



**CHANGING DIMENSIONS
&
EMERGING ISSUES
IN
ENVIRONMENTAL LAW**

**Prof. (Dr.) J.S.P. Srivastava
Dr. Avinash Kumar Babu**



**ENVIRONMENTAL
LAW**

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WPP 

Well Press Publications
Roorkee, Uttarakhand, INDIA

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ISBN : 978-81-956482-5-2

Publication : 22 Oct., 2022

Edition : First, 2022

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Cover Image:
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Published by:

Well Press Publications

787, Lane 9, East Shiv Puram, Roorkee - 247667

Distt.-Haridwar [Uttarakhand], INDIA

website : www.wellpress.in, www.recentjournals.in

email : ritesh.rke@gmail.com

Contact : +91-9412999793, +91-9319056411

Typeset by

Shiv Computer & Printers, Roorkee

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*Edited Book*

Changing Dimensions and Emerging Issues in Environmental Law

|| 2022 ||

Sustainable Development: Concept and Legal Aspect

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Abstract

Sustainable development includes four dimensions society, environment, culture and economy and the goals of sustainable development can be achieved only when these four dimensions are in harmony. Sustainable development is the developmental processes where the development goals are achieved with an aim to sustain the resources for the forthcoming generations i.e. the resources should not be exploited beyond the carrying capacities of the ecosystems. The sustainable resource utilization is the only way to protect the ecosystem. People in the developing and developed countries are exploiting the resources beyond the repairable capacity which has damaged and damaging the ecosystems and resulted in the loss of biodiversity. All the four parameters of sustainable development is protected by the law i.e. every person has right of social equity, has right to be provided with an environment suitable of the lives, rights for the conservation of his/her cultural beliefs and also have certain economic rights too. This chapter aims to understand the concept of sustainable development along with legal background.

Keywords: Sustainable Development, Biodiversity, Ecosystem, Damaged.

Introduction

The arrangement of plant cell with living cell in creation is very deep. Plants and animals are mutual existence to each other. Trees absorb Carbon dioxide and release Oxygen into the environment, that is, the life air of our living beings. But at present, human pressure on forests is increasing a lot. This pressure is due to both the modern lifestyle and the rural system. There is a dependence on forests for fulfilment of the daily needs of the rural population. Agricultural equipment, animal feed, house construction item, etc. are being obtained from the forests. Similarly, for fulfilment of modern lifestyle, furniture, modern furnishings etc. are also obtaining from the forests. Environmental degradation is a major problem in the world. The result of this is being seen as global warming.

A pure and balanced environment is the lifeblood of human life. The environment available on earth is the best gift of nature. Through the environment, the earth has gained the pride of the living world. Human beings use artificial transformation of the resources available on the earth to fulfil their interests and needs but human beings are exploiting the resources available on earth instead of using them. Economic development motivates man to exploit the environment. The result of such exploitation of the environment is visible in the form of ecological imbalance. So it is necessary for the present and future human generations to stop this imbalance.

Many theories have been developed to maintain the environmental balance, but the most important of them is that of sustainable development. Sustainable development emerged in the 1970s but fully flourished in the 1990s. After the U.N. conference on Human Environment, Stockholm, 1972, the awareness of sustainable development of the world society gradually increased.

The principle of sustainable development has evolved on the basic assumption of co-existence of two apparently conflicting notions like environment and development.

The principle of sustainable development emphasises on two basic needs, firstly, need for socio-economic development and secondly, need of limitation imposed on the environment's capability to cope with the present and future requirements.¹

¹ Philippe Sands: Principles of International Environmental Law (1995) p. 198.

Definition of Sustainable Development

The term sustainability originates from the Latin word "sustinere" which means "to hold up". This word also seen in other language like Italian "sostenere", in French "soutenir", in English "sustain".

Sustainable development word also describe in the Brundtland Report as "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.... Sustainable development requires meeting the basic needs of all and extending to all opportunity to satisfy their aspirations for a better life."²

Sustainable development is a form of balance development. Balance development means development without destruction. It is also called sustainable development or healthy or sound development.

There are three main components of this development:

(1) **Integrated Development:** Integrated development refers to such development in which equal importance is given to both economic development and ecosystem. The focus is on integrated development with recognising the interdependence of economic development and ecology.

