
ENVIRONMENTAL JURISPRUDENCE VIS-À-VIS THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT

Snigdha Sood, Practicing advocate at the Punjab and Haryana High Court, Chandigarh,
LLM, LL.B., MA (English), B.A (Hons.) English

ABSTRACT

It may not be far-fetched to claim that if a wide extinction level apocalypse-like event does occur, it will be the outcome of human actions, rather than an asteroid. The incessant ignorance of the warning signs further worsens the issue of climate change, and essentially confirms the doom of the human race in its entirety.

The exploitation of the environment by the various industries for the promise of economic development, is a double-edged sword which will eventually lead to millions, if not billions of casualties in the war, that the humans have waged against themselves. The principles of sustainable development amidst this, provide a glimmer of hope, perhaps, light at the end of the tunnel, which lays down a path for the co-existence of environmental protection as well as the economic development of the human society.

In this paper, the author narrativizes this discourse that essentially focuses on the approach wherein, economic development and environmental protection can co-exist. The papers sheds light on the various challenges that are likely to be faced in the process. Further, the author strives to emulate the overlapping of these two principles, and the geo-political stance of nations on the adverse impact of the industries that release hazardous waste in the environment, laying bare the issues at hand in each approach. Lastly, it suggests an effective recourse to bridge the apparent gaps in the process to bring about economic development and further the cause of environmental protection.

Keywords: Environment, Protection, Sustainable Development, Geo-Politics, Jurisprudence, Economic Development.

I. Introduction

The environment is most certainly a vital part of the equation that first planted the seed of life on the face of the Earth, and is one of the main factors for sustenance of life on the planet.

Unfortunately, the masses today take Environment protection for granted to meet the short-term goals of *Economic Development*, whilst ignoring the long-term adverse effects of the callousness that can be attributed to mankind. *Mahatma Gandhi* in this context, rightly said, “*The world has enough for everyone's needs, but not everyone's greed*”. Amidst the greed for comforts in the luxurious, industrialized world, the fact that which is not paid any heed to, is that, comfort comes with a cost, which will eventually have to be paid, if not by this generation, then perhaps the following generation.

The main problem at the helm of everything is that, the selected few people or the *Decision Makers* perhaps, such as the Politicians, or huge businessmen or industrialists, are primarily responsible for causing the harm as they are the deriving power and they profit out of the exploitation of the environment-such as chopping down forests for wood, or bypassing Environmental Regulations.

While the State Governments of the particularly affected areas and even the Central Government is making some strides in the pursuit of Environment protection, there still is a long way to go. The United Nations has also made strenuous efforts to achieve sustainable development. In this frame of reference, it is pertinent to note that, in 1987, the United Nations¹ laid down the Principles of Sustainable Development for its Member States which categorically stated the mechanism to achieve economic stability while balancing the protection of the environment. However, as far as its implementation is concerned, ever since the end of World War II and inventions of the atomic bomb, the dominating factor has always been the “Economic Development” of a nation. The economic power of a nation dictates the amount of respect it gets on an international forum as well as the influence they enjoy over other nations.

The said economic development comes at an environmental cost, which most nations do not consider paying possibly because not all environmental issues have immediate and ephemeral consequences, and no change can be detected instantly, which makes some politicians even

¹ Brundtland Commission, Report of the World Commission on Environment and Development: Our Common Future, 1987

question that if the issue of global warming is real². Such ignorance can further aggravate the environmental issues for, unless there is acceptance of the problem, the problems cannot possibly be resolved, this was primarily the case when the United States withdrew³ from Paris Accord⁴, valuing economic stability over environmental protection. Further, the paper emulates the principles for sustainable development and the path that would lead to the achievement of the aforementioned *utopia*.

II. Sustainable Development

Sustainable development is a concept that helps extract or refine natural resources in such a manner that it does not cause harm to the environment or limits it considerably so that the said natural resource would remain available in perpetuity, if it is of non-renewable nature. On the face of it, the concept seems too good to be true as it provides a way to continue the dependency on natural resources as well as achieving the status of “economic powerhouse”, along with saving the planet for the future generations. If we did live in a perfect and harmonious world, this would have been true and the end of story, but unfortunately, we are not and we don't live in an idealised world.

