Indian and Pakistan are members.[33] International data exchange policy [Resolution 20 (EC-XLVI)] of WMO mandates member nations to "*provide on a free and unrestricted basis, essential data and products which are necessary for the provision of services in support of the protection of life and property and the well-being of all nations*".

In this regard, the special envoy of United Nations' World Meteorological Organization (WMO) on disaster risk reduction and climate **services to Asia, headed by** Dr. Qamar-uz-Zaman Chaudhry submitted a proposal to the Pakistani government for improving the present hydrological data exchange system between India and Pakistan to improve flood warning system. [34] [35]

Although SAARC initiatives on environmental protection and climate change could not achieve as it had targeted, it has some remarkable achievements in formulating norms and establishing institutions.

On normative stage, through numerous declarations and policy statements like SAARC Environment Action Plan, 1997; SAARC Action plan on Climate Change, 2008; SAARC ministerial Statement on Cooperation in Environment (Delhi Statement), 2009 and Thimphu Statement on Climate Change, 2010, SAARC has created strong conceptual foundations on which collective actions can be taken by SAARC member-nations in regard to environmental protection and climate.

It has also helped SAARC to espouse a common South Asian position at various international meeting and deliberations on climate change and environmental protection. For instance, a common SAARC position on climate change was presented by Sri Lanka at UN Climate Change

[32] Rina Saeed Khan & Kabir Arora, *The Climate crisis: An appeal to the governments of Pakistan and India*, DAWN, Sept. 22, 2014, http://www.dawn.com/news/1133208.

[33] *Members of Regional Association II (Asia)*, WORLD METEOROLOGICAL ORGANIZATION, http://www.wmo.int/pages/members/region2_en.html, (last visited 14th October, 2014).

[34] Shahid Husain, *Climate change scientist offers to improve flood warning system*, THE NEWS, Sept. 14, 2014, http://www.thenews.com.pk/Todays-News-4-272633-Climate-change-scientist-offers-to-improve-flood-warning-system.

[35] Mosley P., *Exchange of Hydrological data and products*, 74 WMO'S TECHNICAL REPORTS IN HYDROLOGY AND WATER RESOURCES.

Conference, December 2009 (COP15) in Copenhagen, Denmark.[36] Similarly, a joint statement on climate change was also presented at COP 16 by Bhutan.[37]

Most significant achievement of SAARC regarding climate change has been the establishment of SAARC focal centers. One of the first Centre to come up under the aegis of SAARC has been SAARC Coastal Zone Management Centre (SCZMC) which was established in 2004 in the Maldives, with the objective of promoting regional cooperation in planning, management and sustainable development of the coastal zone and preservation of biological diversity of the region. Role of SCZMC is significant because five of the SAARC nations i.e. India, Maldives, Bangladesh, Pakistan and Sri Lanka possess wide coastal zones which are ecologically diverse and sensitive and the life support systems of the region.[38]

In furtherance of Malé Declaration, a SAARC Disaster Management Centre (SDMC) was established in New Delhi in October 2006 with the objective of providing policy advice and facilitating capacity building services including strategic learning, research, training, system development and exchange of information for effective disaster risk reduction and management in South Asia.[39]

Similarly a SAARC Forestry Centre (SFC) was established in Bhutan in 2007 and SAARC Meteorological Research Centre was established in Bangladesh as a form of a concrete step towards bringing about the practical enforcement of the different SAARC declarations, statements and action plans.

Conclusion

At the normative and institutional levels, SAARC has done commendable work by formulating a common SAARC position and action plans regarding environmental protection; and establishing

[36] SAARC Statement on Climate Change at UN Climate Change Conference (COP 15) Copenhagen, Denmark, 7-18 December 2009, *available at,* http://saarc-sec.org/uploads/document/COP%2015%20SAARC%20Statement_20110123094208.PDF, (last visited Oct. 14, 2014)

[37] SAARC Statement on Climate Change at UN Climate Change Conference (COP 16) Cancun, Mexico, 29th November, 2010 to Dec, 2010, *available at,* http://saarc-sec.org/uploads/document/Common%20SAARC%20position%20for%20COP16_20110123094124.pdf, (last visited Oct. 14, 2014).

[38] Objective of SCZMC, *available at*, http://www.sczmc.org/about-sczmc/, (last visited Oct. 14, 2014).

[39] Objective of SAARC Disaster Management Centre, *available at,* http://saarc-sdmc.nic.in/index.asp, (last visited Oct. 14, 2014).

various focal centers throughout the SAARC region to further its objective of a green and happy south Asia.[40] However, taking into account the organizational limitations of the SAARC, the success or the failure of such initiatives depend upon the effective cooperation of its member nations. SAARC initiatives are marred by the political mistrust and differences amongst its member nations.

Now it's a high time for the SAARC member nation to realize the gravity of the situation and have a united stand against the danger posed by the climate change to their fragile regional ecosystem. As with other area of cooperation under SAARC, it is not the SAARC which is failing; it is the member nations who are failing the SAARC.

[40] Theme of 16th SAARC Summit at Bhutan on 28–29th April, 2010.

SUSTAINABLE DEVELOPMENT: THE RIGHT ACTION

Suman Yadav & Rachna Choudhary*

Abstract

Sustainable development which means meeting the need of the present generation without hampering the resources for the future generation - In other words, a better quality of life for everyone, for present and future generations to come. Sustainable development will not be brought about by policies only: it must be taken up by society at large as a principle guiding the many choices each citizen makes every day, as well as the big political and economic decisions that have. India being the developing country and having the limited natural resources sustainable development is the only way through which the needs of the future generation can be protected. Currently, India is experiencing rapid and widespread environmental degradation at alarming rates. Tremendous pressure is placed upon the country's land and natural resources to support the massive overpopulation.

With the help of the present articles, researcher will analyze the roles of the various planning systems in case of the social, economic and environmental sustainable development.

Keywords: *Sustainable Development, India, Environmental, Pollution, Growth.*

Introduction

Sustainable Development stands for meeting the needs of present generation without jeopardizing the ability of future generations to meet their needs – in other words, a better quality of life for everyone, for present and future generations to come. It offers a vision of progress that integrates immediate and longer-term objectives, local and global action, and regards social, economic and environmental issues as inseparable and interdependent components of human progress.

Sustainable development will not be brought about by policies only: it must be taken up by society at large as a principle guiding the many choices each citizen makes every day, as well as the big

political and economic decisions that have. This requires profound changes in thinking, in economic and social structures and in consumption and production patterns.[1]

India makes up 2.4 percent of the world's land, while supporting 16 percent of the world's population. The compounding result is a severely unsustainable use of natural resources for several generations. Currently, India is experiencing rapid and widespread environmental degradation at alarming rates. Tremendous pressure is placed upon the country's land and natural resources to support the massive overpopulation.[2]

There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and

- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimize waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.[3]

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1 *Sustainable Development,* EUROPEAN COMMISSION, http://ec.europa.eu/environmen t/eussd/ (last updated Dec. 19,2014 at 12:16 p.m.).

2 *Achieving Sustainable Development*, PLANNING PRACTICE GUIDANCE, http://ww w.fsdinternational.org/ country/india/envissues (last visited Dec. 19, 2014).

3 *Achieving Sustainable Development*, PLANNING PRACTICE GUIDANCE, http://planningguidance.planningportal.gov.uk/blog/policy/achieving-sustainable-development/ (last visited Dec. 19, 2014).

An environmental perspective must guide the evaluation of all development projects, recognizing the role of natural resources in local livelihoods. This recognition must be informed by a comprehensive understanding of the perceptions and opinions of local people about their stakes in the resource base. To ensure the sustainability of the natural resource base, the recognition of all stakeholders in it and their roles in its protection and management is essential. There is need to establish well-defined and enforceable rights (including customary rights) and security of tenure, and to ensure equal access to land, water and other natural and biological resources. It should be ensured that this applies, in particular, to indigenous communities, women and other disadvantaged groups living in poverty.[4]

Major environmental issues are forest and agricultural degradation of land, resource depletion (water, mineral, forest, sand, rocks etc.), environmental degradation, public health, loss of biodiversity, loss of resilience in ecosystems, livelihood security for the poor.[5]

The major sources of pollution in India include the rampant burning of fuel wood and biomass such as dried waste from livestock as the primary source of energy, lack of organized garbage and waste removal services, lack of sewage treatment operations, lack of flood control and monsoon water drainage system, diversion of consumer waste into rivers, cremation practices near major rivers, government mandated protection of highly polluting old public transport, and continued operation by Indian government of government owned, high emission plants built between 1950 to 1980[6]([7])([8])([9])([10]).

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4 *Sustainable Development,: Learnings and Perspectives from India* 3, http://www.moef.nic.in/divisions/ic/wssd/doc4/consul_book_persp.pdf (last updated Jul. 28, 2015 at 11:21 p.m.).

5 CHANDRAPPA RAMESHA & RAVI.D.R ENVIRONMENTAL ISSUES, LAW AND TECHNOLOGY – AN INDIAN PERSPECTIVE (2009).

6 Milind Kandlikar & Gurumurthy Ramachandran, *2000: India: The Causes And Consequences of Particulate Air Pollution in Urban India: a Synthesis of the Science,* 25 ANN. REV. ENERGY & ENV'T 629-684 (2000).

7 *Drowning in a Sea of Garbage*, N. Y. TIMES. Apr. 22, 2010.

8 Anshuman Tripathi, Rajesh Kumar Mishra, Nik Bouskill, Susan Broadaway, Barry Pyle & Timothy Ford, *The Role Of Water Use Patterns And Sewage Pollution In Incidence Of Water-Borne/Enteric Diseases Along The Ganges River In Varanasi, India*, 16(2) INT'L. J. ENVTL. HEALTH RES. 113-132 (2000).

9 Klement Tockner and Jack A. Stanford, *Riverine flood plains: present state and future trends,* 29(3) ENVT'L. CONSERVATION 308-330 (2002).

10 Snigdha Sushil & Vidya S. Batra, *Analysis of fly ash heavy metal content and disposal in three thermal power plants in India,* 85 (17-18) FUEL 2676-2679 (Dec. 2006).

Since about the late 1980s, the Supreme Court of India has been pro-actively engaged in India's environmental issues. In most countries, it is the executive and the legislative branches of the government that plan, implement and address environmental issues; the Indian experience is different. The Supreme Court of India has been engaged in interpreting and introducing new changes in the environmental jurisprudence directly. The Court has laid down new principles to protect the environment, re-interpreted environmental laws, created new institutions and structures, and conferred additional powers on the existing ones through a series of directions and judgments.[11] The Court's directions on environmental issues goes beyond the general questions of law, as is usually expected from the highest Court of a democratic country. The Supreme Court of India, in its order, includes executive actions and technical details of environmental actions to be implemented. Indeed, some critics of India's Supreme Court describe the Court as the *Lords of Green Bench* or *Garbage Supervisor*. Supporters of India's Supreme Court term these orders and the Indian bench as pioneering, both in terms of laying down new principles of law, and in delivering environmental justice.[12]

The reasons for the increasing interjection of India's Supreme Court in governance arenas are, experts claim, complex. A key factor has been the failure of government agencies and the state owned enterprises in discharging their Constitutional and Statutory duties. This has prompted civil society groups to file public interest complaints with the Courts, particularly the Supreme Court, for suitable remedies.

Public interest litigation and judicial activism on environmental issues extends beyond India's Supreme Court. It includes the High Courts of individual states.

India's judicial activism on environmental issues has, some suggest, delivered positive effects to the Indian experience. Proponents claim that the Supreme Court has, through intense judicial activism, become a symbol of hope for the people of India. As a result of judicial activism, India's Supreme Court has delivered a new normative regime of rights and insisted that the Indian state cannot act arbitrarily but must act reasonably and in public interest on pain of its action being

11 Geetanjoy Sahu, *Implications Of Indian Supreme Court's Innovations For Environmental Jurisprudence* 4(1) L., ENV'T & DEV. J. 1–19 (2008).
12 *Id.*

invalidated by judicial intervention[13]. India's judicial activism on environmental issues has, others suggest, had adverse consequences. Public interest cases are repeatedly filed to block infrastructure projects aimed at solving environmental issues in India, such as but not limiting to water works, expressways, land acquisition for projects, and electricity power generation projects. The litigation routinely delays such projects, often for years, whilst rampant pollution continues in India, and tens of thousands die from the unintended effects of pollution. Even after a stay related to an infrastructure project is vacated, or a court order gives a green light to certain project, new issues become grounds for court notices and new public interest litigation.([14])([15])([16]).

Judicial activism in India has, in several key cases, found state-directed economic development ineffective and a failure, then interpreted laws and issued directives that encourage greater competition and free market to reduce environmental pollution. In other cases, the interpretations and directives have preserved industry protection, labor practices and highly polluting state-owned companies detrimental to environmental quality of India[17]. Proactive measures should be taken to conserve the depleting environment[18].