(2) **Balance Development:** Balanced development refers to such development in which all sections of the society get proper benefits. At the same time, to develop such a way that bridges the gap between developed and underdeveloped countries and pay full attention to the fulfilment of basic needs of poor countries.

(3) **Sustainable development:** Sustainable development refers to such development which keeping in mind only the immediate needs of the human society, presents the basis of sustainable development for the future as well. It means sustainable and perpetual development.

Human beings are the main focus of sustainable development. Its main thrust is the fulfilment of equity and distributive justice along with adaptation to the natural ecosystem.

Objectives of Sustainable Development:

The Sustainable development principle focuses on following objectives:

- (1) **Social Sustainability:** Which aim to maintenance and enhancement of the quality of life adopting the principle

² Report of the U.N. Commission on Environment and Development titled as *Our Common Future*(1987) p.43.

of equal distribution of wealth and available material resources.

(2) **Economic Sustainability:** Which aim to equitable distribution of economic benefits among the masses and also aim to maintain production of goods and services for development and efficiency.

(3) **Environmental Sustainability:** Which aim to conservation and management of the natural resources and protect the natural balance of the planet, while limiting the impact of human activities on the environment.

From the environmental point of view, the objective of the principle of sustainable development centres round three issues, namely, (i) to maintain essential ecological processes, (ii) to preserve genetic diversity; and (iii) to secure sustainable utilization of species and ecosystems.

International and National Legal Perspectives On Sustainable Development

In 1983, the Executive Director of the United Nation Environment Program, Mr Tolba clearly expressed the view that "We have come to realise that the two : environment and development are interdependent, that without conservation you cannot have development and without development you cannot have conservation."³

In this way, in the present economic society, it is necessary to maintain a balance in the fulfilment of resources and needs because the coming generation can also use theses resources to fulfil their needs. Keeping this objective in mind, all the civilized countries of the world have emphasized on environmental protection and balance and have adopted the principle of sustainable development.

International Legal Perspectives Of Sustainable Development :

Sustainable development in international society was first discussed openly at the Stockholm Convention of 1972. We can say that it was the initial stage of the concept of sustainable development. After the Stockholm Conference, many other conferences and meetings were held, in which the concept of sustainable development was discussed

³ Tolba 1983; 3

and the rules in relation to it were strengthened. The major conferences and meetings in this context are - Cocoyoc Declaration 1974, Brundtland Commission Report 1983, Rio Declaration 1992, Agenda 21, Convention on climate change, Convention on Biodiversity.

The U.N. Conference on Human Environment, Stockholm, 1972:

The U.N. Conference on Human Environment held in Stockholm on 5 to 16 June, 1972 taken the first attempt by the countries to solve the global problem of conservation and regulation of environment by an international agreement. 'Stockholm convention 1972 was a turning point in international relation between various nations as it placed the issue of protection of biosphere on the official agenda of international policy on environmental law.'⁴

Stockholm convention 1972 has two part, the first part of the convention comprised seven realities whereas the second part contained 26 principles set out for improvement and protection of environment.

Out of the seven truths of part one of this convention, we would like to mention the third and seventh truths, which strengthen the principle of sustainable development. :

1. It is natural human tendency to use his creativity for his advancement and progress but he should not cause damage to water and air resources, animals or forest assets in this endeavour as it would adversely affect the environment and ecosystem.⁵
2. People, including citizens, groups, industrialists and social institutions should make common efforts for the preservation and improvement of environment for their development and prosperity. The U.N. should also organize conferences, conventions, workshops, seminars etc. to provide a common platform for all the countries to discuss their environment related problems and find solution to resolve them.⁶ Also out of the 26 principles of part two of this convention, we would like to mention the second, five and

⁴ Paranjape Dr. Vinay N., Environmental Law, C.L.A., Allahabad, p.g. 37.