One of the main problems that arises from the concept of sustainable development is that it basically puts limits and regulations in the path of a nation to become an economic powerhouse and denies competitive advantage, hence the developing nations tend not to follow the principles of sustainable development⁵ such as China or North Korea, whose aim is to dominate world, and the principle of sustainable development is often perceived as a hurdle in that process.

Further, sustainable development is ineffective if viewed from strictly environment friendly perspective as it adds additional costs, making the price of the commodity go up, which then

² University of Hull, “Why people still believe climate change is fake... and why we know they're wrong” available at <https://www.hull.ac.uk/special/blog/why-people-still-believe-climate-change-is-fake-and-why-we-know-theyre-wrong> (Last visited on 28/01/2022)

³ Matt McGrath, “Climate change: US formally withdraws from Paris agreement” *BBC News*, 04/11/2020, available at <https://www.bbc.com/news/science-environment-54797743> (Last visited on 28/01/2022)

⁴ United Nations Framework Convention on Climate Change, 2015

⁵ Sustainability for All, Are Countries Achieving the Sustainable Development Goals? Available at https://www.activesustainability.com/sustainable-development/are-countries-achieving-the-sustainable-development-goals/?_adin=02021864894 (Last visited on 28/01/2022)

leads to decrease in demand because the cheaper (non-environment friendly) versions of these products are available in the market.

The other problem being that, sustainable development provides a limit on the consumption of natural resources and on the damage to the environment, but even after the limit, the natural resources will still get depleted one day, thus only postponing it but not extinguishing the chances of depletion. Even after having limited the damage, there still is damage, which will eventually lead to something disastrous for which the planet might never be prepared.

However, one of the perks of the concept of sustainable development is postponing the inevitable climate change to such an extent that together the Nations might come up with some new technology or perhaps an alternative and clear resource which would eventually cease the dependence of the mankind on fossil fuels, such as widespread adoption of nuclear energy⁶, if it were to be made safer and more efficient.

III. Sustainable Development as per the Domestic Law

Following the ratification of the Stockholm Convention⁷, the Indian government and machinery has portrayed itself to be one of the key leaders in the fight against climate change by providing legislative authority to environmental jurisprudence and passing acts such as, The Environment Act 1986⁸, The Forest Act 1980⁹, The Wildlife protection act 1972¹⁰, The Air act 1981¹¹, The Water Act 1974¹² and The Indian Forest Act 1927¹³, which effectively enforce the environmental legislations of the country. However, due to the changing dimensions of the world in which we are living in today and the rapid industrialization, the laws have somewhat lagged behind in their objective and intent, therefore need revision. In order to combat this, a

⁶ Office of Nuclear Energy, 3 Reasons Why Nuclear is Clean and Sustainable, Available at <https://www.energy.gov/ne/articles/3-reasons-why-nuclear-clean-and-sustainable> (Last visited on 28/01/2022)

⁷ Nawneet Vibhaw and Upama Bhattacharjee, "India Bans Seven Persistent Organic Pollutants Listed Under Stockholm Convention" *Mondaq*, 19/10/2020, available at <https://www.mondaq.com/india/chemicals/995588/india-bans-seven-persistent-organic-pollutants-listed-under-stockholm-convention> (Last visited on 28/01/2022)

⁸ Environment Protection Act, 1986 (Act 29 of 1986)

⁹ The Forest (Conservation) Act, 1980 (Act 69 Of 1980)

¹⁰ The Wild Life (Protection) Act, 1972 (Act 53 Of 1972)

¹¹ The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 Of 1981)

¹² The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 Of 1974)

¹³ The Indian Forest Act, 1927 (Act 16 of 1927)

committee has been formed to suggest pertinent amendments in the existing legislations¹⁴. Furthermore, constitutional protection has been conferred onto the environmental laws as a Right to live in a pollution free environment¹⁵ and the Fundamental duty that State shall protect and improve the environment¹⁶.

