

## **1 RMLNLUJ (2008) 31**

### **Sustainable Development: International and National Perspective**

by  
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*The earth does not belong to man: man belongs to the earth..... All things are connected like the blood which unites one family.... Whatever befalls the earth, befalls the sons of the earth. Man did not weave the web of life: he is merely a strand in it. Whatever he does to the web he does to himself.*

Humanity is conducting, by way of development activities, an enormous, unintended, globally pervasive experiment whose ultimate consequences could be second only to nuclear war. The "Test Tube" that humanity is using in the development process to perform the experiment is the atmosphere. Into this test tube, we are spewing a variety of gases, such as carbon oxides, sulfur oxides, methane, chlorine, ozone, chlorofluorocarbons, and halons which are emitted from millions of industrial smokestacks, motor vehicles, waste dumps, and other sources. These emissions behave like shock waves for the life form on the planet Earth and cause global environment problems like acid rain, climate change, ozone depletion and loss of biodiversity. If uncontrolled, life form on the planet may vanish. In the race between life and death, death shall prevail if development process is not regulated and controlled. The developmental activities must be so managed and controlled that not only the present generation but also the future generations are able to reap the fruits of development. In other words, development must proceed in a manner that it is sustainable for generations.

The mandate of the time is to introduce component of "sustainability" to the development process which is possible only if the development is in harmony with the nature. What the mankind needs is sustainable development and not merely development without regard to



environment considerations. Sustainable development focuses on balanced synthesis of environment and development imperatives. It modifies the outdated and antiquated concept of unqualified development and ensures both economic and ecological sustainability. It indicates the way in which developmental planning should be approached. The need for sustainable development is so compelling and pressing that in its absence, man finds himself an endangered species. The present paper grapples with number of questions. Does human rights jurisprudence recognise human right to sustainable development? If human right to sustainable development is recognised in the human rights jurisprudence, what is its status in the hierarchy of human rights? How far human right to sustainable development finds a place in the Constitution of India or environmental protection legislations adopted in India? What is judicial response on the issue of status of sustainable development in India? How far sustainable development has witnessed implementation in India?

#### **I. SUSTAINABLE DEVELOPMENT-CONCEPTUALISATION:**

The concept of sustainable shot itself into limelight during UN Conference on Human Environment at Stockholm in 1972. However, it received legal shape in the Brundtland Report of 1987 which defines sustainable development as "development

that meets the needs of present generation without compromising the ability of the future generations to meet their own needs<sup>2</sup>. The report emphasises that sustainable development means an integration of economics and ecology in decision making at all levels.

The Caring for the Earth document defines "sustainability" as a characteristic or a State that can be maintained indefinitely, whereas "development" is defined as the increasing capability to meet human needs and to improve the quality of human life<sup>3</sup>. This means that sustainable development would imply improving the quality of human life within the carrying capacity of the supporting ecosystem.

The concept of sustainable development rejects the old notion that development and environment are antithesis of each other. On the contrary, it emphasises that development and environment are synthesis of each other. Both are complementary and mutually supportive. Development generates economic resources which are necessary to have



recourse to the measures to protect environment. An economic component renders sustainability to development. Brundtland Report asserts that poverty is the biggest polluter and only economic growth can eliminate poverty and create capacity to solve environmental problems.

Economic and environmental concerns have critical links. The concept of sustainable development has evolved from the linkages between economics and ecology. The terrain of sustainable development is found in the zone where the circles of economics and ecology overlap. It is the overlapping zone of the circles of economics and ecology which represents sustainable development. Sustainable development crystallises only if ecology and economics merge and integrate.

The mission of the UN Conference on Environment and Development held in 1992 at Rio de Janeiro was to put the world on a path of sustainable development which aims at meeting the needs of the present without compromising on the ability of the future generations to meet their own needs. The Rio Declaration reiterates the significance and importance of sustainable development for human beings and provides that the right to development must be fulfilled so as to equitably meet the development and environmental needs of the present and future generations<sup>4</sup>. The Declaration further provides that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it<sup>5</sup>.

At Rio, UN Commission on Sustainable development has been established which has the mandate to review reports from Governments and international organisations of their efforts to implement Agenda 21, discuss financial and technical issues, and recommend further actions to promote sustainable development. The mandate of the Commission is sustainable development which requires integration of environmental and economic objectives rather than just environmental protection. It falls on Commission itself to build consensus on norms of behaviour which provide a basis for effective monitoring and compliance. However, the Commission relies on political rather than legal authority to integrate global environmental and economic policies.

The World Summit on Sustainable Development held at Johannesburg in 2002 reaffirmed sustainable development as a central element of the international agenda and introduces the third component of social development to the well known two components of sustainable

development, namely, economic development and environment protection. Accordingly, the Summit focuses at the efforts to promote the integration of the three components of sustainable development - economic development, social development and environmental protection - as interdependent and mutually reinforcing pillars. Poverty eradication, changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements for sustainable development. The Summit recognises that eradicating poverty is an indispensable requirement for sustainable development and is greatest global challenge facing and world today, particularly for developing countries. The Johannesburg Plan of implementation provides for the establishment of World Solidarity Fund to eradicate poverty and to promote social and human development in the developing countries pursuant to the modalities to be determined by the General Assembly.