⁵ Third truth of Stockholm convention 1972

⁶ Seventh truth of Stockholm convention 1972

eleventh principle. It has accepted the commitment of the theory of sustainable development:

- a. Natural resources of earth, including the air, water, land, flora and fauna and especially representative samples of ecosystems, must be safeguarded for the present and future generations through careful planning and management.⁷
- b. The non-renewable resources of the earth must be employed in a way so as to guard against the danger of their future exhaustion and to ensure that mankind shares benefits from such employments.⁸
- c. The environmental policies of all states should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all.⁹

The conference concluded that it has become imperative for the mankind to defend and improve the environment not only for the present generation, but also for future generations to come.¹⁰

Cocoyok Declaration, 1974 :

An international seminar on 'Pattern of Resource use, Environment and Development Strategies' was organized under the joint sponsorship of U.N. Development and U.N. Trade and Development agencies in Cocoyok in October, 1974. This seminar was presided by Lady Jaction. The seminar ended with a resolution that "Our first concern is to redefine the whole purpose of development. This should not be to develop things but to develop man—We therefore reject the idea of growth first justice in the distribution of benefits later".

Brundtland Commission Report 1987 :

⁷ Second principle of Stockholm convention 1972

⁸ Fifth principle of Stockholm convention 1972

⁹ Eleventh principle of Stockholm convention 1972

¹⁰ Paranjape Dr. Vinay N., Environmental Law, C.L.A., Allahabad, p.g. 44.

The U.N. General Assembly in 1983 had set up a Commission on Environment and Development under the President ship of Mrs. Gro Harlem Brundtland, the Prime Minister of Norway. The commission proceeded with the concept of 'from one earth to one world'. The Commission define of sustainable development - " sustainable development is the development which meets the needs of the preset without compromising with the ability of future generations to meet their own needs".

Rio Declaration on Environment and Development

The United Nations Conference on Environment and Development (UNCED) popularly known as 'Earth Summit' was held in June 1992 at Rio-de-Janerio in Brazil. It was a ten days Conference held from June 3 to 12, 1992. The Earth Summit produced some important documents which can be considered as its remarkable achievement in the prevention and improvement of environment all over the world. These are as follows :

1. Reo Declaration on environment and development
2. Agenda 21
3. Convention on Climate Change
4. Convention on Bio-Diversity
5. Convention on Forest Management.

The Rio declaration contains 27 principles concerning rights and obligations of the State worldwide regarding environmental protection. The most important principal are as follows :

Principal 1.- Human being are at the centre of concerns for sustainable development.

Principal 2.- States have a sovereign right to exploit their resources in compliance with their own environmental and developmental policies.

Principal 3.-Right to development must be fulfilled as to equitably meet development and environmental needs of present and future generations.

Principal 4.-Environmental protection will be an integral part of the development process for achieving sustainable development and cannot be thought of in isolation.

Principal 5.-All the states and all the people should cooperate in the important work of poverty alleviation for sustainable development so that there can be equality in the standard of living.

Principal 6.-The developing States and semi-developed States should be given priority in the environmental development programs.

Principal 8.-States should reduce and eliminate unsustainable pattern of production and consumption for achieve sustainable development and a high quality of life.

Principal 9.-State should cooperate in increasing scientific and technological knowledge.

Principal 10.- The state will try to solve environmental problems at every level.

Principal 11.-State should enact effective environmental legislation.

Principal 12.- The State to co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries to better address the problems of environmental degradation.

Principal 13.- State shall develop national law regarding liability and compensation for the victims of pollution and other environmental damages.

Principal 14.-State will cooperate with other states to discourage environmental degradation and harmful works for health.

Principal 15.-For the protection of the environment, the policy of caution will be adopted widely by the states according to their capacity.

Principal 18.-The State shall immediately inform those States of natural destruction and other emergency situations which may have adverse effects on the environment.

Principal 20 and 21.-There should be active participation of women and youth in the management and development of environment. Therefore, they should be associated with the sustainable development programme.

Principal 23.-There is need to protect the natural resources of persons who are victims of exploitation and coercion.

Principal 26.-States should resolve their environmental disputes by peaceful means under the United Nation Charter.

Principal 27.-States and people should cooperate in the spirit of trust and participation in the fulfilment of the principles embodied in the Rio Declaration and in the further development of international law in the field of sustainable development.

Agenda 21 :

Agenda21 provides a blueprint of local, national, regional and global actions to affect the transition to sustainable development in 21st

century. According to Boutros Ghali, who was then General Secretary of United Nation, 'Agenda 21 constitutes a centrepiece of international co-operation and co-ordination activities within the UN system for many years to come'.