The stance of the Judiciary on the issue of environmental protection can be observed from the case of *M.C. Mehta vs. Kamal Nath*¹⁷, in which while holding the person liable for pollution to pay the damages, the court held that “Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole.” From that critical juncture the stance of the judiciary became amply clear that restoring the ecosystem and ecology is in fact the responsibility of the polluter.

The concept of sustainable development or whether pollution and progress go hand in hand was once again raised in the case of *M.C. Mehta vs Union of India*¹⁸, wherein it was categorically held that, the production of goods and services are becoming increasingly reliant on science and technology, with which comes an element of risk and that, all the necessary steps must be taken into account in order to ensure safety.

Further in the case of *N.D. Jayal vs Union of India*¹⁹, the Apex Court gave clearance to construction of the *Tehri Dam* despite the harm that it was causing to the environment, in order for it to achieve a larger goal for the good of public purpose whilst stating that Right to sustainable development is a fundamental right, thereby lending official support of judiciary to the concept of sustainable development.

Furthermore, the judiciary has incorporated many doctrines in order to further the cause of environmental protection in India, such as:

- a) Polluter Pays Principle – Polluter pays principle basically holds accountable those who cause pollution, whether it be air, water or land. In this, the polluter not only has to pay for the damages caused, but also has to compensate monetarily for the restoration of

¹⁴ Anupam Chakravartty, “Six environmental laws to be amended soon”, *DownToEarth*, 07/04/2015, available at <https://www.downtoearth.org.in/news/governance/six-environmental-laws-to-be-amended-soon-49317> (Last visited on 28/01/2022)

¹⁵ The Constitution of India, 1949, art. 21

¹⁶ The Constitution of India, 1949, art. 48A

¹⁷ *M.C. Mehta vs Kamal Nath & Ors* (1997) 1 SCC 388

¹⁸ *M.C. Mehta And Anr vs Union of India & Ors.* 1987 AIR 1086, 1987 SCR (1) 819

¹⁹ *N.D. Jayal and Anr vs Union of India and Ors.* Writ Petition (civil) 295 of 1992

the polluted substance to its natural stance. The principle was first originated in OECD²⁰, but it was first applied in India in case of *Indian Council of Enviro-Legal Action vs Union of India*²¹, in which it was decided that financial responsibility of the damage caused should rest upon the industry that caused it.

- b) Public Trust Doctrine – Public Trust doctrine states that, all the citizens are beneficiaries of the natural resources of the nation and that the State has the right to use them as a trustee, in order to limit the State’s control or abuse of the resources. It further states that, the government needs to hold the resources in order to ensure that the resources remain available for utilization by the current as well as the future generations. In the case of *Shailesh R. Shah v. State of Gujarat*²², the judgment pronounced by the Gujarat High Court stated that all the lakes or ponds, natural gases are parts of the public trust and it is the duty of the State to protect them.
- c) Precautionary Principle – Precautionary Principle states that, if in the course of a venture, the probability of the damage to be done is of such a magnitude that it is likely to have serious and irreversible repercussions then, the State should steer clear off of it, while following the approach of being better safe than sorry. In the case of *M.C. Mehta vs. Kamal Nath*²³, the court stated that, the Precautionary Principle is the part of the Environmental Laws in India. Further, in the case of *AP Control Pollution Board vs. Prof M V Nayadu*²⁴, the court reiterated that it is better to wrong in caution rather than inviting an irreversible catastrophe.