Sustainable development is an objective which we are constantly striving for. This calls for an urgent need to bring about necessary changes in the industrial and agricultural production patterns, utility services, consumer behavior and life styles of the people keeping in view our social and developmental priorities for conservation and sustainable use of natural resources. Facing the environmental challenges of the 21st century will be a matter of food policy, effective leadership, creative agencies, concerned and involved citizens, good information and rational decision making.

Safe water, clean air and sustainable use of other natural resources are key elements to development. A major cause of environmental degradation in the country is the lack of integrated

13 P. N BHAGWATI, JUDICIAL ACTIVISM IN INDIA.
14 *Power Problems Threaten Growth in India*, WALL STREET JOURNAL (Jan. 2, 2012).
15 RATHINAM AND RAJA, ECONOMIC EFFICIENCY OF PUBLIC INTEREST LITIGATIONS (PIL): LESSONS FROM INDIA (2008).
16 Chauhan and Chauhan, *Ecological Destruction vis-à-vis Environmental Jurisprudence in India: A Survey*, 27(3) J HUM. ECOL. 207–216 (2009).
17 Alexander Fischer, *Which Road to Social Revolution? Liberalisation and Constitutional Reform in India,* SOUTH ASIA INSTITUTE, UNIVERSITY OF HEIDELBERG (Dec. 2007).
18 Rao-kashyap, Aju John, *More proactive conservation*, MYLAWNET (2013), www.myLaw.net.

environmental planning. Often authorities and industries use natural resources according to the priorities of their individual sectors without much regard to the overall needs of the country or sustainable use of resources. Excessive decentralization of responsibility for ensuring a balanced development of natural resources among sectoral agencies is proving to be an impediment in environmental protection.

To achieve sustainable growth we have to make pragmatic choices that balance the benefits of development with the need to maintain and improve the environment. In certain cases development choice may conflict with environment concerns and in such cases we have to tackle it pragmatically. We have to ensure that development takes place in a planned and environmentally sustainable way.[19]

19 *Available at*, http://pib.nic.in/feature/fe0699/f0306991.html (Last visited Dec. 19, 2014 at 2:15 p.m).

Biodiversity preservation and sustainable development an analysis in India

Ms. Nanda Pardhey*

Abstract

The paper delves into the inquiry of Development and its impact on the Environment, the paper goes on to establish the link between Biodiversity and Sustainable development. The paper focuses mainly on growth which cares the Future as well. The paper examines various case laws to see how the courts have build the Jurisprudence of protecting Environmment. The principles held down in cases have been narrated and thier implication discussed, the paper ends while maintaining the position that it is our necessity to keepthe Environment healthy and its not just an option.

Keywords: *Sustainable Development, Diversity, Globalization, Natural Resources, Rights.*

Introduction

India's fast growth and huge population, scientific and techonological development, urbanization, industrialization and various other related factors are responsible for the rapid degradation of the environment and the ecosystem. Environmental problems and balancing of the biodiversity and ecosystem has become a serious issue in India. Its a high time that this issues need to be curbed and effective measures be taken for sustainable development of the environment and in protecting and preserving biodiversity not only for present generation but also for the coming future. It has been observed in the past few decades, and it is evident that we can no longer think of socio-economic development if we separate environment and biodiversity.

Biological diversity is an essential factor in the organization of organism for survivability and sustainablity of life. Biological diversity means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems[1]. Biodiversity can be classified and categorised in three sphere of living system-

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[1] CONVENTION BIOLOGICAL DIVERSITY (Dec. 16, 2014), www.cbd.int/convention/articles.

genetic, species and ecosystem diversity. Genetic diversity relates to genetic variability within species. The term diversity also covers distinct population of a single species. Every individual species possess genes which are the source of its own unique features. Species diversity relates to the variety of different animals and plants that live in a particular habitat. An ecosystem is a natural system consisting of all plants, animals and microorganisms (biotic factors) in an area functioning together with all the non-living physical (abiotic) factors of the environment.

Biodiversity preservation and protection is knittly related to various global environmental changes and globalization, industralization, urbanization and technological develpoment has raised many issues relating to climate change, land use and land cover change. If we look over the last century due to fast growth in industralization and urbanization there has been a drastic change in the ecosystem as compared to the history of mankind, as a result biodiversity has been impacted and variety of genes, species and ecosystem has declined rapidly in India and around the globe imbalancing the ecosystem. This loss has fused the knowledge of biodiversity amongst the people who were in close proximity with the natural ecosystem.

India has a varied biodiversity amongst the people and is known for its genetic and species richness in vivid ecological zone throughout. Scientific and technological development has disturbed the ecosystem and increasing human intervention and excessive exploitation of natural resources had resulted in tremendous changes in the environment and contributed alarming signals of increased biodiversity loss. This change in the ecosystem resulted in a policy shift from conservation single species to conserving their habitats. Presently we can see that there is distinct change in understanding the priorities of biodiversity preservation, protection and balancing the ecosystem mainly through sustainable development in various vivid biodiversity rich and poor areas in India.

The change in past century relating to land use and agriculture in Indian subcontinent and South Asia is remarkably diverse. According to many ecologists and environmentalist relating to preservation and protection of biodiversity, inquest remain uncertain to estimate species richness, due to the drastic decline of species diversity and ecological imbalance which relates to climate change. Various issues are seen confronting us with the increasing degradation of the ecosystem and steps are being necessiated by various countries by making rules, regulation and law for preserving the nature and ecosystem. At international level many countries came together for

protection of the biodiversity and balancing the ecosystem by sustainable development.

The milestone event at international level was laid down by the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992, which effectively aggravated the world's attention on environmental and development issues which the global community face as a whole. The Summit lead in sync governments from around the world from 178 countries , representatives from International agencies and NGO with the objective of preparing the world for attaining long-term goals of sustainable development and the fundamental focus was on the issues of how to diminish the global environmental system through the launch of principles of sustainable development. The concept of sustainable development highlight that socio-economic progress depend critically on preservation and protection of the natural resources which will ultimately prevent environmental degradation.

Rio Earth summit made a benchmark as compared to an earlier Conference in Stockholm plus ten which was held in Nairobi, Kenya in 1982. Rio Summit strived two terms together relating to broadening the scope of global environmental diplomacy and adopting the notion of sustainable development. Increased leveled of public interest was seen amongst the people in the environment and environment concerned was raised relating to stratospheric ozone depletion and global climate change were on the policy map and emphasis was laid for preservation of energy which become a major concern for economic security. If we look it from jurisprudential point , it can be said that social engineering theory of Roscoe pound can be related here when it comes to preservation and protection of natural resources by using the means of sustainable development and conservation of natural resources. According to his theory, satisfaction of maximum wants with minimum friction and waste is complementary and supplementary to the concept of sustainable development and conservation of biodiversity. Further, the concept of interests in his theory , under social interest emphasised on protecting and preserving social resources not only for today but also for the coming generation. Social interest tries to balance the needs of the people same can be applied to environment were it demand for balancing the ecosystem while utilizing the natural resources. Rio Declaration also advocated that development should not undermine the natural resources which are base of future generation and its a collective responsibility of all countries to preserve and protect environment and biodiversity by using the means of sustainable development.

The Rio Declaration on Environment and Development is a set of 27 legally non-binding principles designed to commit governments to ensure environmental protection and responsible development and intended to be an Environmental Bill of Rights, defining the rights of people to development, and their responsibilities to safeguard the common environment.[2] The Declaration also established the *Precautionary principle*[3]3 which had a impact in India too. The declaration also adopted various progressive approaches like polluter pay principle i.e., the polluter bears the costs of the pollution which he has done to the environment.

According to Agenda 21 , which was the international plan of action to sustainable development, was made a blueprint of key policies for acheiving sustainable development that meets the needs and also recognizes the limits of development. The agenda define a balance between development and natural resources and keep a check on the production, consumption, population, development and the Earth's life- supporting capacity. The main emphasis of agenda was firstly sustainable development, with conservation and management of natural resources like atmosphere, land, forest, deserts, agriculture, biodiversity, etc. Secondly, socio- economic aspect relating to developing countries, consumption patterns, population, assimilating environment and development. Thirdly, strengthening the role of major groups like indigenous peoples, NGO's, local authorities, farmers, scientists and technologists. Lastly, laying down means of implementation by way of technology transfer, science, education, capacity-building, international institutions, legal measures and information.

The United Nations Convention on Biological diversity which is also known informally as the Biodiversity Convention was signed by 154 member countries and today it is 197 member countries. The fundamental purpose of the convention was conservation of biological or biodiversity and protecting and preserving various species, genetic resources, various habitats and the ecosystem; to ensure sustainable use of the biological components and guarantee fair and equitable sharing of benefits arising from genetic resources. The convention was to envisage the principles laid down in Agenda 21 into reality and use it as a practical tool.

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[2] IDA KUBISZEWSKI & CUTLER J. CLEVELAND, SUSTAINABLE DEVELOPMENT INTERNATIONAL ENVIRONMENT ISSUES (2007).

[3]Black Law Dictionary "A rule in environment management which states that if serious damage can be caused to the environment and/ or to the health of a human being, immediate steps should be taken in order to contain or to prevent such an event from happening. It is also known as the preventative principle".

The United Nations Commission on Sustainable Development (CSD) was established by the UN General Assembly in 1992 to ensure aftereffect of UNCED. The commission is responsible for reviewing the breakthrough of the Agenda 21 and Rio Declaration on Environment and Development, and also administering policy guidance to follow up the Johannesburg Plan of Implementation (JPOI)[4] at local, regional, national and international levels. The commission advocated the CSD in the high-level conference for sustainable development within the United Nations system.

Indian Scenario on sustainable development and biodiversity

Sustainable development focuses on the development and also emphasises on the environmental mandates. Natural resources to be sustainable, balancing the development, the development should be both economic and ecological sustainability. Sustainable development must be economic and environment friendly and necessary conditions for achieving it by way of ecological security, economic efficiency and fair and equitable social equity based on the CBD. Sustainable development is the highway for conserving and preserving the socio-economic well-being of the people around the world. The CBD stressed that all states have the sovereign rights to exploit their own resources, and further laid down that all contracting parties should co-operate for the conservation and sustainable use of biodiversity, develop national strategies, plans and programmes, identify and monitor components of biological diversity and make endeavours for in-situ and ex-situ conservation[5]. Each contracting parties shall take all practical measures to promote and advance priority access of a fair and equitable basis by contracting parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by the contracting parties. Such access shall be on mutual agreed terms[6].

India is a party to the CBD has incorporated with the guidelines laid under it and in 2002 enacted the umbrella legislation called the Biological Diversity Act, 2002 (BDA)(No.18 of 2003) aimed at conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner and through a just process. The following are the thrust areas of

[4]Johannesburg Declaration on Sustainable Development, A/CONF.199/20, Chapter 1, Resolution 1, Johannesburg, September 2002

[5] P. LEELAKRISHNAN, ENVIRONMENT LAW IN INDIA 153-154 (2008).

[6] *Id.*

BDA[7]:

1. Access to biological resources and information.

2. Benefit sharing with conservers of biological resources and holders of knowledge and information relating to use of biological resources.

3. Notification of areas important relating to use of biological diversity as biological heritage sites.

4. Protection of threatened species.

5. Involvement of local bodies in sustainable management of biodiversity and the preparation of biodiversity registers.

6. Establishment of biodiversity authority, state biodiversity boards and biodiversity committees at block/village level to implement the legislation.

BDA incorporates these ideas as well as broadly accepts the provision of the CBD.The National Biodiversity Authority (NBA) is a statutory autonomous body, under the Ministry of Environment and Forests, established in 2003 to implement the provisions under the Act. State Biodiversity Boards (SBB) has been created in 28 States along with 31,574 Biological management committees (for each local body) across India. NBA advises the Central Government on conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilisation of bilogical resources[8]. The regulatory provisions in BDA are at par and in conformity with the provisions of CBD. The purpose of these committees is to promote conservation and facilitate sustainable use and documentation of biological diversity along with preservation and protection of habitats and cultivars, domesticated stocks and breeds of animals and micro-organisms and record of knowledge relating to biological diversity.

Initiatives by the government for protection and preservation of biological diversity and sustainable development has been taken, but apart from the BDA there is protection under the Indian Constitution for protechtion of environment. India is at developing stage when it comes to

[7] *Id.*
[8]Biological Diversity Act, 2002.

protection of the environment. We have the Environment Protection Act, 1986 but wholesome environment is a fundamental right under Art. 21 of the Constitution of India and there must be balance between development and ecosystem." Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generation"[9] and the Stockholm Declaration can be retraced in the Fundamental Rights that are among the basic features of the Constitution of India under Art. 14 and Art. 21.

