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## **Environmental law and sustainable development challenges ahead**

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### **Abstract**

An empowerment in human well being that allows us to meet the needs of presents without compromising the ability of future generation to meet their own needs, is called sustainable development.

Our planet earth has the ability to sustain and cater to the needs of all living beings but we are observing today that the Earth’s reserves are being rapidly being depleted and this means that there is a limit to the infinite capacity and sustainability of mother Earth. Since ancient times, man has revered and worshipped nature, From the Vedas to modern writings. Man has recognized the basic elemental forces-water, air, earth, and fire. These elemental force are in the universe and the human body. Of these, water is of utmost importance, because without water there will be no life on earth no-vegetation, no plantations, no survival of men, birds and bear.

If water begets life, air props it up. All the basic forces of nature are intertwined and play a role in our survival. The ecological balance is very fragile and it is our responsibility to preserve all the living beings that nature has put on this earth.

There have been considerable changes in the industrial and technological situations, on account of setting up of many industries that produced hazardous and toxic substances, causing environmental pollution. These developments have made essential a review of the existing industrial and environmental laws. The recent catastrophic events have also raised the question of adequacy of existing laws relating to hazardous substances. The increasing trend of the problem also exposes administrative and judicial efficacy to provide remedy to reduce environmental pollution from hazardous processes and compensate the victim of pollution. In spite of a number of legislation to check industrial pollution, the quest for more and more profit by the

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industrialists has led to the violation of laws relating to environment pollution. Industrialists who spend crores of rupees on a project are unwilling to spend a few lakhs of rupees on pollution prevention devices.

### **Constitutional response to international urge: Protecting the fragile environment**

The Indian constitution adopted in 1950 did not deal with environmental protection as such. The environmental movement in the India has its genesis in the United Nations Conference on Human Environment held at Stockholm in June, 1972, to draw the world's attention towards the universal problem of environmental pollution and, for the first time, the provisions were inserted in the Indian Constitution by the 42<sup>nd</sup> Amendment in 1976, with regard to preservation of the environment throughout the country. Thus, by responding to the International call, the Indian Constitution, perhaps, became the first Constitution in the world to attempt to secure the protection of the fragile environment. It laid down the basic foundation for environmental legislations in Directive Principles of State Policy and citizens' duty towards environment protection in India.

The legal utility of the Fundamental Duties is similar to those of the Directive Principles of the State Policy and they are without any legal sanction for their violations. Although they are not legally enforceable in the courts, but if the State makes a law to prohibit the breach of such duties, the courts would uphold it as a reasonable restriction on the relevant

Fundamental Right.

It may be noted that Article 48A and 51A(g) of the Constitution emphasize the expressions 'protect' and 'improve' with reference to the environment. These are significant and expressive words which obligate the State and citizen to endeavour towards preserving the environment at its best by ensuring that the degraded from is also improved in its quality.

Thus, human and environmental safety measure must be enforced by all and at any cost. The Supreme Court's judgement in *Shriram Chemicals case* has set the direction in this regard by fixing absolute and non-delegable liabilities on the industries for mishaps involving hazardous substances. Simultaneously, the regulation of hazardous industries in all aspects is also necessary to ensure that the degradation of environment is not taking place surreptitiously or negligently. When such restrictions are imposed to check and regulate the high risk processes, the need for legislations and judicial activism becomes increasingly important.

### **Environmental pollution and courts' concern**

Ecological problems affecting the clean environment have been brought before the courts in many cases. The factual situations provide an opportunity to determine the judicial attitude in the matter. The remedial measures provided under the laws-civil or penal-have been restored to control and prevent pollution. The jurisdiction of the Supreme Courts in also being invoked by citizens on their becoming aware that the

environmental imbalances have the potential of affecting their fundamental rights under the constitution. The significant issues that have come up in the recent years before the courts are: public nuisance as environmental hazards; right to wholesome environment hazards; right to carry on trade vis-à-vis duty to protect environment and right to information about hazardous installations. Each of these issues is specifically dealt with here.