The Brundtland Report also recognises the inequalities between countries and stresses that several problems arise from inequalities and access to these resources. The Report maintains that inequitable land ownership structures can lead to over exploitation of resources in the smallest holdings with harmful effects on both environment and development. Accordingly, the Brundtland Report asserts that the future cannot be common in the sense of being equal, fair and just when the economic and ecological situation of lower and higher income countries are compared. Undoubtedly, the inability of the mankind to promote the common interest in sustainable development is often a product of the relative neglect of economic and social justice within and amongst nations. Thus, the Brundtland Report emphasises that the reduction of poverty is a precondition for environmentally sound development in lower income countries.

One of the important postulate of the sustainable development is the intrageneration equity. The intragenerational equity requires that the developed countries should provide environmentally friendly technology and funds to the developing countries to build their capacities to protect the environment. The developing countries are entitled to the funds as well as technology on the basis of intragenerational equity which is an essential component of sustainable development. Accordingly, international treaties and conventions concerning protection of the environment effectuate intragenerational equity by providing transfer of technology and funds by the developed countries to the developing countries. International funding mechanism for building the capacities of the developing countries to protect the environment aim at the fulfilment of the entitlements of the developing countries based on intragenerational

equity. Intragenerational equity mandates recourse to capacity building measures.

The developed and the developing countries have common but differentiated responsibilities<sup>6</sup> to protect the environment. The responsibilities are differentiated due to the difference in the economies. The concept of intragenerational equity is based on the realisation that we have two planets, two worlds, two humanities and two economies. The responsibilities of the States to protect the environment are



proportionate to their respective economies. Despite international law's fundamental principle of sovereign equality, which treats all States equally regardless of their size or power, international environmental law distinguishes among States through the principle of common but differentiated responsibility which seeks global solutions for global environmental concerns by considering States' differentiated degrees of responsibility for causing these problems and their divergent capacities to redress them<sup>7</sup>.

This brings us to the discussion of the essential components of sustainable development which include: Precautionary Principle, Polluter Pays Principle, Environmental Impact Assessment and Environmental Audit.

### **1. Precautionary Principle:**

Precautionary principle plays a significant role in determining whether developmental process is sustainable or not. It underlines sustainable development and requires that developmental activity must be stopped and prevented if it causes serious and irreversible environmental damage. Precautionary principle is contained in Principle 11 of the World Charter for Nature of 1982 and proclaims that, activities which are likely to cause irreversible damage shall be avoided<sup>8</sup>. The principle requires that environmental protection measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The implication of this duty is that the developers must assume from the fact of their development activities that harm to environment may occur and they should take necessary action to prevent that harm. The principle has been




given utmost importance in the United Nations Conference on Environment and Development held at Rio in 1992. It was unanimously agreed that scientific uncertainty would not be allowed to become an excuse for deferring environmental protection measures. Principle 15 of the Rio Declaration contains precautionary principle which provides that in order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats of serious or irreversible environmental damage, in that case the lack of scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental degradation.

The precautionary principle forms the basis for the adoption of all the instruments at the Rio Conference<sup>9</sup> including the UN Convention on Biodiversity of 1992, which has later been supplemented with the adoption of a Cartagena Protocol on Biosafety on 29-1-2000. The Protocol seeks to protect the biodiversity from the potential risk posed by living modified organisms of modern biotechnology. It establishes a procedure for ensuring that, countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Biosafety Protocol is breakthrough in that, it enshrines the "precautionary principle" as a principle of international environmental law. Moreover, UN Convention on Climate Change was adopted at Rio in 1992 on the basis of precautionary principle. Although there was scientific uncertainty on various environmental issues e.g., causes and effects of global warming, Climate Change Convention was concluded which was supplemented by the Kyoto Protocol adopted in 1997, where in it was unanimously agreed that scientific uncertainty would not be allowed to become an excuse for deferring environmental protection measures.

## **2. Polluter Pays Principle:**

Polluter Pays Principle (PPP) has been developed by the Organisation of Economic Cooperation and Development (OECD) as one of the principle for allocation of entitlements. The Council of OECD on 28-5-1972, adopted one of the recommendations wherein it was recommended that the "polluter pays principle should be used to allocate the costs of pollution prevention and control measures"<sup>10</sup>. Further on 14-11-1974, the Council adopted another recommendation on "The Implementation of the Polluter Pays Principle"<sup>11</sup>. Thus, the credit for

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 Page: 37

popularising for the first time "Polluter Pays Principle" goes to OECD<sup>12</sup>. The principle basically means that the producer of goods or other items should be responsible for the costs of preventing or dealing with pollution which the process causes. This includes environmental costs as well as the direct costs to people or property. The costs include full environmental costs, not just those which are immediately tangible.


The Brundtland Report of 1987 insisted on internalisation of the environmental cost of economic activities<sup>13</sup>. The principle of internalisation of the environmental cost of the economic activities effectuates the spirit of the polluter pays principle. It encourages the developers to invest in preventive, restorative or compensatory measures. However, the polluter pays principle finds prominent place in the Rio Declaration of 1992. Principle 16 of the Declaration proclaims that national authorities should endeavour to promote the internalisation 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 investment.