IV. Advantages of Economic Development

As aforementioned, the economic development of a nation is the straight path for countries to become Global or Regional powers and perhaps a sphere of influence far from their territories, ensuring their economic interests and strengthening their national identity as a prosperous and a cultural hub of the world. Economic development further ensures that the citizens of a nation are well fed, and employed. Furthermore, the economic stability in the nation raises the living

²⁰ OECD Legal Instruments, Recommendation of the Council on the Implementation of the Polluter-Pays Principle, 1974

²¹ *Indian Council for Enviro-Legal ... vs Union of India and Ors.* 1996 AIR 1446, 1996 SCC (3) 212

²² *Shailesh R. Shah v. State of Gujarat* 2002 SCC OnLine Guj 164: (2002) 43 (3) GLR 2295

²³ Supra Note 18

²⁴ *AP Control Pollution Board vs. Prof M V Nayadu* AIR 1999 SC 812.

standards of the society, while boosting the trade and consumption of goods- thereby, cementing the faith of the people in the ruling regime, be it democracy or the authoritative regime, as long as the country is economically sound, the people stay faithful. In order to secure public support in the government, the States usually opt for economic stability and for that environment protection sometimes becomes optional or advisory, instead of being mandatory.

The better the economy of a country, the more it would be able to sustain its population, provide welfare schemes, ensure the law is being upheld and provide security from the foreign invaders or foreign powers the more likely it becomes that the economically stable countries could to some extent, suffer and resist the changes being brought by global warming, due to their immense wealth and the advancements in science and technology, whereas the countries with poor infrastructure and instable economy, could bear the worst of what were to come. It indeed is ironic that the nations that harm the environment more by industrializing without due consideration of the Planet, can sustain the major problems being created as a consequence of *their* own decisions. Whereas the less prosperous economies, are left bereft of adequate resources to deal with the problems occurring due to the phenomenon of global warming.

For instance, countries like China and India, that are currently on the track of developing their economies, find themselves cornered and are seen as major polluters of CO₂ emissions²⁵, whereas the major western developed countries are seen as eco-friendly, despite being the first to industrialize and pioneer in the problem of emissions, that the Planet is facing today. The developing countries therefore are made to hold back their economic progress when the West has already caused immense damage to the Environment and profited off of it.

V. The conundrum of Environment Protection v. Economic Advantages

Humans have the tendency to procrastinate as long as that entails no direct consequences on their present. As was the case of appearance of a hole in the *Ozone Layer*²⁶, which was sudden and something that needed immediate intervention. The Planet came together as a species and passed the Montreal Protocol²⁷, the success of the Treaty is undeniable for, the Montreal

²⁵ Chetan Chauhan, "India, China most vulnerable to joint risks of climate change, air pollution", *Hindustan Times*, 22/07/2021, available at <https://www.hindustantimes.com/india-news/india-china-most-vulnerable-to-joint-risks-of-climate-change-air-pollution-101626951839200.html> (Last visited on 28/01/2022)

²⁶ Smithsonian Environmental Research Centre, A Hole in the Ozone Layer, available at https://forces.si.edu/atmosphere/02_04_05.html (Last visited on 28/01/2022)

²⁷ The Montreal Protocol on Substances that Deplete the Ozone Layer 1987

Protocol is the only Convention in the history of humanity, which has been signed and ratified by every country on the planet²⁸ (Member States of the United Nations).

The *Ozone layer hole* has now repaired itself to the extent that it poses no threat to the humans, which is quite an astonishing success that we have managed to achieve as humanity. So, does this mean that the humans will unite to fend for themselves against the invisible enemy that is, global warming?

If we take another example, say, that of Covid-19, which was declared a global pandemic by World Health Organization in the early 2020²⁹ and the vaccine of which was first made available by the end of 2020, the World Health Organization urged the equitable global distribution of the vaccine³⁰, but the vaccination rate parity³¹ between developed and developing countries clearly showcases that the nations prefer to vaccinate their citizens first, rather than distributing the vaccine equally. In furtherance of that, many developed countries were alleged to have hoarded the vaccines³² and throwing out vaccines as they expired in their excess stock³³, rather than donating it to poor nations which were in dire need of them.