### **Indian penal code**

The Anglo-Saxon jurisprudence does not view a crime in the area of environment, e.g., crime pollution, at par with conventional crimes such as murder, rape, etc. It is classified as a *white – collared crime*. The society's response to such crime is also very minimal and, while the conventional crime shocks the society, the crime of pollution is more often taken for granted. The penal law on pollution finds its origin in the Indian Penal Code in 1860 (hereinafter referred to as the Penal Code) and it is covered under the offences affecting public health and safety. Chapter XIV of the Penal Code, Deals with offences affecting the public health and safety, convenience, decency and morals running from Section 268 to 294 A. in addition to the provisions of the Water Act, the Pollution Control Board invoked the provisions of the penal Code against persons causing defilement of water. The Penal Code under Section 277 specifies the fouling of water of public spring or reservoir. It states: *Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the*

*purpose for which it is ordinarily used, shall be punishable with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, with both*

### **Code of criminal procedure**

Section 133 of the Code of Criminal Procedure, 1973 provides most effective, speedy as well as summary remedy in cases of urgency, i.e., where danger to public interest or public health is involved. The environmental cases may be of public nuisance which includes pollution of water, air and noise nuisance. Section 133 of Code of Criminal Procedure which seeks to control all kinds of pollution has seldom been used due to cumbersome criminal procedure for prosecuting the offenders.

The first time when Section 133 of Code of Criminal Procedure was used in the environmental context was in the celebrated *Municipal Council, Ratlam case*. In this case, residents of Ratlam filed a complaint under Section 133 of the Code of Criminal Procedure alleging that the municipality had failed to prevent discharges from an alcohol plant into the public street. It also did not provide sanitary facilities on the roads.

The Supreme Court took a serious note of wrongful denial of the constitutional and statutory provisions by authorities and ordered the municipality follow the statutory duties and stop effluents from flowing on to the street. Justice Krishna Ayer observed.

*The law will relentlessly be enforced and the plea of poor finance will be poor alibi when*

*people in misery cry for justice. The dynamics of the judicial process has new 'enforcement' dimension not merely through some of the provision of Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal.*

### **Environmental Protection for Sustainable Development: Role of Indian Judiciary**

The jurisdiction of superior Courts has been invoked by the citizens when they have become aware that environmental pollution and ecological imbalance have the potential to affect fundamental rights under the Constitution of India. Under the writ jurisdiction, the Courts have given wide-ranging reliefs to citizens which are not even contemplated under the existing environmental laws of India. Under the power to review a state action by the Supreme Court which is provided under Article 32 of the Constitution, it has interfered and given directions after directions to the government to enforce the fundamental right to life and liberty and for implementing environmental protection measures in the interest of general public. This is evidenced from many public interest petitions that the traditional rule of *locus standi* does not stand in the way in those cases where environmental issues are raised.

Since the Supreme Court of India has included

the right to a wholesome environment under Article 21 of the Constitution in the *Rural Litigation case*, litigants have asserted the right to life as the right to have a jurisdiction, the Court has interpreted the right to life as the right to have a living atmosphere congenial to human existence.

Sustainable Development has emerged as a new paradigm in the contemporary history of our civilization. It was the enshrined into the Agenda 21 of Rio Declaration on Environment and Development, 1992. It followed the declaration of the United Nation Conference on the Human Environment, 1972, which essentially called for protection of the global environments from undesirable changes being introduced into the environments by unplanned growth and technology. Sustainable Development became the major focus of yet another United Nation Conference in Johannesburg in 2002 called "World Summit on Sustainable Development" (WSSD). Thus sustainable development is a positive concept in economics and law both which aims to seek good partnership by man with nature and explore ways and means for economic development without adverse impact on the capacity of natural resources to regenerate. With the use of new science and technology, new means can be made available for greater production and conservation of natural resources. SD therefore has a strong link with the law of protection of environments. For the discipline of economics, SD means as Dr. Anil Agarwal said, "Gross Natural Product," not Gross National Product. Sustainable Development, for legal purposes means

ecological law that is the law that holds good for ecology or the eco-system of a place . the present writer has published quite early an extensive Article in 1982 entitled “Ecology and International Law” in Indian journal of International Law, vol 22,1982 pp.422-438 outlining the usefulness of an ecological approach to International Law for a sustainable and creative world order. Another Article by the present writer with Dr. B.D. Nag Chaudhury, former Chairman of National Committee on Environmental Planning and Coordination was entitled Reflection on India’s Environment Policy”, was published in India Quarterly vol. 34, 1983 ,pp.71-78. This Article reflected the traditional approach of India on environment management based on the cultural traditional and harmony with nature. Another article of that period by the present writer had the title “Nehru’s Contribution to Environment Movement”, published in India Quarterly, 1981, no. 2, pp. 252-63.