Right to life encompasses in it the right to healthy and clean environment. In the case of *Rural litigation and Entitlement Kendra v. State of UP*[10] the mining operation of limestone in the valley was causing ecological disturbance and the Supreme court established Committee of Experts which found that there was ecological balance which has been damaged and the notion of Art. 21 was accepted. The Supreme Court in *M. C. Mehta v. Union of India*[11], observed that 'the development and the protection and preservation of the environment are the two side of the same coin. If without degrading the evnvironment or minimizing the adverse effect thereupon by applying stringent safeguards and if it is possible to carry on development procedure by applying the principles of sustainable development and the balance need to be struck between development and environment. In case of *Vellore Citizens Welfare Forum v. Union of India*[12], the Hon'ble Court observed that, 'Sustainable development" means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The 'Sustainable Development' has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-system. The "Precautionary Principle" and the "The Polluter Pays Principle" were the essential features of "Sustainable Development. "Adherence to sustainable development is a constitutional requirement the bench said in its order, which only seeks safeguards by which we are able to protect nature and subserve development. While the country needed to focus on its present development needs, it had to be done without compromising the needs of future generations, the court added[13].

[9] Princliple 1 of Declaration of the United Nations Conference on the Human Environment held at Stockholm 1972
[10] 1985 A.I.R. 652, 1985 S.C.R. (3) 169 (India).
[11] 1988 A.I.R. 1115, 1988 S.C.R. (2) 530 (India).
[12] A.I.R. (1996) 5 S.C.C. 647 (India).
[13] *Id.*

The courts in the recent decades have become activist in environment issues and interpreted clean and healthy environment as a fundamental right under Art. 21 of the constitution. Courts extensively had address this right in variety of aspects relating to environment protection and improvement of the environment by laying down guidelines and measures to the concern authorities. In *Hinch Lal Tiwari v. Kamala Devi*[14] the court held that preservation of material resources of the community such as forests, tanks, ponds, hillocks is needed to maintain ecological balance so that people would enjoy a quality life, which is the essence of the right guaranteed under Art. 21. In K. M. Chinnappa v Union of India[15] the court explained the concept of right to life in Art. 21 of the constitution thus:

> *"Enjoyment of life and its atainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of enviornment, ecological balance free from pollution of air, water, sanitation without which life cannot be enjoyed. Any contra acts or action would cause environmental pollution*[16]*."*

The 42nd Constitutional Amendment of 1976, which was four years after the Stockholm Conference, incorporated two significant articles to protect the environment under the Indian constitution under the Directive Principle of State Policy under Art. 48-A[17] and Art. 51-A (g)[18]. In case of *M/s. Ivory Traders and Manufacturers Association and Others v. Union of India* and Others[19], the Delhi High Court held that " no person can claim ivory trade as a fundamental right as per Art. 19(1)(g) and prohibition is imposed thereon on this fundamental right by the Amendment Act which is in the public interest with consonance with moral claims embodied under Art. 48-A of the Constitution. Futher it stated that right of an ivory dealer are subject to the paramount interest of the public at large who have right to healthy environment and balanced ecology, killing of elephants for procuring ivory should be stopped for balanced environment.

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[14] A.I.R. (2001) 6 S.C.C. 496 (India).
[15] A.I.R. 2003 S.C. 724 (India).
[16] *Supra*.
[17] Protection and improvement of environment and safeguarding of forests and wild life. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
[18] To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
[19] A.I.R. 1997 Del. 267 b, I.L.R. 1997 Del. 22.

In *Chandmari Tea Co v. State of Assam*[20]the Gauhati High Court sought strength from the directive principles of state policy and the fundamental duties, when it needs to protect the habitat of the wild animals and justify depriving of the privileges of not only certain persons but also a corporate entity engaged in a plantation business. Right to life and protection of habitat is a corresponding duty within the domain of the human species which is universally limited. In *Kenchappa v. State of Karnataka*[21] the High Court referred to Art. 47, 48-A and 51-A (g) of the constitution to call attention of the State to protect the fundamental right of the villagers to have access to the land reserved for greenbelt around their residential village . Later the conversion of these lands to the industry sites were blocked.

Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric[22]. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism[23]. In Suo Moto v. The State of Karnataka[24] the court stated that, "We are inclined to see this overlap as a potential opportunity for new models of conservation rather than as a threat. Hence, we recommend that, in the present circumstances, the State and the adivasis jointly draw up management plans compatible with the goals of conservation, in consultation with experts, clarifying their respective rights, roles and responsiblities to further conservation through a democratic process, and to hold each other accountable to that commitment". The court was of the view that we should incorporate with the international declaration to which we are signatory and adhere to the provisions of various acts existing in India for preservation and protection of the environment and biodiversity. Steps should be taken to harmonize the human needs with that of ecosystem.

Deforestation causes ecological imbalance and leads to environmental deterioration[25]. Deforestation had been taking place on a large scale in the country and it had caused widespread concern. Therefore, this Court recognized the need to take all precautionary measures when forests

[20] A.I.R. 2000 Gau. 13
[21] A.I.R. 2000 Kant. 73
[22] E.Seshan vs Union Of India.
[23] *Id.*
[24] The High Court of Karnataka.
[25] T.N. Godavarman Thirumulpad v. Union Of India & Ors.

land are sought to be diverted for non-forestry use, the Court took into consideration intergenerational equity. The State was required to undertake short term as well as long term measures for the protection of the environment[26]. The state and centeral government needs to take more initiatives for balancing the demands of the people but with that it needs to conserve and protect the environment and biodiversity.

Conclusion

The socio-economic development is undoubtedly a positive force for the nation, but with that protection of environment and biodiversity laws has change drastically and initiatives are been taken and guidelines are been provided by the courts for protecting and preserving the endanger species. Development is important for socio-economic growth of the people. Along with it primary measures for conservation and protection of environment and biodiversity are needed. Various statutes concentrates on the importance of sustainable development, applying the precautionary principle and intergenerational equity are common which cast a responsibility between and amongst countries. Resolving environmental issues and following the pathway of sustainable development, if done judiciously, could lead to acheiving sustainability by moving on or beyond the benchmark.

[26] *Id.*

Inter-generational Equity-the need for development on a sustainable basis

Raunaq Bagade*

Abstract

Sustainable development has become the need of the hour and we are the custodian of the right of future generation to have a healthy Environment. The paper establishes the link between various Conventions and Declaration which have taken place to secure to us as well as to future genration the environment to flourish. The author takes the central theme of Inter-generational Equity and after explaining it, goes in to look into its implication. Furthr the paper delves into the Jurisprudence developed by Indian court which suits the Indian scenario. The paper concludes with giving the recommendation which can help to secure a Sustainable development model.

Keywords: *Conventions, Sustainable Development, Intergenrational Equity, Pollution.*

INTRODUCTION:

Sustainable development as a concept emerged in the 1980s in response to a growing realization of the need to balance economic and social progress with concern for the environment and the stewardship of natural resources.[1] It is difficult to encapsulate sustainable development in a short, punchy definition, which is also precise and unambiguous. This is reflected in the fact that there is no internationally agreed definition of what is meant by sustainable development. A number of general statements of broad principle have been made and have been widely accepted, but it has been left to nations, organizations and individuals to come up with more precise definitions. Accordingly, hundreds have been offered, and the meaning of sustainable development has become an area of intense academic debate in itself.[2]

The roots of sustainable development can be found in the 1970s. In 1972 the UN organized the

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[1]Tom Edwards *Sustainable Development*, http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/6460bd8194e62717ca25758d0012e3d1/$FILE/sustainable%20development.pdf.

[2]*Id.*

first UN Conference on Human Environment in Stockholm in 1972. At this conference the UN Environment Programme (UNEP) was developed and 26 principles for the preservation and enhancement of the human environment were identified which the member countries of the UN should comply with. In 1972 in the Stockholm declaration it had been stated that:

"*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generation"*[3]

After approximately a decade a new milestone was reached. The World Commission on Environment and Development (established in 1983) came with the first official definition of sustainable development in "Our common future", also known as the Brundtland Report in 1987 after that many events took place led by governments and businesses to stimulate the implementation of sustainable development and bring it to the attention of the public.[4]

It defined 'Sustainable Development' as:

"*Sustainable development is "development that meets the needs of present without compromising the ability of future generations to meet their own need"* [5]

INTER-GENERATIONAL EQUITY:

Equity is about fairness:

Equity derives from the concept of social justice. It represents a belief that there are some things which people should have, that there are basic needs that should be fulfilled, that burdens and rewards should not be spread too divergently across the community, and that policy should be directed with impartiality, fairness and justice towards these ends.[6]

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[3] Soura Subha Ghosh, *Sustainable Development and Indian Judiciary*, LEGAL SERVICE INDIA, http://www.legalserviceindia.com/articles/jud.htm.

[4] Anneke Hoijtink, *The Sustainability Attitude of Commercial Banks*, 1 http://www.telos.nl /Publicaties/PublicatiesRapporten/downloads_getfilem.aspx?id=180263.

[5] WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (1987) Our Common Future.

[6] Falk, Jim, Hampton, Greg, Hodgkinson, Ann, Parker, Kevin & Rorris, Arthur, *Social Equity and the Urban Environment*, COMMONWEALTH ENVIRONMENT PROTECTION AGENCY, AGPS 2 (1993).

Equity means that there should be a minimum level of income and environmental quality below which nobody falls. Within a community it usually also means that everyone should have equal access to community resources and opportunities, and that no individuals or group of people should be asked to carry a greater environmental burden than the rest of the community as a result of government action.

It is generally agreed that equity implies a need for fairness (not necessarily equality) in the distribution of gains and losses, and the entitlement of everyone to an acceptable quality and standard of living.[7]

The Rio Declaration recognised a number of principles of equity. However, foremost of these are the principles of inter- and intra-generational equity. Inter-generational equity is defined as meaning that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations. Intra-generational equity involves consideration of equity within the present generation, such as use of natural resources by one nation state (or sector or classes within a nation state) meaning to take account of the needs of other nation states (or sectors or classes within a nation state). In other words, people within the present generation have equal rights to benefit from the exploitation of resources and from the enjoyment of a clean and healthy environment.

Brown-Weiss has identified three fundamental principles which form the basis of intergenerational equity, and hence are integral to sustainable development. First, the conservation of options principle requires each generation to conserve the diversity of the natural and cultural resource base in order to ensure that options are available to future generations for solving their problems and satisfying their needs. Second, the conservation of quality principle holds that each generation must maintain the quality of the Earth such that it is passed on in no worse condition than in which it was received. Third, the conservation of access principle provides that each generation should give its members equitable rights that access the legacy of past generations and should conserve this access for future generations.[8]

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[7] Sharon Beder, *Costing the Earth: Equity, Sustainable Development and Environmental Economics*, 1-2 http://www.uow.edu.au/~sharonb/esd/equity.html.

[8] Edith Brown Weiss, *Intergenerational equity: a legal framework for global environmental change*, *in* ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: NEW CHALLENGES AND DIMENSIONS, (Edith Brown Weiss ed., 1992).

The need for Intergenerational equity arose because of following three main reasons:

1. Pollution disturbing Ecological Balance:

Ecological Balance is must for smooth procedure of recreation of natural resources by nature. But stepping stones towards development are the main reasons behind disturbed ecological balance. While growth of Industrialization, environment protection was considered as hurdle in its path and no measures were taken to minimize the pollution so caused by growing industries. Apart from Industrial activities, human activities are also contributing to various types of pollutions such as Air Pollution, Water Pollution, Noise Pollution, Land Pollution, etc. Natural resources are getting polluted in every possible way due to human activities.[9]

2. Loss of Biodiversity:

Biodiversity can be referred to as variety of life forms. Various forms of life due to genetically combinations, species and also ecosystem are covered under biodiversity. Bio diversity helps in protection of water resources, nutrient storage and cycling, climate stability, maintenance of ecosystem. But these benefits are not widely known and there was no specific effort taken to prevent bio diversity. This resulted in diminishing of many species of birds, animals and affecting ecological system.[10]

3. **Excessive and Reckless Use of Natural Resources:**

We all know that natural resources are very scarce and they can be recreated only by nature which may require over hundreds of years. Present generation is using every possible modern gadget to ease their life. Such gadgets use power which is directly or indirectly generated from natural resources. Present generation is using natural resources in excess and up to exhausting level. This gave alarming signals to whole world and resulted in evolution of concept which emphasize saving of natural resources for future generations who also have equal rights over natural resources

[9] Madhura Ubale, *In the ambit of Developing nexus between Trade Liberalization and Environment Protection*, CACLUBINDIA (Apr. 18, 2012), http://www.caclubindia.com/articles/intergenerational-equity-need-for-development-on-sustainable-13607.asp#.VJJXHyuUcc9.