From this, it can be inferred that, the nations cannot rely on shared humanity to save themselves in the times of need, as in the case of Montreal Protocol, each nation, whether big or small-support was needed in order to combat the growth of the Ozone layer hole, but when it comes to survival of one's own nation in the times of a pandemic- nationalization takes over the collective human good. However, there might be hope that the nations will come together to address the problem of global warming, when the same becomes imminent, but by then it might

²⁸ United Nations Environment Programme, About Montreal Protocol, available at <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol> (Last visited on 28/01/2022)

²⁹ World Health Organisation, WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (Last visited on 28/01/2022)

³⁰ World Health Organisation, WHO issues its first emergency use validation for a COVID-19 vaccine and emphasizes need for equitable global access, <https://www.who.int/news/item/31-12-2020-who-issues-its-first-emergency-use-validation-for-a-covid-19-vaccine-and-emphasizes-need-for-equitable-global-access> (Last visited on 28/01/2022)

³¹ Our World in Data, Coronavirus Vaccinations, available at https://ourworldindata.org/covid-vaccinations?country=OWID_WRL (Last visited on 28/01/2022)

³² Olivia Goldhill, "We have enough Covid vaccines for most of the world. But rich countries are stockpiling more than they need for boosters", *STAT*, 13/12/2021, available at <https://www.statnews.com/2021/12/13/we-have-enough-covid-vaccines-for-most-of-world-but-rich-countries-stockpiling-more-than-they-need/> (Last visited on 28/01/2022)

³³ Melody Schreiber, "US throws out millions of doses of Covid vaccine as world goes wanting", *The Guardian*, 16/10/2021, available at <https://www.theguardian.com/world/2021/oct/16/us-throws-out-millions-doses-covid-vaccine-world-shortages> (Last visited on 28/01/2022)

be too late to act on the irreversible and irreparable damage caused, as it was noted in a study, that even if we collectively stop all our emissions today, the temperature will keep on rising until 2100 AD³⁴.

VI. Conclusion

We may or may not have passed the point of no return³⁵ but in accordance with the Precautionary Principle, it might be too late to risk it. Sustainable development despite its noble intention of providing economic stability in keeping with environment protection, can no longer be relied upon as the same is a concept of 1970s along with many Landmark case laws or legislations of the country which have become obsolete to keep pace with the dynamic needs of the world. There is a strict and urgent need to modernise the laws and enforce them to their full extent in order for them to have somewhat relevance. Climate change would not just manifest itself in global warming, but make every weather scenario, extreme, be it snowfall, hurricane or typhoon or even draught. Further as per a report of the Special Rapporteur on Human Rights³⁶, it was stated that *“It is estimated that by 2050, 150 million people or more could be displaced by the impacts of climate change as a result of extreme weather, slow-onset events such as rising sea levels and desertification, relocation from high-risk areas (such as floodplains), and conflicts over scarce resources.”* This report clearly outlines the problems we will face in the near future, as our fundamental rights will become irrelevant, there will new type of refugees that will be added to the list, namely *“climate refugee³⁷”*, millions will die of displacement and millions more of starvation as droughts will soon become the norm. Sustainable development was a solution of the era which had not seen drastic climate change which we are facing today, and sustainable development cannot be the answer again, it is time for us to come up with a process that is better equipped to provide solutions, not in the near future, but today. Therefore, to conclude, the quote of a young teenage who is fighting against climate change, becomes especially pertinent and it reads, *“I want you to act as if our house is*

³⁴ Tomorrow.io, What Is the Point of No Return in Global Warming, available at <https://www.tomorrow.io/weather/blog/the-point-of-no-return-in-global-warming/> (Last visited on 28/01/2022)

³⁵ Olivia Rosane, “Are We Really Past the Point of No Return on Climate? Scientists Respond to Controversial New Study” *Eco Watch*, 13/11/2020, available at <https://www.ecowatch.com/climate-study-greenhouse-gas-emissions-2648886531.html> (Last visited on 28/01/2022)

³⁶ Report of the Special Rapporteur on Human Rights and the Environment, “Safe Climate” 11, 2019

³⁷ The Third pole, What is the definition of a climate refugee?, available at <https://www.thethirdpole.net/en/hub/climate-refugees/> (Last visited on 28/01/2022)

*on fire*³⁸”.

³⁸ Greta Tintin Eleonora Ernman Thunberg is a Swedish environmental activist who is known for challenging world leaders to take immediate action for climate change mitigation