### **The role of state governance for sustainable development**

State in India is active performers in SD with the Union Government. In fact implementation of national policies in SD is the responsibility of States. The States have environment boards which have active liaison with the CPCB. There are State departments on environment. With cooperative federalism SD policies are followed in states effectively. A unified judicial system helps in implementing laws on SD. Yet the Planning commission in India has not been satisfied with the work of State Pollution Control Boards. They lack resources and technical manpower. The Union

Government has now asked States to file regular reports on environments and SD. Environment education is spreading fast. Centre for excellence in SD are being established. Federalism is helping state to follow eco-management of natural resources. Forest management is now a joint management between the States Governments and the people concerned. New water policies are being developed by States. Water harvesting is followed actively. Desserts are being given green cover. Local bodies and municipal committees have greater devolution of powers for environment management. Environment Management and Federalism: The Indian Experience 2002, it highlights the growing role of federalism for environment management in India.

### **Important ideas of Sustainable development**

Environment movement and sustainable development in India and the world large has thrown up new and challenging ideas that this important conference of ISIL may consider. International law has as a result taken a new direction in recent years for harmony and partnership with nature. National laws in India have been modified to be in harmony with global laws. Some of these new ideas that have emerged on the global and national society are as follows:

- a. A biologist view has emerged of the world order and economic life. Eco-system approach to natural resource management is an important part of environmental law with a biological perspective. Indeed the MOEF has new set of environmental

lawyers, biologist and microbiologist handling environmental legal issue.

- b. There is a synthesis of science and humanism. It started with a UNESCO symposium on this subject (proceeding published in 1970, New York). Thus a new science philosophy is evolving which is not determinist but provides bridges for understanding. Professor Iliya Prigogine, a Noble- laureate in physics, has done much work on the subject in this book “Order out of Chaos” in which he says that man is evolving new relationship with nature. This philosophy looks to integration of science philosophy and humanism. Stephen Hawking also take this view on science in his book “A Brief History of Time”.
- c. In the field of SD there is need to integrate studies in law and science. Theory about law, as professor Myres McDougal of Yale Law School said, must facilities a decision, rather is a theory of law to confirm outcomes. Hence contextual and ecological jurisprudence is suited to SD issue.
- d. Federalism and eco-management are concepts that promote together SD. The great success of environment policies in India is due to cooperative federalism.
- e. Outer space law is also helping SD. Outer space enable remote sensing of natural resources, keeps vigil on terrorism, helps in locating biodiversity, helps locate life and habitats of wild life.
- f. In the present age of science and technology, when new inventions are being made every day, and man is traveling in space, awareness about our environment

has become even more significant. In our country, pristine rivers are being polluted with industrial pollutants, and human waste, thus endangering the health one of us also that will we justify ourselves to the future generations.

Life & Environment on earth are interdependent and the friendly co-existence is crucial or the survival of each other. The ecological balance maintains the life cycle in a state of equilibrium. Any imbalance caused by the over exploitation of natural resources adversely affects the life on earth. Environment comprising of air, water, land and living organisms are today facing an onslaught from some of the following sources.

- Discharge of gases released from burning the fossil fuels.
- Indiscriminate destruction of forests to meet the growing needs of the mankind. Release of chemicals that are grievously injuring the ozone layer that provides protection to earth against harmful radiations.
- Global warming due to green house gases.
- Accumulation of non-biodegradable waste, such as polythene, synthetic rubber tyres and batteries.
- Release of chemically polluted and untreated industrial & domestic waste into water bodies, threatening the life of aquatic animals.
- Over exploitation of water from sub surface acquirers.
- Culture of consumerism and human greed.
- Extinction of certain species of living organisms due to non sustainable eco-

system. Unsustainable growth of infrastructure.

Unless the global community stands up to realize the gravity of the environmental degradation due to human greed and flagrant violation of environment protection legislations, brings about a paradigm shift in its perception, dedicate liberal funds for perusing the goal of clean & green earth, run international campaign for creating awareness among the masses and join hands for the rehabilitation of earth, the future of life on earth appears to be bleak.

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