[10] *Id* 3.

available in the world. The intergenerational equity explored in field of environment by introducing the concept of saving resources for future generation which paved path for Sustainable Development. The development that meets the needs of the present without compromising the ability of future generations to meet their own needs is described as Sustainable development, it is a pattern of growth in which resource use aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come. It's a buzz word in today's era. All countries have included word 'sustainable' in their developmental objectives.[11]

INDIAN POSITION:

Legislative Initiative

It is possible to suggest with conviction that the beginnings of Indian environmental law were sown at the United Nations Conference on the Human Environment held at Stockholm in 1972, where India was a participant, leading to some sort of realization that a framework of laws was necessary to deal with environmental hazards that would result from the stage of development that India was entering in the 1970s.[12] Prior to this phase, Indian environmental law mainly consisted of claims made against tortious actions such as nuisance or negligence. The Water (Prevention and Control of Pollution) Act of 1974 gave the statute book its first real foundation for environmental protection. Other major enactments followed in 1980 (The Forest (Conservation) Act), 1981 (The Air (Prevention and Control of Pollution) Act),[13] and 1986 (The Environment (Protection) Act).

The Constitutional Framework

The Forty-Second Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an explicit manner into the Constitution through Articles 48A and

[11] *See supra* note 10.

[12] This is in contrast to laws in countries such as England, which were sometimes a direct result of some mass environmental disaster; for example, the Clean Air Act of 1956 was the outcome of the deadly smog that killed over 4000 people in London in 1952. (The Act has since been replaced by the Clean Air Act of 1993). *See* HARISH SALVE, *Justice between Generations: Environment and Social Justice*, *in* SUPREME BUT NOT INFALLIBLE: ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 360-380, (B. N.Kirpal et el. Eds., 2000). Salve adds: "In the fullness of time, political upheavals brought home the realization that freedom can only survive if it honours basic human rights and is founded on principles of natural justice."

[13] The Preamble to the Act for a specific reference to the Stockholm conference.

51A(g). Article 48A, part of the Directive Principles of State Policy,[14] obligated the State to protect and improve the environment.[15] On the other hand, Article 51A (g) obligated citizens to undertake the same responsibilities.[16] As far as legislative power was concerned, the Amendment also moved the subjects of "forests" and "protection of wild animals and birds" from the State List to the Concurrent List.[17] The Stockholm conference is honoured by references in the Air Act and the Environment Act – a result of effective applications of Article 253 of the Constitution, which gives the Parliament (India's central legislature) the power to make laws implementing India's international obligations, as well as any decision made at an international conference, association or other body.[18]

Recent Noteworthy Initiatives

The National Environment Appellate Authority Act (1997) was enacted to enable the Union Government to establish the National Environment Appellate Authority. The Authority is empowered to hear appeals against orders granting environmental clearance in designated areas where industrial activity is restricted under the Environment Act. The National Environment Tribunal Act (1995) extends the principle of no-fault liability beyond the compensation limits prescribed under the Public Liability Insurance Act (1991). The Act deals with, inter alia, compensation related to accidents concerning toxic substances. The Tribunal set up under the Act has exclusive jurisdiction[19] over claims of compensation in these circumstances.

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[14] SHYAM DIVAN & ARMIN ROSENCRANZ, ENVIRONMENTAL LAW AND POLICY IN INDIA: CASES, MATERIALS AND STATUTES 45-46 (2d ed., 2001). (For a detailed discussion on the Directive Principles of State Policy in the Indian Constitution in the context of the environment, see generally.)

[15] INDIA CONST. art. 48A. ("The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.") For a discussion of the legislative debate behind the origin of the amended Article, see also ibid, p. 45, n.21.

[16] INDIA CONST. art. 51A, cl. (g). ("To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;").

[17] The Seventh Schedule of the Constitution delineates legislative power between the Centre and the States. List I (the Union List) comprises subjects over which only the Centre shall legislate. List II (the State List) comprises subjects over which only the State shall legislate. List III (the Concurrent List) contains subjects over which both entities may legislate, subject to a preference for the Centre pursuant to the doctrine of "occupied field".

[18] *See supra* note. 5, 47. It has been pointed out that the Parliament has the power to legislate on virtually any subject in the State List by virtue of Entry 13 of the Union List, which covers participation in international conferences and the implementation of decisions made at the conferences.

[19] The National Environment Tribunal Act, 1995, No. 27, Acts of Parliament, § 19, 1995 (India).

JUDICIAL DECISIONS ON INTER-GENERATIONAL EQUITY:

In India, in *State of Himachal Pradesh v Ganesh Wood Products*,[20] a writ petition was filed seeking issuance of a writ restraining the government of the State of Himachal Pradesh from permitting the establishment of any factory units for the manufacture of Katha in the State. Katha is derived from the Khair tree, which is found in considerable numbers in the State. Only the central portion of the trunk of the Khair tree is used for the manufacture of Katha. Hence, the manufacture of Katha requires the cutting of the Khair trees. The ground for seeking the writ was that the establishment of Katha manufacturing units would lead to indiscriminate felling of Khair trees which would have a deep and adverse effect upon the environment and ecology of the State.[21] The Supreme Court of India (B.P Jeevan Reddy J and M.K. Mukherjee J) in a judgement delivered by B P Jeevan Reddy J upheld the appeal. The Supreme Court stated that:

> "*The considerations of environment and ecology and preservation of forest wealth are absolutely relevant considerations which the Government must keep in mind while devising its policies and programmes".*[22]

The Supreme Court upheld the applicability and significance of the concept of sustainable development. The Court cited from the Our Common Future report,[23] the 1972 Stockholm Conference[24] and E.F Schumacher's book, Small is beautiful – a study of economics as if people mattered.[25] The Supreme Court then emphasised the significance of the concepts of sustainable development and intergenerational equity. As to the latter, the Supreme Court said:

> *"Intergenerational equity means the concern for the generations to come. The present generation has no right to impede the safety and well-being of the next generation or the generations to comes thereafter".*[26]

The Supreme Court found the actions of the relevant government body to approve any and every

[20] A.I.R 1996 S.C. 149 (India).
[21] A.I.R. 1996 S.C. 149 at 152[10] (India).
[22] A.I.R. 1996 S.C. 149 at 158[36] (India).
[23] A.I.R. 1996 S.C. 149 at 158[37]-159[38] (India).
[24] A.I.R. 1996 S.C. 149 at 159[39] (India).
[25] A.I.R. 1996 S.C. 149 at 159[40] (India).
[26] A.I.R. 1996 S.C. 149 at 159[42] (India).

proposal that came before it, on the assumption that so long as there is no commitment on the part of the Government to supply Khair wood to the proposed factories there is no harm, to be "a totally faulty and a myopic approach". It not only violated relevant and National and State Forest Policies, it was also:

> *"Contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and inter-generational equity. After all, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations. Not keeping the above considerations in mind, it is obvious, has vitiated the approvals granted by the sub-committee of IPARA – apart from the fact that it was not empowered to grant any such approval. The obligation of sustainable development requires that a proper assessment should be made of the forest wealth and the establishment of industries based on forest produce should not only be restricted accordingly but their working should also be monitored closely to ensure that the required balance is not disturbed".*[27]

In *T.N. Godavarman Thirumulpad vs Union of India & Ors*[28] the Supreme Court held that Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non- human based benefits to humans. Ecocentrism is nature centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interests. Ecocentrism is therefore life- centred, nature-centred where nature include both human and non- humans. National Wildlife Action Plan 2002-2012 and centrally sponsored scheme (Integrated Development of Wildlife Habitats) is centred on the principle of ecocentrism.

[27] A.I.R. 1996 S.C. 149 (India).
[28] T.N. Godavarman Thirumulpad vs Union Of India & Ors, A.I.R. 2012 S.C. 1254 (India).

In *Goa Foundation v. Union of India & Ors*[29] the Supreme Court ordered the State government

i) That until the final report is submitted by the Expert Committee, the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps.

ii) The State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with the CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from the date of judgment.

SUSTAINABLE DEVELOPMENT NEED OF THE HOUR:

We need the speediest, most productive and advantageous wellsprings of transport to encourage our improvement. We need the best machines to produce merchandise at the rate of sound. We oblige the best correspondence offices, the best structures, and the best scaffolds. Development, advancement and benefit – these are the motivational drives in today's quick paced world and this all is possible only because of the natural energy resources that are available with us.

All the countries require the control of environmental assets. The world is facing the problem of advancing the utilization of the available natural resource currently accessible in a manner to address the needs of the present era without bargaining on the prerequisites of future generations. To add to this, now it is likewise basic that our delicate environment endures the slightest harm conceivable. In more specialized terms, reasonable use of the resources available naturally in the surroundings is needed to overcome the misbalance thus created.

The future of our planet depends on our use of the available resources. This does not mean that we stall all progress to save the resources for our future generation. This calls for efficient use of non-renewable resources. Wastage of such resources must be minimized and alternative sources should be made more feasible for even the common man. By shifting the energy burden from non-renewable to renewable resources, we can stand up to the challenges of the future.

[29] (2014) 6 S.C.C. 590 (India).

To address the issue of sustainable development from its root causes, many conventions were held worldwide and Regulation guidelines were prepared. They can be summarized as follows:

- WWF (World Wide Foundation) is formed for protecting the world's wildlife, endangered species, etc. They are conservation leaders for more than 39 years.

- BASEL Convention on Trans boundary Movements of Hazardous Wastes and their Disposal was held in 1989 made environmentally sound management prerequisite in Trans boundary movement of wastes.

- Kyoto Protocol was adopted in 1997 by 37 countries. It sets binding targets for 37 countries for reducing greenhouse gas emission. Protocol places a heavier burden on developed nations. Market based mechanism allow developed parties to earn and trade emission credits.

- The United Nations Conference on Sustainable Development (UNCSD), also known as Rio 2012, Rio+20, or Earth Summit 2012 was the third international conference on sustainable development aimed at reconciling the economic and environmental goals of the global community.[30]

- Apart from this many conventions on issues such as Preservation of Wetlands, Sea Water, Marine lives, Climate change and carbon trading, Trail Smelter Arbitration were passed which focused on root causes of need of sustainable development such as bio diversity conservation, ecological system's balance, etc.

Conclusions

It is clear that the law on sustainable development is gaining momentum at local, national, regional, and international levels. While one of the four fundamental elements of sustainable development i.e. intergenerational equity aims for the conservation of biological diversity and ecological

[30]UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT, *available* at: http://en.wikipedia.org/wiki/United_Nations_Conference_on_Sustainable_Development#Outcomes.

integrity, and the internalisation of environmental costs has been much discussed and promulgated in various international and national legal contexts, there is still a long way to go in terms of their implementation.[31]

Intergenerational Equity is required due to undue human interference in natural systems. It can be achieved through development on sustainable basis. An important step towards this path is formation and implementation of proper environmental policy. Environmental Policy has a vital role to play in actively supporting environmental friendly consumptions of natural resources. It may also be instrumental in making tangible progress towards more sustainable consumption and production patterns. We the members of present generation, hold the earth in trust for future generations and sustainable development will help us achieve the same.

Recommendations

The following recommendations are proposed:

i) To promote environmental awareness and education among general public with the use of Information Technology and Communication tools.

ii) To Reduce, reuse, recycle resources whenever, where ever possible.

iii) To use eco-friendly, energy efficient technologies.

iv) To utilize resources as per the carrying capacity of the system.

v) Promoting sustainable consumption and production with the aid of NGO's

vi) To promote research activities in the sphere of sustainable development

vii) To enact appropriate and stringent laws promoting inter-generational equity through sustainable development process.

[31] Brian J. Preston, *The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific*, 110, http://www.lec.justice.nsw.gov.au/agdbasev7wr/_assets/lec/m4203011721754/speech_10jan06_preston.pdf.

A critical analysis of Right to Sustainable Development: With reference to Article 21 of the Constitution.

Yash Joshi*

Abstract

The paper critically analyses the Right to sutainable Development in light of Article 21 of Indian constitution. The author tries to explain that with the economic growth there comes the reponsisibility upon us to keep our environment healthy and cleaner, and how it forms our right as well. The paper maps Development, Growth and Environmental rights in one line and seeks the solution of preparing our Environment for future generation. The paper goes on to examine various case laws set out in such tone which advocates Sustainable development. The paper concludes with telling the importance of securing for our future generation the gem called Environemnt.

Keywords*: Growth, Development, Environment, Future, Right.*

INTRODUCTION:

Franklin Roosevelt stated that:

> *"Basic essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want…..*
>
> *We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. 'Necessitous men are not free men'. People who are hungry and out of a job are the stuff of which dictatorship are made."*[1]

From the above mentioned lines it can be concluded that economic development along with Human Rights is an indispensable part of the human life. The focus of mankind should be

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[1]WALTER LAQUEUR & BARRY RUBINS, HUMAN RIGHTS READER.

economic development which also takes care of the welfare of the people in all sense. For the purpose of solving this issue leaders of the world had come up with a concept of Sustainable Development, which promised to come up with a midway between ecology and economy.