The Agenda 21 has exposed to the world nations the environmental problems which people are facing today and suggested that these could be solved only by international co-operation through sustainable development. The Agenda 21 provide five section as under :

Section 1 : Social and Economic Dimension- - This section recommended for International co-operation to acceleration sustainable development in developing countries and the related policies such as reducing poverty, changing consumption patten, demographic dynamics and sustainability, promoting and protecting human health and integrating environment and development in the process of decision making.

Section 2: Conservation and Management of Resources for Development - This section emphasizes on integrated approach to planning and management of land resources, dealing with the problem of deforestation management of fragile ecosystems, promoting sustainable agriculture and rural development, conservation of biological diversity, environmentally, favourable biotechnology, protection of seas and oceans and fresh water resources, management of solid wastes and also radioactive waste materials.

Section 3 : Strengthening of the Role of Major Groups - This section focused on global action for women towards equitable and sustainable development and also recognises the role of children, youth and indigenous people and their communities.

Section 4 : Means of Implementation—This section relate to financial resources and mechanisms, transfer environmentally sound technology, co-operation and capacity building, science for sustainable development. The need for promoting education, public awareness and training at national and international level for capacity building is also emphasized in this Agenda. The use of international legal mechanism and institutional arrangement is also suggested for decision making.

Section 5 : Establishment of a sustainable Development Commission consisting of 53 members who are nominated from various countries.

U.N. Commission on Sustainable Development, 1993 :

Under the Agenda-21, which is the most important document of Rio-de-Janerio, set up the U.N. Commission on Sustainable Development. The Commission had 53 members elected in accordance with the principle of geographical distribution to ensure a balanced representation from different continents and between the developed and developing world. Its first session was held in 1993 in New York.

The main functions of the Commission are as follows-

1. Ensuring the work to be done after the Rio Convention to make it effective.
2. Increasing the international co-operation.
3. Rationalize the ability to make Inter-governmental decision making capacity of environmental developing issues.
4. Examine the progress of the implementation of Agenda 21 at the national, regional and international level and the problems faced in its effective enforcement.

National Legal Perspectives of Sustainable Development :

There is a special mention of the provision relating to environmental protection in the Indian Constitution. Fundamental Right, Directive Principle of state Policy, Fundamental Duties and other parts of Indian constitution have been mentioned in the provision related to environmental protection.

Inspired by the principles of the Stockholm Conference 1972, India also become more active in the context of environmental protection. Consequently, two new constitutional provisions, namely, Article 48-A and Article 51-A(g) were inserted in the Constitution of India by the 42nd constitutional (Amendment) Act, 1976.

Fundamental Right and Sustainable Development :

Clean and healthy environment is a fundamental right of human beings. Through the creative interpretation of Article 21 of the Constitution of India, the Supreme Court of India has accepted this and considered the right of individuals to a healthy and clean environment as a fundamental right. The Supreme Court in *Rural*

Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh,¹¹ for the first time recognized the right to live in healthy environment as a part of Article 21.

In *A.P. Pollution Control Board v. Prof. M.V. Nayadu*,¹² the Supreme Court reiterated that right to healthy environment and a sustainable development are fundamental rights implicit in the right to life under Article 21.

The Supreme Court has pointed out that two salutary principles governing environment are (1) Principle of sustainable development, and (2) Precautionary principal.¹³

About the relationship between ecology and Article 21, the court clearly stated that the right to life is a fundamental right under Article 21 and since the right to life connotes "quality of life", a person has a right to the enjoyment of pollution free water and air to enjoy life fully.

Any disturbance of the basic environment elements namely, air, water and soil, which are necessary for 'life' would be hazardous to 'life' within the meaning of Article 21 of the Constitution.¹⁴ The Supreme Court has accepted many principles through its decisions in the context of environmental protection and sustainable development, such as **Public trust policy**, **Precautionary principle**, **Polluter pays principle**, **Absolute liability principle**, **Concept of banning**. These concepts are part of environmental law of the country. 'The concept of sustainable development is based on the principle of inter-generational equity'¹⁵ Development needs of the person without compromising the ability of the future generation to meet their own needs is the basis of this concept.¹⁶

¹¹ AIR 1985 SC 652.

¹² (2001) 2 SCC 62.

¹³Jain M.P.; Indian Constitutional Law, Eight Edition, LexisNexis, p.g 1224.