This is the era of sustainable development. The world has traveled too far while pursuing the developmental process. In the name of reckless industrial and scientific development, the adverse effects of the end product have been overlooked. To minimize disparity in the society, the provision has been made under Article 21 of Constitution of India and right to life and personal liberty has been made as Fundamental Right. Now, it is to be examined that how far this constitutional provisions has been translated in practice. Sustainable development has been the main goal of UN, in the year 1972 the UN Conference on Human Environment had set a goal of "not merely to be better informed about the changing environmental conditions but also to "protect and enhance the quality of the human environment for present and future generations" [2]

Legislation such as the Schedule Tribes and Other Forest Dweller Act, 2006 have come up with provisions that would be beneficial for the tribal and rural communities, but when these provisions were put into practice, huge large scale violations of human rights was observed in the local population.[3] It is because of this violation of human rights in the impoverished regions that people take up arms against the government, further giving birth to the disease named Naxalism. For a government to impart good governance it becomes mandatory to build a strong relationship and consensus between human rights and economics.

Another aspect of sustainable development is the Right to natural resources, which means "every generation has the right to use resource only to the extent that it does not jeopardize the Human Rights of the next generation."[4] In a recent judgment the government of India has held that the rights of Dongria Konds (the tribal community behind the preservation of the Niyamgiri Hills) supersedes the rights of the corporates

"Right to life is the most fundamental of all human rights. Denial of this basic right means denial

[2] DR. KHAMESH MANI TRIPATHI & DR. S.S. JASWAL, RIGHT TO ENVIRONMENTAL INFORMATION AND HUMAN RIGHTS: THE EXISTING ENVIRONMENT LAW AND THE CHALLENGES (Human Rights Year Book 2010).

[3] JUSTICE S.N. VARAIVA, NEW DIRECTIONS IN THE HUMAN RIGHTS MOVEMENT (Human Rights Year Book 2010).

[4] *Id*, at 15.

of all other rights because none other rights would have any utility and existence without it."[5] In Allgever v. Louisana[6], the Supreme court of United States observed that, "life includes all personal rights and their enjoyment embracing the use and enjoyment of faculties, acquiring useful knowledge, the right to marry, establish a home and freedom of worship, conscience, contract, occupation, speech, assembly and press."

Article 21 of the constitution includes all those personal liberties which are not been mentioned earlier in the previous sections of the constitution. Right to life and personal liberties not only means the right to live life but also live life with dignity. In order to have a decent life style ahead in future, it is imperative to preserve the natural resources that we have. It should be noted that the resources which is consumed by humans have been borrowed from their children.

It appears that no relationship can be established between Right to life and personal liberties and the sustainable development. However, it is incorrect; there is indeed a relationship between Article 21 and sustainable development. "Right to life cannot be realized without basic rights of safe water, air and land."[7] "A Human Rights approach allows the quality of life of all people to be the central part of the decision making."[8] There is a perpetual conflict between economy and ecology, a state has to balance its decision keeping both the environment and economy in mind. If a decision in favour of economy is pronounced then it is the environment that suffers. However, it has been observed that companies that look after the environmental needs by producing environmental friendly products those companies reap huge profits.[9]

Sustainable development is understood as an amalgamation of environmental and developmental policies. "The concept of "sustainable development" covers environmental conservation and consists of economic development, economic inclusiveness, social development, empowering the rural population by creating jobs, by providing health care and quality education apart from environmental protection." [10]"The true test of good governance is the degree to which it delivers

[5] SHAILJA CHANDER AND JUSTICE V.R. KRISHNA IYER, FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES.
[6] Id.
[7] *Supra* note 3.
[8] *Id.*
[9] *Id,* at 98.
[10] JUSTICE S.H. KAPADIA, INTERRELATIONSHIP BETWEEN SUSTAINABLE DEVELOPMENT, GOOD GOVERNANCE AND THE HUMAN RIGHTS IN DEVELOPMENT (Human Rights Year Book 2010).

on the promise of Human Rights: civil, cultural, economic, political and social rights."[11]

Karl Marx has been the source of economic foundation of human rights, whereas Locke propounded basic human rights. These geniuses were the principal forces for theorizing the conception of Right to Development and the basic Human Rights.

Article 21 of the constitution is seen as the favorite subject of numerous jurist across the world and not just India. Justice V.R. Krishna Iyer has contributed extensively to the study of the abovementioned Article of the constitution. He has also explained the intricate relationship between the Fundamental Rights and the Directive Principles. Article 21 is hailed as a milestone in human rights[3]. Justice Altamas Kabir, Justice P.N. Bhagawati, Justice Markandey Katju have been the pioneers of Right to life. They have pronounced judgments that have carved new definitions of the right. Both the jurists have laid down in their landmark judgment that preventive detention is an infringement to right to life. A person arrested in preventive detention undergoes a permanent loss to reputation. Justice P.N. Bhagawati on various accounts have advocated and justified judicial activism, which also falls under the purview of Article 21. Justice Krishna Iyer was of the opinion that prisoners too have a right to live with dignity and hence he provided various judgments that could safeguard their rights. He held that the sentence provided to the prisoners should not be coerced into doing hard jobs, they too have a right to life with dignity, if not then it would be violitative of article 19.

The term sustainable development has been defined by the Brundt land Commission in the year 1981, which means "development that meets the need of the present without compromising the ability of future generation to meet their own need."[12] Right to life and personal liberty. The Fundamental Right under Article 21 of the Constitution of India has taken various aspects of human life in its ambit. Now, the right to sustainable development has become an integral part of Right to Life and Personal liberty. Article 21, states that no person shall be deprived of his life and personal liberty except in accordance to the procedure established by law.[13] This law is available to citizens and non-citizens. In Maneka Gandhi vs. Union of India of 1978, Supreme Court

[11] *Id*, at5.
[12] UN 1987, Report of the world commission on Environment and Development: Our common future, conspect.nl/pdf/Our_Common_Future-Brundtland_Report_1987.pdf.
[13] Indian constitution, article 21.

observed that Right to life is not merely confined to the physical existence but also the right to live with dignity.[14] Likewise, every person on earth is entitled to equal allocation of global atmospheric space in pursuit of sustainable development[15] emphasized Right to Sustainable Development has been derived from Right to Environment, which again draws its root from Right to Life and Personal liberty.

KNOWING SUSTAINABLE DEVELOPMENT

Development in simple words can be termed as progress. Progress is the inherent desire and need of mankind. Human beings exhibit the urge for moving forward in life, it is this urge that eventually leads to development and it is this development that advances to environmental degradation. It is worth noting that all developmental activities subsequently result into degeneration of environment. Developmental activity and a healthy environment are innately entwined together. If there is absence of one the other one cannot exist on its own. A healthy environment conducive to the health and well-being of human being is an essential ingredient of right of life.[16]All the developmental activities take place only because of the pre-existence of a healthy environment. Ecological system provides material foundation for human existence and development.[17] For example, a person who is interested in building a house, needs timber for setting up doors, window panes and furniture. This need of timber is fulfilled by the forests, which is expeditiously vanishing from the planet earth! There's a requirement to strike balance between environment and development. Motto of development should be to be of such nature that it can be contained by the ecology. To overcome this problem, scientists and thinkers have come up with the concept of sustainable development.

As per the Brundtland report, sustainable development is development that meets the need of the present without compromising the ability of the future generation to meet their own needs. It contain within it two key concepts:

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[14] A.I.R. 1978 S.C. 597 (India).

[15] Srivastava, L., Pahuja, N., Srivastava, M. and Upadhya,P. RIGHTS TO SUSTAINABLE DEVELOPMENT *availble at* : www.teriin.org/events/pdf/issues_in_international_climate_negotiations/1_Right_to_Sustainable_Devel opme nt.pdf.

[16] PROF. SATISH C. SHASTRI, HUMAN RIGHTS DEVELOPMENT AND ENVIRONMENTAL LAW.

[17] PRIYASHA CORRIE, ENVIRONMENTAL JUSTICE – REMEDIATION OF THE WRONGS AGAINST THE UNVOICED.

□□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 the present and the future needs.[18]

According to another definition, sustainable development is to ensure the health and productive life of the human beings and harmony with nature.[19] The issue of sustainable development in not merely confined to a nation but it goes beyond the jurisdiction of a single nation. Hence, sustainable development should not be viewed as a matter concerning only one nation but of the whole world community.

Primarily there are three guiding principles for sustainable living, they are as following:-

1. People must share with each other and must care for earth.

2. Humanity must take no more from nature than man can replenish; and;

3. People must adopt life styles and developmental paths that respect and work within nature's limits.[20]

The 1992 Rio declaration on 'environment and development' recognizes the element of integration of environmental and developmental aspects, particularly in principles 3&4, which are set as under:

Principle 3:

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present as well as future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral

[18] *Id.*
[19] *Id.*
[20] *Id.*

part of the developmental processes and cannot be considered in isolation from it.[21]

'Sustainability' is defined in 'caring for the earth' as "a characteristic or state that can be maintained indefinitely", whilst "development" is defined as "increasing the capacity to meet human needs and improve the quality of human life." What this seems to mean is, "to increase the efficiency of resource use in order to improve human living and standard.[22]

Why did the question of sustainable development arise?

According to the report presented by UNEP, the global environment has been promptly depleting ever since 1972. The instances cited below show the fast degradation of environment:-

- The problem of air getting serious.
- The problem of water becoming grave.
- The ozone layer is being depleted to a dangerous level.
- The rate of desertification is growing at a faster speed.
- The rate of extinction of species is increasing.
- The overall conditions of human health are worsening.[23]

The issue of sustainable development has often been raised by the developed country since they have developed to the fullest and now their primary concern is to safeguard environment. To pursue developmental activities the developed countries or the first world countries have employed the use of natural resources to the extremes. After facing the aftermaths of the exploitation, the developed nations have woken up from their slumber and thought of formulating measures that would be prove pivotal in improving the menace. The residents of a few developed countries maintain a lavish lifestyle of astonishing overspending --maintaining and expanding production processes that lead to ever more acute environmental pollution. On the other hand, millions live in

[21] ABHISHEK JOSHI, THE UNFULFILLED DREAM OF SUSTAINABLE DEVELOPMENT OF ENVIRONMENT IN INDIA AND THIRD WORLD COUNTRIES.
[22] *Id.*
[23] *Id.*

misery in many regions of the globe, specially in the third world, because of poverty, population explosion, shortage of resources and environmental pollution.[24]

ARTICLE 21 OF THE CONSTITUTION

"The concept of "right to life" and "personal liberty" is as old as mankind"[25] ."The Greeks distinguished between the liberty of the group and liberty of the individual."[26] In Athenian states "concept of liberty was the outcome of two notions; first, protection of groups from attack, secondly, the ambition of the group to realize itself as fully as possible through self-realization."[27]

Article 21 of the constitution deals with "the protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedures established by law."[28] The section seems benign, but considering it limited would be undermining the scope and the ambit of this section. Within the confines of the abovementioned articles there are various rights that have been enshrined in it. For instance, right to sleep, right to privacy, right to education, right to information and so on. Supreme Court in a series of decisions has laid down the definition of life. To live life means to live life with dignity.

"The right to life and personal liberty does not mean mere physical existence or being medically alive, but it includes the right to essential means and facilities which make life worth living with comfort and dignity."[29] "In common language life means animation from birth to death of every living being, but in broad sense life means activeness, liveliness, physical or intellectual force, energy and the vitality etc."[30]

In Sant Ram case- the court held that the right is, "the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as part of the

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[24] Supra at 16.

[25] *Id*.

[26] NEPA and Transportation Decision making, The Importance of Purpose and Need in Environmental Documents, available at: environment.fhwa.dot.gov/projdev/tdmneed.asp.

[27] *Id.*

[28] What is Sustainable Development?, International Institute of Sustainable development, available at: http://www .iisd.org/sd/.

[29] *Id.*

[30] SUNIL DESHTA , KIRAN DESHTA INTRODUCTION TO FUNDAMENTAL HUMAN RIGHTS., THE RIGHT TO LIFE AND PERSONAL LIBERTY.

constitutional right to life, the easiest way of depriving a person of his right to life would be deprive him of his means of livelihood to the point of abrogation."[31]

A.K. Gopalan v. State of Madras- The Supreme Court has deliberated on the issue of "the procedure established by law"[32]. As per the constitution the procedure established by law means procedure prescribed by law as enacted by state. The effect of these two decisions (A.K. Gopalan v. State of Madras and A.D.M Jabalpur v. Shivkant Shukla) was that it provided protection against the arbitrary actions of the executive.

Maneka Gandhi v. Union of India- In the given case the honorable Supreme Court observed that procedure prescribed by law for depriving a person of his life and personal liberty must be "right, just and fair" and not "arbitrary, fanciful and oppressive." "The expression 'personal liberty' in article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of men and some of them have been raised to the status of distinct fundamental rights and given additional protection under art. 19"[33]

SUSTAINABLE DEVELOPMENT AS A FUNDAMENTAL RIGHT

A question that needs to asked is whether development can be taken as a right? In this age there is a huge gap between the rich and the poor, it is the world where children are denied health and education, despite increasing affluence and wealth. Through the mechanism of rights, the basic requirements of human beings can be satiated. As per the International Covenant on Economic, Social and Cultural Rights (ICESCR) for receiving the entitlement of Human Rights one needs to fulfill a number of conditions: "it must be fundamental and universal; it must in principle be definable in justiciable form; it should be clear who has the corresponding duty to uphold or implement the right and the responsible agency should possess the capacity to fulfill obligation."[34]

In India, since time immemorial, environment has been recognized as a human right. The people of India have been worshiping animals, such as mouse, cows, tigers, owls, etc. The famous Bishnoi

[31] *Id.*
[32] *Id.*
[33] DR. PARAMJT S. JAISWAL AND DR. NISHTHA JAISWAL, HUMAN RIGHTS AND THE CONSTITUTION OF INDIA, 87 (Human Rights and Law).
[34] *Supra* note 16.

community of Rajasthan, are well known for their community service and dedication towards nature. The females of this tribe have been seen breast-feeding the young ones of the animals foremost and then their own babies. The members of this tribe have given their lives in order to protect the local flora and fauna.

"Integration of environment concerns with the goals of social and economic development has come to be guiding principle and is at the center of development planning and implementation. This is in accord with the directive principle under article 48A of the constitution of India which obliges the state to protect the environment and to safeguard forest and wildlife of the country."[35] "The field of judicial intervention is constantly expanding and it has been held that the right to life conferred by article 21 of the constitution includes the right to enjoyment of pollution free environment."[36]

"Right to development (classified as a third generation right) debate include the legal foundation of the classical human rights and the basis for recognition of new rights, the priority to be accorded to different sets of rights, the links between human rights and democratic governance, the extent to which the international community bears some responsibility for assisting states whose resources are inadequate to ensure the human rights of their own citizens, and the relationship between the individual and collective rights (including people's rights)"[37]. "The concept of human right is necessarily in evolving in nature apace with the evolution of human civilization in the context of a changing social, political, economic and cultural milieu"[38]. Human rights should be framed by keeping the societal knitting in mind. Humans rights is an amalgamation of the dynamic social, cultural, political and economic perspective.

Various international agencies have stressed upon considering development as a human right. Today, due to their contribution the right to development is seen as an inherent human right, which when separated would take away the very essence of existence.

[35] *Id.*
[36] *Supra* note 33.
[37] *Id.*
[38] *Id.*

ENVIRONMENTAL SUSTAINABILTY

"Impacts of energy-Most developed countries and a number of middle income developing countries have experienced reductions in some energy related emissions notably Sulphur Dioxide. This can be attributed to technological changes and to stringent regulation of quality standards and emissions.

Fresh Water-Global demand for water has been increasing in both developed and developing countries alike.

Forest Cover- Natural forest loss in developing countries has been 16.3 million hectares per year while the increase in plantations in the same countries has been 3.2 million hectares per year for the decade beginning with 1990.

Biological Diversity-The first comprehensive global assessment of biodiversity was released in 1995 at the second meeting of the conference of parties to the convention on biodiversity."[39]

CONCLUSION

There is an integral relationship between environment and development, paving way for the need of sustainable development, this has been charted out since international development agenda. The agenda of all nation-state should be to implement sustainable livelihood and hence should crystallize policies pertaining to it. "Some developed countries have been trying, by taking advantage of their economic cooperation with the developing countries. to shrink their responsibility, for protecting the environment, in many cases exploring their non-sustainable activities or their wastes to the developing nations."[40] Now we are in a world where each person is dreaming for a safer and a healthier environment and hence it is the foremost duty of the government to frame policies that would look after their needs.

[39] *Supra* note 30.

[40] *Supra* note 12.

International Environmental Law and its Scope and Implementation in India

Shivin Mathur and Richa*

Abstract

The problems related to environment had begun since the inception of mankind on Earth. The advancement of technology and the burgeoning population of the world only added to the environmental problems. The paper explains how Environmental issues are one of the biggest global challenges in the world at present and are something which needs to be addressed immediately. Paper furthers by drawing a solution to these problems and to justify as to why it is the need of the hour as all the countries on the globe are affected by it. Finally paper concludes by stating that Due to the high level of concern regarding the global environmental issues, international environmental law has expanded its horizons in the recent times in the world and in India.

Keywords: *Environmental, Development, Rights, Jurisprudence, Principles.*

Introduction

The Environmental (Protection) Act 1986, defines environment as one which "includes water, air and land and inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."[1]

Environmental law is a body of law, which is a system of complex and interlocking statutes, common law, treaties, conventions, regulations and policies which seek to protect the natural environment which may be affected, impacted or endangered by human activities. Some environmental laws regulate the quantity and nature of impacts of human activities: for example, setting allowable levels of pollution or requiring permits for potentially harmful activities. Other

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[1] The Environmental (Protection) Act 1986, §. 2 (a).

environmental laws are preventive in nature and seek to assess the possible impacts before the human activities can occur.[2]

International Environmental Law:

The customary international law comprises of practices prevalent in countries and followed in the association from extended time. The abovementioned principle forms the base of international environmental law. The principle put down in international declarations also becomes element of international customary international law, like the Stockholm declaration, 1972; Rio Declaration 1992; The World Charter for Nature 1982; the third UN Conference on the law of the sea 1982. Numerous principles applied in the settlement of environmental cases (principle of sustainable development, polluter pays principle, precautionary principle, principle of intergenerational equity) are the results of principles affirmed in these international conferences. These principles have also become foundation of a lot of decisions in national and international courts.

Article 38 (1) (d) of the statute of the International Court of Justice (ICJ) has also recognized judicial decisions as one of the sources of international environmental law. The ICJ has decided many important cases involving environmental issues and put the environment on firm footing, some of them are the United Kingdom v Albania[3], Lake Lanoux case[4], Belgium v Spain[5], Australia v France[6], Aerial Herbicide case[7], Pulp Mills case[8] and others.[9]

Protocols, conventions and treaties have been considered as the primitive source of International Environmental Law.

The Expansion of International Environmental law in India-

[2] Environmental Law and Multilateral agreements, available at: http://www.unep.org/training/programmes/Instructor%20Version/Part_2/Activities/Interest_Groups/Decision-Making/Core/Environmental_Law_Definitions_rev2.pdf, last seen on 2/3/2015
[3] United Kingdom v Albania, 1949 I.C.J. 4.
[4] France v Spain, (1957) 24 I.L.R. 101.
[5] Belgium v Spain, 1970 I.C.J. Rep. 3.
[6] Australia v France, 1974 I.C.J .Rep. 253.
[7] Aerial Herbicide Spraying, Ecuador v Columbia, 1-4-2008 (ICJ).
[8] Argentina v Uruguay (Pulp Mills on the river Uruguay), 4-5-2006 (ICJ).
[9] PROF. SATISH C. SHASTRI, ENVIRONMENTAL LAW, 405 (4th ed.).

Through Article 253 the legislature possesses exclusive right to create laws for implementation of any treaty, agreement or convention with any other nation or nations or any resolution made at any international convention, association or body. The legislature gets a comprehensive right to make laws regarding global issues by this provision. This power overrides the "normal and federal State" jurisdictional lines and distribution of legislation power between the state and the centre.

Although the rights conferred upon the citizens through Part 3 of the Constitution i.e. the fundamental rights cannot be superseded by this right of the parliament. According to the idea of the constitution the centre's executive power is identical to the legislative power of the legislature (Article 73). The Supreme Court states that treaty making is to be revered as an executive power and not a legislative action.[10]Although Article 51 of the constitution hasn't been used by the courts in environmental matters but it has to be noticed that the courts have summoned Article 48-A (duty of the state to safeguard environment to expand a fundamental right to environment as an element of the Right to life under Article 21.[11]

Post referring to the International Covenant on Civil and Political Rights, 1966 and the Universal Declaration of Human Rights, 1948 the Supreme Court in People's Union for Civil Liberties v Union of India stated that: "It is almost an accepted proposition of law that the rules of the customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law"

The Environment Protection Act, 1986 and the Air (Prevention and Control of Pollution Act, 1981 have been passed to implement the decision taken at Stockholm in 1972 known as Stockholm Declaration, 1972. The Public Liability Insurance Act, 1991 was passed to fulfill the commitment made by India "to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages" called upon as per decision at the UN Conference on Environment and Development held at Rio De Janeiro in June 1992. Similarly, the National Environment Tribunal Act, 1995 provides that the Act has been passed as "decisions were taken at the UN Conference on Environmental and Development held at Rio de Janeiro in June 1992, in which India participated, calling upon states to develop national laws regarding liability and

[10] Maganbhai Ishwarbhai Patel v Union of India, (1970) 3 S.C.C. 400 (India).
[11] MC Mehta v Union of India, A.I.R. 1988 S.C. 1037 (India).; Rural Litigation and Entitlement Kendra v State of UP, A.I.R 1988 S.C. 2187 (India).; Kinkari Devi v State of Himachal Pradesh, A.I.R. 1988 4 (India).

compensation for the victims of pollution and other environmental damages." The CFC Substance rule of 200 notified under the EPA, 1986 has been passed to implement the Montreal Conference, 1987, Vienna Convention for the Protection of the Ozone layer, 1985 and the Kyoto Protocol, 1977 etc.[12]

International law as a rule signifies the 'laws of nations that states feel themselves bound to observe. In simple understanding, international environmental law comprises those substantive, procedural and institutional rules of international law which have the primary objective of the protection of the environment like the Precautionary and the Polluter Pays Principle.[13]

These Two vital principles of international environmental law, namely the precautionary principle and the polluter pays principle had been involved through judicial review in India:

1. Precautionary Principle-

The precautionary principle gives the appliance of international environmental law where there is technical ambiguity. The precautionary advance started to come into view in international legal mechanisms in the mid-1980s. This principle got formal acknowledgment in Principle 15 of the Rio Declaration, which states 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 measures to prevent environmental degradation.[14] Starting with Vellore Citizens' Welfare Forum v Union of India[15], the Supreme Court has overtly acknowledged the precautionary principle as a principle of Indian environmental law. More recently, in *A.P. Pollution Control Board v M.V. Nayadu*[16], the court discussed and elaborated upon the expansion of the precautionary principle.[17]

2. Polluter Pays Principle

[12] *Supra* 26, at 431
[13] Divya Soni, *The Scope and Limits of Environmental Laws and International Treaties in India*, MANUPATRA, manupatra.com/roundup/318/.../The%20Scope%20and%20limits.pdf (last visited Mar. 10, 2015).
[14] Rio Declaration on Environment and Development, http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163.
[15] Vellore Citizens' Welfare Forum v Union of India, A.I.R. 1996 S.C. 2715 (India).
[16] A.P. Pollution Control Board v M.V. Nayadu, A.I.R. 1999 S.C. 812 (India).
[17] S. Jagannath v Union of India, A.I.R. 1997 S.C. 811 (India).

The polluter pays principle is the requisite that the costs of pollution should be taken up by the person who is accountable for causing pollution and its resulting costs. The polluter pays principle in treaty law can be followed back to some of the first instruments establishing minimum rules on civil liability for loss resultant of harmful actions.[18] According to Principle 16 of the 1992 Rio Declaration 'National authorities should endeavor 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 environment.' The Supreme Court has moved towards sustaining a position where it estimates environmental losses not on the merit of an assertion put forth by either party, but through an assessment of the condition by the court, keeping in mind factors such as the deterrent nature of award.[19]

Public participation in environmental decision making:

An important principle that takes birth from the international environmental law is the active participation of the public in environmental decision making. For creating a healthier environment public participation in decision making is of paramount importance. The Public participation can not only secure the needs of the present but also cater to the needs of the future generations. Thus, public participation is very critical in saving the environment. The public opinion acts as pressure group on the government and helps the government in framing policies. The public interest groups take up environmental litigation at a different level and thus, enlighten developmental proponents, decision-makers and judicial and quasi-judicial institutions.[20] The prospective harm to the environment is also covered by the watchful eyes of the public, through their participation. However, there are allegations against the public participation that it is merely an empty slogan and it can only create hindrance to the government. These allegations against the public participation isn't true, the positive outcomes of the participation is totally neglected. The public participation assists the state to accomplish its duties towards the environment. Whenever there is a public participation in the matters related to environment, views from all the sides are represented, pros and cons of the project is discussed, thus creating an equilibrium between both

[18] Indian Council for Enviro-legal Action v Union of India, A.I.R. 1996 S.C. 1446 (India).
[19] MC Mehta v Union of India, A.I.R. 1987 S.C. 965 (India); Vellore Citizens' Welfare Forum v UOI, A.I.R. 1996 S.C. 2715 (India).
[20] *Supra* 6, at 352

the developmental gains and environmental ethics. This leads to the improvement in the quality of the decision making by the judiciary. Public participation also creates wider acceptance of the decision taken by the judiciary and generates confidence of the people on the decision making process. All such cases of violations which are submitted to the Ministry of Environment & Forests/SEIAAs for environmental clearance would be referred to the respective Expert Appraisal Committee (EAC) / SEACs for their consideration bases on the merit of the proposal. After the EAC / SEAC have made its recommendations on the project, the proposal will be processed on file for obtaining the approval of the competent authority.[21] These stages of proceedings now include public hearing.