¹⁴ Jain M.P.; Indian Constitutional Law, Eight Edition, LexisNexis, p.g 1224.

¹⁵ Ibid

¹⁶ T.N. Godavarman Thirumulpal V UOI, (2006) 5 SCC 47

Public trust policy- Public trust which rests on the premise that certain natural resources like air, sea, water are means for general use and cannot be restricted to private ownership. These resources are a gift of nature and the state as a trustee thereof, is duty bound to protect them. The state is the trustee and general public the beneficiary of such natural resources as sea, running waters, air, forests, ecologically fragile lands.¹⁷

Precautionary principle-The 'Precautionary Principle' means that the state government and the concerned statutory authorities must anticipate, prevent and attack causes of environmental degradation.

Polluter pays principle-The principle of 'polluter pays' means that one who carries on a hazardous activity is liable to make good the loss caused to another person by such activity. The Supreme Court in case *Indian Council for Enviro-Legal Action-v UOI*¹⁸ ruled that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.

Absolute liability principle-Our Supreme Court rejected the common law doctrine of strict liability which propounded by House of Lords in the historic English case *Rylands v. Fletcher*¹⁹. The Supreme Court in the case of *M.C.Mehta v. Union of India*,²⁰ observed that India has to develop its own law and if there be need to formulate new principle of liability to deal with unusual situation on account of inherently dangerous or hazardous activities, there should be no hesitation to evolve a new principle of liability though such principle might have not been evolved in England. Justice P.N. Bhagwati in this case observed: "An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a threat to the health and safety of the persons working in the factory and those residing in the surrounding areas owes an absolute and non delegable duty to the community to ensure that no harm results to anyone on account

¹⁷ MC Mehta V Kamal Nath, (1997) 1 SCC 388

¹⁸ AIR 1996 SC 1446.

¹⁹ (1868) L.R. 3 H.L. 330.

²⁰ AIR 1987 SC 1086.

of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with highest standards of safety and if any harm results on account of such activity, the enterprises must be absolutely liable to compensate for such harm and it should be no answer to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

Thus, the principle of absolute liability a non-delegable duty on the part of industry to prevent environmental pollution and be prepared to face all the direct, indirect or foreseeable consequences and pay compensation, if there is environmental pollution due to its activities.

State Duty to Protect Environment- As a Directive Principal of State Policy :

Keeping the environment clean is the fundamental duty of the citizens. Realizing the importance of this, part IV was added to the Constitution by the 76th Constitutional Amendment and citizens were told fundamental duties. Today in our constitution eleven fundamental duty deals for the citizen's of India. The fundamental duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.

Article 51-A(g) specifically deals with citizens duty ' to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.' In the case *TN Godavarman Thirumulpad v UOI*²¹ Supreme court said that Article 51A(g) imposes a fundamental duty on every citizen to preserve environment.

Fundamental Duty of Citizens to Protect Environment:

Articles 36 to 51 contain the Directive Principles of State Policy. The Directive Principles seek to give certain direction to the legislatures and governments in India as to how, and in what manner and for what purpose, they are to exercise their power. But these principles are specifically made non-enforceable by the Court of law. Under the Directive Principle of State Policy, Article 48-A, it is the duty of the

²¹ AIR 2012 SC 1254

state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

In the case of *MC Melita v UOI*²² the Supreme court said " Articles 39(e), 47, and 48A by themselves and collectively cast a duty on state to secure the health of the people improve public health and protect and improve the environment".

Conclusion:

This planet is not only for humans. Earth is the common home of all of us living beings, but man has used his brain to fulfil his greed. Presently our lifestyle has become consumerist instead of utilitarian. Because of this we are using natural resources more than necessary. The Global Foot Print Network declared 'Overexploitation Day' by counting how many natural resources the world's population exploited, how many created and how many improved in a year. Overexploitation Day was celebrated on 29 December in the year 1970, which was celebrated on 29 July in 2021. This means that the resources that we were supposed to use in 12 months, we used up within seven months. This calculation done at the global level, makes it clear to us that all of us are exploiting natural resources with great enthusiasm. It is a great threat to the ecology. There is a need for the sustainability of natural resources. This will not happen only by making laws. This will be possible by being aware of the environment of all the human beings living on earth and adopting a simple life.



²² JT 2002(3) SC 527