In United States of America, it is important to produce an Environment Impact Statement (EIS) along with the federal actions. The EIS is prepared after consulting with the experts and the public. It gives an opportunity to the public to acquaint themselves with the consequences of the project.

While in United Kingdom, an act namely The Control of Pollution Act 1974 provides for a local inquiry with a view to preventing or dealing with the pollution, or noise at any place.[22] The plans regarding the waste disposal are made only after consulting with the public. The discharge of the waste materials or pollutants into a water body is done only after the publication of the notice, confirming the consent of the public.

In USSR, the activists of environmental groups included comments on draft legislation, inspections to assist environmental law enforcement, spreading awareness, and endeavors in beautification, influencing facility sitting, and promoting the establishment of parks and protection of wildlife. [23]

Shortcomings in the application of international standards and environmental law in India-

Environmental law in India although being on the rise is not free from defects. It continues to have a hasty response to environmental problems and has been short sighted in its attitude.

[21] Office Memorandum, http://www.moef.nic.in/downloads/public-information/ia-28092011.pdf.last seen at 8/3/2015
[22] Control of Pollution Act 1974, § 96.
[23] Nocholas G Yost, *'The Citizen's Role in Nature Protection in The USSR'*, ENVT'L. L. REP. 50051 (1981).

Lack of vision, in foreseeing environmental problems, not evolving appropriate policies and plans besides non dynamic, reactive legislative laws, in tackling the complex and ever challenging environmental issues and problems appear to be at the root of the activist stance of the courts of law.[24]

The flaws which lead to such low conformity of environmental rules in India are:

1) Frail enforcement:

Absent or simply formal inspections on enforcements leads to a very weak reaction from organizations and environment administrations transcends into crisis administration. Every mine in a 5 km radius of Lake Badkal and Surajkund was ordered to be shut by the court only after a report was put forward by NEERI on mining pollution in MC Mehta v UOI. In that area, mining activities had been going out devoid of any sort of permission required by the Air Act and also the Mines Act of 1952 and Explosives Act were clearly being dishonored. Only after a PIL was filed blaming the Pollution Control Board of Haryana for failing to implement rules and norms did the judgment come out.[25]

2) Financial Constraints-

Financial constraints are a big hampering factor. The minimal funding is one of the root causes of bad monitoring and enforcement. Pollution Control Boards are deprived of proper infrastructure like labs, equipment, apparatus etc. which is vital for the proper performance of their duties.

3) No Flexibility in laws-

The manner in which rules and standards are devised is very over determined and thus the levels of conformity tend not to be very high. The compliance with these standards should be absolute. The status of environment keeps on falling as there is no firm enforcement because the standards which are generally fixed are neither scientifically based and nor performance based. Also, as the

[24] Evaluation of Environmental Laws and Proposals for Reforms- A Report, prepared by the Centre for Environmental Law Education, Research, and Advocacy Research Team (Mumbai) (1998)
[25] MC Mehta v Union of India, A.I.R. 1996 S.C. 1977 (India).

standards set are so over determined, organizations hesitate in investing on techniques which will curb pollution.

4) Low standards of monitoring-

The Environment Protection Act mandates Pollution Control Boards of states to be armed and equipped with technologically and scientifically capable Board of members. But the real picture is in contrast with most of the members of the boards' of Pollution Control Boards hail from bureaucratic background and do not have any form of technical expertise. The systematic calculation of pollution levels spawning from organizations and industries also becomes very tough as the manpower which is employed is technically and scientifically unsound/ill equipped.[26]

5) Low standards of discipline and penalizing-

If firms are not in conformity with the rules and policies formulated then the fines that are forced are very small and do not consider the degree of conformity and amount and quality of emissions. A firm has to pay only a penalty of Rs. 10,000 or bailable sentence of only up to 3 months in case of violations, irrespective of the level of pollution. Pendency of litigation further deteriorates the problem. For example In Rajasthan, only two convictions have taken place in spite of the fact that almost 7000 cases have been filed against air and water polluters.[27]

CONCLUSION

While transcending into a strong world economy, India faces difficulties in its ability to check its local, state and nationwide pollution levels. The extent to which it can obligate itself to improve and execute international environmental and climate change strategies is the pertinent question right now for India to answer.

Some signs have been positive with international environmental law influencing and having a good contact with municipal law in India. Post the 1980s, India has signed innumerable international treaties and all the branches of the sovereign (judiciary especially) have been well influenced

[26]Yohei Hirashima, *Environmental Governance in Selected Asian Developing Countries*, INT'L. REV. ENVTL. STRATEGIES 200 (2001)
[27]*Id.*

encouraged by the international environmental law. Integration of international environmental law with domestic law has occurred to some extent by the help of the legislation passing certain Acts and the judicial activism on the part of the apex judicial body of India. Not only the modern ecological jurisprudence is being shaped but also it is being enhanced at the same time by exploiting and making the most of international environmental law principles. At this juncture it is yet a process going on and has led to positive incorporation of international environmental law into Indian environmental law.

But at the same time, despite the fact that India has signed various multilateral treaties and to some extent of progress in the country of environmental law, much is yet to be achieved at executing and implementing. It is vital for India to be exhibiting that they are domestically conforming to the Internationals rules and standards with supplementation of International Declarations, Conferences and Treaties and are the most major developing economy of the world. India now faces the challenge of achieving its essential and fundamental needs of its ever-rising population, protect its flora and fauna, meet the power requirements of the people and yet work along the principle of sustainable development to make sure that coming generations receive the inheritance so that they also can benefit from the gifts of nature which past and current generations have so blatantly abused.

Fukushima Incident: Revisiting Human and Environmental Safety

Devyani Bissa and Kunjal Arora*

Abstract

Environment and development usually do not go hand in hand. Whatever developments are made, it somehow affects the nature and damages the environment. Nuclear power is one such development.

This essay talks about the Fukushima Daiichi Nuclear Power Plant Disaster and its environmental impact. It also elaborates on the laws which were neglected, the present legal framework and what changes should be made in the present environment legal framework to protect it from the future disasters.

Keywords: *Fukushima, Environment, Disaster, Law, Society*

INTRODUCTION:

Human being is an evolved creature. And like itself, it likes to evolve its surroundings too so that they match its needs and wants. Development is a major part of human development. From centuries, the world has developed and evolved to the way it is now. Economic development is given a keen importance in the world today however, economic development cannot be an end in itself.

The environment is affected with every change, every development made in the surroundings and nature. Nuclear power is one such development in the list of human developments which have affected the environment on a large scale. The setting up of a nuclear power plant is a big step which requires a lot of work and it also affects the environment. However, if there is an accident in the nuclear and radiation field, the consequences are very widespread.

Nuclear accident is defined by International Atomic Energy Agency (IAEA) means, ‘any accident involving facilities or activities from which a release of radioactive material occurs or is

likely to occur and which has resulted or may result in an international trans-boundary release that could be of radiological safety significance for another State'[1].

Thus, it means such a disaster or accident which causes widespread and significant consequences to people, facility or the environment because of the release of nuclear or radioactive material. Fukushima nuclear disaster was considered as a 7 in the scale of world's biggest disasters.

This essay deals with the environmental impacts of the nuclear disaster, the laws that were not followed and the steps which should have been taken to prevent this. The authors also try to give suggestions regarding the future of nuclear energy.

FUKUSHIMA DISASTER: FACTS

Fukushima Daiichi nuclear disaster was a disaster occurred in the Fukushima Nuclear Power plant in Japan which on 11th March 2011 which resulted in nuclear meltdown of 3 reactors of the plant. It all started with an earthquake on 11th March 2011. During that time, 3 units out of 6 of the plant were working. Due to the earthquake, these units went into an automatic shutdown causing power cut. So, emergency generators were used as the only source of power at that time. The tsunami hit the shore approximately 50 minutes later. The tsunami waves overtopped the seawall, causing flooding in the basements of the building. This led to disabling of the emergency generators and the plant was fully out of power. TEPCO notified this to the authorities as 'first level emergency'. The government started the evacuation procedure for the people nearby to protect them from radiation harm. The reactors were overheated which caused an explosion in reactor 1. Later, another explosion happened in reactor 3 which injured 11 people. There were several spills from the plant which leaked into the surroundings. The plant's way to prevent leakage was building chemical underground walls which were not fully successful in its objective. Although it was short term radium exposure, 30,000 people were evacuated from the area. According to a linear no-threshold model (LNT risk model) this energy accident's release of radiation into the surroundings would most likely cause a total of 130 cancer deaths in the years and decades ahead.[2]

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[1] IAEA Safety Glossary, Terminology used in Nuclear Safety and Radiation Protection, 2007

[2] John E. Ten Hoeve & Mark Z. Jacobson, *Worldwide health effects of the Fukushima Daiichi nuclear accident*, 5 (9) ENERGY & ENVTL. SCI. (2012).

IMPACT OF INCIDENT ON VARIOUS STAKEHOLDERS

Every disaster leaves after itself some or the other harmful effects and the intensity of the harm done depend upon the type of disaster. The Fukushima daichii's nuclear plant's destruction resulted in radioactive contamination at a greater level. These radioactive elements were released from vessels containing the reactor. The effect of this can be seen on both the living things and the environment.

A report given by the World Health Organization says that the people residing in mostly affected areas, there is a threat among 70% of females of thyroid cancer and 6% of breast cancer exposed as infants. Also, there is a 7% risk of leukemia in males exposed as infants.[3] As of August 2013, 40 new infants ad been diagnosed with thyroid cancer in Japan. The disaster had not only affected the physical health but also the mental health of people. A survey conducted by ligate which showed that the respondents which were residing around the area of incident only said that though there has been no physical injury but the people living over there experience anxiety and instability. These behavioral changes sometimes become more dangerous than the physical injury. Many people had lost their homes during that time so the stress and the behavioral changes will be there for a long time. Professor Simon Wessely, president of the Royal College of Psychiatrists, said that the Lancet series showed that "the psychological and social consequences of nuclear accidents are more profound, long-lasting, divisive and difficult to manage than the more direct consequences of radiation leaks." [4] The disaster had also affected the animals and the ecology. "A growing body of empirical results from studies of birds, monkeys, butterflies, and other insects suggests that some species have been significantly impacted by the radioactive releases related to the Fukushima disaster," says Dr. Timothy Mousseau of the University of South Carolina, lead author of one of the studies.[5]The various species such as butterflies and birds showed major

[3] Stephanie Nebehay, *Higher cancer risk after Fukushima nuclear disaster: WHO,* REUTERS, Feb. 28, 2013, http://www.reuters.com/article/2013/02/28/us-japan-nuclear-cancer-idUSBRE91R0D420130228.

[4] Charlie Kooper, *Psychological impact of nuclear disasters like Fukushima more damaging than the risk from radiation, experts say,* INDEPENDENT, Jul. 31, 2015, http://www.independent.co.uk/life-style/health-and-families/health-news/psychological-impactof-nuclear-disasters-like-fukushima-more-damaging-than-the-risk-from-radiation-experts-say-10428096.html.

[5]Chris Pash, *The Crushing Effects Of Radiation From The Fukushima Disaster On The Ecosystem Are Being Slowly Revealed,* BUSINESS INSIDER, Jul. 9, 2015, http://www.businessinsider.com.au/the-serious-biological-effects-of-fukushima-radiation-on-plants-insectsand-animals-is-slowly-being-revealed-2014-8.

declines three months after the radiation and there was also an increase in mutation in reproductive and non-reproductive cells.

The radiation also affected the agriculture sector. According to Japanese Ministry of Health, the radiation had also affected milk and vegetables produced in that area and had reached beyond the legal limits. The disaster not only affected the land but also the water bodies. Fishing was banned in Fukushima as high amount of radioactive elements were found in the fishes over there.

The disaster's effect can also be seen on a worldwide basis. For instance, soon after the Fukushima incident the German Government decided to close down it's very old 17 nuclear plants and had from that time started moving towards a nuclear free country and had started developing strategies for using coal in future. The reactions were most notable in Germany, where the planned complete phase-out of domestic nuclear generation by 2022 was reaffirmed.[6]Many countries like Germany are doing the same. The Overall global nuclear power output has declined to 10% in 2012 and its share of global commercial primary energy production dropped to 4.5% percent, a level last seen in 1984. This is partially due to Japan's stall on nuclear energy, but also a result of the shutdown of reactors in the U.S.

NATIONAL AND INTERNATIONAL LAW VIOLATIONS IN FUKUSHIMA DISASTER

There are many laws that govern the nuclear scheme. One such law is Atomic Energy Basic Law which was passed in 1955. It establishes the basis guidelines for monitoring the nuclear energy in Japan.[7] After that there are many laws passed and many agencies have been formed. One such commission is Nuclear Safety commission which looks out for basic policy of nuclear safety. The Nuclear and Industrial Safety Agency governed by Nuclear Fuel Material and Reactors or Electricity Business Act, had also issued threat under the incident which was not paid heed to. Thus it violated that act. When the problem occurred neither of the commission and Ministries were able to control it as there was a lot of overlapping of responsibilities between many ministries. The major problem of these agencies was that they lacked quick and efficient response when the

[6] Masatsugu Hayashi, Larry Hughes, *The Fukushima nuclear accident and its effect on global energy security,* 59 ENERGY POL'Y 102, 108 (2013).
[7] Atomic Energy Basic Act, 1955, art. 1, 2 (Japan).

incident occurred. Also, the plant continued to rely on design and features that were not in compliance with the current industry standards. So, it had also violated the standards laid down

When the incident originally happened people believed that it was a natural disaster but there were many investigations conducted which shows that it was a man-made disaster. This was inferred from the fact that prior to the incident an in-house study was conducted by TESCO in which it was found out that there was a possibility of tsunami in future but the officials ignored it and said it to be unrealistic. The incident not only violated Japan's national laws but International laws were also violated Though we can see that the leak caused in the nuclear plant was unintentional as it was caused by the tsunami but the dumping of the effluent of radioactive water by TEPCO was intentional. Japan is a signatory to the Convention on the Prevention of Marine Pollution by Dumping of Wastes under which this type of dumping is not allowed. Also, the government which had although taken responsibility along with TEPCO for the incident can also be made liable under the Vienna Convention and Convention on Nuclear safety which requires the state to take necessary steps to assure the safety of installed nuclear plants which in this case the government failed to do.

SOCIAL IMPLICATIONS

The disaster of such magnitude not only has environmental issues but also have a societal impact. Same had happened with the Fukushima incident. The people who considered nuclear power as a great achievement and development were distressed after the incident. The same people who were previously excited are now afraid of its long term radiation caused due to the disaster. Many people had lost their livelihood, their families their home. Though no one died due to the incident but future diseases were predicted among the affected people. These things create a mental trauma inside a person which lives with the person for a long time and is more dangerous than physical harm. This incident had not only affected the people of the Japan but had also forced many other countries to look upon their own nuclear energy laws and safety procedures.

This incident had also affected the economy of the country. Japan is the major player with regards to the nuclear energy but due to this incident its nuclear energy generation had been slowed down. Also, the other countries are also deciding to close down their nuclear industries. Due to this there is 10% decrease in nuclear power plants and the economy gets affected.

CONCLUSION AND SUGGESTIONS

Whenever any natural disaster happens everyone just abstains from their liability by saying that they had no role in that incident. But sometimes a natural disaster may lead to a man-made disaster which had happened in the Fukushima nuclear power plant. This incident happened due to fault on the part of both the government and the company handling the plant. There was no quick response by both the parties at the time occurrence.

The point to be noticed here is how an incident of such kind affects all the spheres of life: humans, animal, plants and ecology. Not only they affected the policies of Japan but also had grave impact on other countries as well. The international conventions were also violated by the same. The incident had many social implications as well. It affected the policy making, conventions, economy, and mental conditions of the people. Many agencies had informed about the possibility of such occurrence but all the information went into deaf ears. The disaster could have been avoided by taking safety measures and the authorities should have taken more safety measures knowing that they are dealing with dangerous radioactive element which have potential to destroy many lives. There is a need for a system of check which checks that the rules are being followed, the requirements are being fulfilled etc. Preventive steps are needed to be taken to stop the world from having another such disaster.

Air Pollution: Control and Judicial perspective

Bhanu Shree Jain*

Abstract

Air Pollution is the one of the concerned area in regards to pollution. Recent steps of Delhi Government to allow odd or even number of vehicles on a particular day is a welcoming note. The various judicial decisions and the provisions of the Air Act show the active participation of judiciary and legislature to stop the menace of Air Pollution. This Article delves upon the Air Act and the Judicial Perspective and Decision in regards to Air preservation and Conservation. It also gives a small glimpse on Aviation Emission as being the recent recognized attributor to the Air Pollution.

Keywords: *Pollution, Judiciary, Government, Conservation, Law.*

INTRODUCTION:

With a view to implementing the decisions taken in the United Nations Conference on Human Environment held in Stockholm in the year 1972, the parliament relied on the external affairs clause in the Constitution, and took steps towards the control of air pollution. The Air Pollution (prevention and Control of Pollution) Act 1981 (Air Act), was enacted on lines with the provisions of the Water Act.[1] Starting in 1987, India's Central Pollution Control Board (CPCB) began compiling readings of Nitrogen Dioxide (NO2), Sulfur Dioxide (SO2), and particulate matter with 9 diameter less than 100 μm (PM). The data were collected as a part of the National Air Quality Monitoring Program (NAMP), a program established by the CPCB to help identify, assess, and prioritize the pollution controls needs in different areas, as well as to help in identifying and regulating potential hazards and pollution sources.[2] Throughout the 1980s and 1990s, India continued to adopt a series of policies designed to counteract the effects of growing environmental damage. The analysis focuses on two key air pollution policies, the Supreme Court Action Plans

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[1] P. LEELAKRISHNAN, ENVIRONMENTAL LAW IN INDIA 170 (3rd ed. 2013).

[2] Michael Greenstone & Rema Hanna, *Environmental Regulations, Air and Water Pollution, and Infant Mortality in India*, HARV. ENVTL ECON. PROGRAM (Sep., 2012).

and the catalytic converter requirements, and the primary water pollution policies, the National River Conservation Plan. These policies were at the forefront of India's environmental efforts. Importantly, these policies were also phased into different cities in different years.[3]

The distinguishing characteristics of the Air Act can be seen in the provision for declaration of air pollution control zones, inclusion of noise within definition of air pollution and control on pollution caused by motor vehicles. On consultation with boards, the state government can declare air pollution control area within the state.[4] The state government can prohibit use of any fuel other than approved fuel in the area. No appliance other than the approved appliances can be used. If it causes or likely to cause air pollution, burning any material, other than fuel, can be prohibited. Restrictions are imposed on the establishment and operation of any industrial plant within the area by the system of consent administration.

As in the case of Water Act, the board considers applications for grant of consent before allowing any establishment to operate. In order to ensure that the standards of emission of air pollution from automobiles are complied with, the government will issue instructions to authorities under the Air Act.[5] This is done after consultation with the state pollution control board. The control of vehicular pollution is not restricted to the air pollution control area, but may extend to the whole area within a state. The Air Act makes an attempt to bring noise pollution within its ambit by including noise within the definition of air pollution.[6] After the introduction of the EPA, the rules framed there under lay down not only the standards to emission of discharge of pollutants, but also ambient air quality standards.[7]

Pollution Control: Judicial Perspectives

For a long time since the enactment of water and Air Acts, industries were invariably disregarding the directions of pollution control boards and violating the conditions of consent with impunity. The Boards, being the agencies envisaged to control pollution, stood as helpless witnesses to these

[3] *Id*.
[4] Air (Prevention and Control of Pollution) Act, 1981, § 19.
[5] Air (Prevention and Control of Pollution) Act, 1981, § 20.
[6] Air (Prevention and Control of Pollution) Act, 1981, § 2(a).
[7] Noise Pollution (Regulation and Control) Rules, 2000.

tragic happenings. The malady stirred the conscience of the courts. The very negligence of the boards in their functioning also came to the notice of judicial vigilance.[8]

In *AFD & C Ltd v Orissa State Pollution Control Board*,[9] Orissa High Court looked into the different parameters of the directing power under the Air Act. In *Chaithanya Pulverising Industry v Karnataka Pollution Control Board*,[10] the question was whether a polluting industry was to be prohibited from carrying on its activities or if it were to be prohibited, should it be given an opportunity for mitigating pollution. In *MC Mehta v Union of India*,[11] the Supreme Court examined how far brick kilns located near Taj Trapesium could be allowed to function. Similarly, the old 'bot' technology of tyre treading should give way to new 'cold're- treading process, according to the High Court of Himachal Pradesh in *Ved Kaur Chandal v State of Himachal Pradesh*.[12] Automobile Pollution was the issue in *Murli Purushothaman v Union of India*,[13] where Kerala High Court directed the state government to commence centers to measure carbon monoxide and other pollutants emitted from automobiles. In another *MC Mehta v Union of India*,[14] the Supreme Court took a firm stand for conversion from diesel vehicles to CNG vehicles as part of the campaign to free Delhi from pollution hazards. In *Adarsh Brick Kiln Industry v Chairman, Pollution Control Board*[15] Allahabad High Court fixed a distance rule for establishing brick kilns. In *Jackson & Company v Union of India*[16] Delhi High Court imposed the manufacturer's liability for pollution caused by DG generators. In *Maulana Mufti Sayed Md Noorur Rehman barkati v State of West Bengal*[17] Calcutta High Court sustained the prohibition on the use of microphone for the call of azan before 7 am in the morning.

[8] P. LEELAKRISHNAN, ENVIRONMENTAL LAW IN INDIA 171 (3rd ed. 2013).
[9] A.I.R. 1995 Ori. 84(India).
[10] A.I.R. 1987 Kant. 82(India).
[11] (2001) 9 S.C.C. 235 (India).
[12] A.I.R. 1999 H.P. 59 (India).
[13] A.I.R. 1993 Ker. 297 (India).
[14] A.I.R. 2002 S.C. 1696(India).
[15] A.I.R. 2004 All. 8(India).
[16] A.I.R. 2005 Del. 334(India).
[17] A.I.R. 1999 Cal. 15(India).

Strengthening the Hands of Agencies and Standards of Control

The Ganga Pollution case[18] is a specific illustration where the Supreme Court noticed the utter indifference of the tanneries, and ordered to stop the discharge of trade effluent into the river Ganga. It is rightly held that the immense adverse effect on the public at large by the discharge of trade effluents would outweigh any inconvenience caused to the polluting entities on account of the closure. Specific directions were issued to the tanneries either to set up primary treatment plant or to stop their functioning. The Central Government, state pollution control board and the district magistrate were asked to monitor the enforcement of its orders. Assignment of such a watch dog function to the authorities was unprecedented. It gave them more awareness and strength for taking up anti- pollution measures.

An Emerging Field in Air Pollution: Aviation Emission

The emission of Greenhouse gas from wide range of economic activities has lead to the increased global temperature and melting of polar caps.[19] This includes the global transport sector, which accounted for 13% of all greenhouse gas emission in 2004.[20] Global aviation was responsible for almost a quarter of these emissions, with over 60% of aviation's emissions coming from international flights.[21] However, the absence of regulation for International Aviation emission is glaring omission in the international governance architecture for climate change.[22]

[18] MC Mehta v. Union of India A.I.R. 1988 S.C. 1037(India).

[19] Michael C. Murphy and Karen M. Gillam, Greenhouse Gases and Climate in Environmental Impact Assessment – Practical Guidance available at: http://www.iaia.org/conferences/iaia13/proceedings/Final%20papers%20review%20process%2013/Greenhouse%20Gases%20and%20Climate%20in%20Environmental%20Impact%20Assessment%20%E2%80%93%20Practical%20Guidance.pdf?AspxAutoDetectCookieSupport=1 (last visited on 14th October, 2015).

[20] Terry Barker and others, 'Technical Summary' in Bertz and others (eds), *Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP 2007) 27.

[21] David Lee and others, Shipping and Aviation Emissions in the Context of a 2 degree Celsius Emission Pathway (2013) available at: http://www.cate.mmu.ac.uk/wpcontent/uploads/2013/03/Shipping_and_Aviati on_Emissions_in_the_Context_of_a_2_degree_Celsius_Emission_Pathway_22032013.pdf (last visited on 14th October, 2015).

[22] Beatriz Martinez Romera & Harro Van Asselt, *The International Regulation of Aviation Emissions: Putting Differential Treatment into Practice* 259 J. ENVTL L., (2015).

CONCLUSION

The increasing pollution in the cities of India is a most concerned area. India may, in coming future, have highest number of Polluted cities. The Recent orders of National Green Tribunal in regards to increasing pollution in capital city Delhi is the alarm. The Indian Judiciary had always taken proactive action in safeguarding the Environment. The current judicial trend in cases relating to Air Pollution shows the judicial activism of Indian judiciary as various directions and measures are enforced by ways of orders. Nonetheless, the fact is still intact that even having the effective laws and judiciary in place India is still not ready to curb the Air Pollution completely because of the lack of Implementation of the Act and the orders of the Court.