The PPP exposes the polluter to two fold liability, namely compensation to the victims of pollution and ecological restoration. The principle is a source of liability and compensation for pollution. Like "Sustainable development" and the "Precautionary Principle", "Polluter Pays Principle" has also acquired the status of customary international law.

## **3. Environmental Impact Assessment (EIA):**

Environmental Impact Assessment (EIA) is a technique to ensure that the likely effects of developmental activity on the environment will be taken into consideration before the developmental activity is authorised to be materialised in action. EIA requires the developer to give to the deciding agency, a statement of the environmental effects of the developmental activity to be considered in the decision-making process. EIA gives a chance to adopt or modify a scheme to mitigate adverse environmental consequences, and for taking the environmental dimension into account in project decisions. The process of EIA effectively has three stages<sup>14</sup>.

1. The developer must submit Environmental Impact Statement to the competent authority. This statement should identify the potential
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 Page: 38

environmental effects i.e. direct and indirect impacts on human beings", flora and fauna, soil, water, air, climate and landscape; the interaction between these factories; and the effects on material assets and the cultural heritage and the steps that are envisaged to avoid, reduce or remedy these effects. It may also include further

information, including the alternatives that have been considered.

2. The competent authority must then consult the public bodies, environmental organisations and other institutions concerned with the protection and improvement of the environment. There must also be an opportunity for the public or express opinion. The developers' Environment Impact Statement must be made publically available and copies must be sent to the consultees.

The issues which crave for answer are: Should EIA be mandatory for all developmental activities? Should EIA be mandatory only for major developmental activities involving threat of serious and irreversible environmental damage? Should competent authorities be given wide discretion to determine whether development activity is likely to have significant adverse environmental effects?


#### **4. Environmental Audit:**

Environmental audit means an assessment of the environmental performance of the developer. The concept of environmental audit has two levels, namely, self-assessment of the environmental effects of the activities and the external verification of the audit by an independent body. Like EIA, it is a continual process and involves reviewing both the organisation and management in relation to environmental performance, following a systematic examination of operations in an environmental context, considering emissions, effects on local communities, landscapes and ecosystems, and resulting in reports on areas for improved performance<sup>15</sup>. The continual nature of the concept requires that developers must draw up annual environmental statement which shall be audited by independent auditors. The question arises: should environmental audit be made mandatory for all the developmental activities?

### **II. HUMAN RIGHT TO SUSTAINABLE DEVELOPMENT:**

Today more than ever, the world community is realising the importance of the natural environment to human life and to the

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 Page: 39

sustainable development of our planet<sup>16</sup>. Such is the value assigned to these issues that environment, sustainable development and human rights capture the attention of international lawyers. Human rights in the context of environment and sustainable development recognise that for human communities to survive, they must have an adequate and secure standard of living; they must be protected from harmful substances and unsafe products; they must learn to conserve and equitably share natural resources. Without these environmental and public health policies in place, human rights for respect, dignity, equality, non-discrimination and the ability for the public to participate in decisions that affect their lives cannot be achieved<sup>17</sup>.

#### **1. Traditional Human Rights:**

The right to life occupies central position in the first generation human rights which are the civil and political rights. It is protected under the Universal Declaration of Human Rights in its Preamble and Article 3. However, the main source of the human right to life is to be found in Article 6 of the International Covenant on Civil and Political Rights. Article 6(1) mandates: Every human being has the inherent right to life.... No one shall be arbitrarily deprived of his life. The word "inherent" signifies that human right to life existed even before its recognition in the Covenant and constitutes customary norm of international law. The right to life is constantly expanding to include more than the guarantee to a mere physical existence. It is evolving to include



the quality of life including the right to food, medical care, education, and a pure and decent environment. Thus, right to living is evolving from the right to life and, therefore, environmental protection becomes mandatory to quality of life on the planet. Right to healthy environment is such an integral part of right to life that the two are inseparable and cannot be distinguished. Human life in healthy environment is not possible without sustainable functioning of natural ecosystems. It is sustainable development which guarantees sustainable functioning of the ecosystems. Sustainable development is sine qua non for the existence of not only right to healthy environment but other basic

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 Page: 40


human rights also. Thus, sustainable development forms part of the evolving human right to life.

The right to health forms part of the second generation human rights which are protected, inter alia, under International Covenant on Economic, Social and Cultural Rights. Environmental pollution as a result of unsustainable development twists, tortures, completely bends and amounts to reversal and nullification of the human right to health. Accordingly, human right to health includes not only human right to healthy environment but also sustainable development. In his structural conception of sustainable development, Dominic McGoldrick structurally conceived sustainable development as having a pillared temple like structure - composed of three pillars, namely, international human rights law, international environmental law, and international economic law<sup>18</sup>.

## **2. Third Generation Human Rights:**

A third corpus of human rights, which is emerging and simultaneously expanding, includes within its sphere the protection of environment<sup>19</sup>. Today, the United Nations employs a Special Rapporteur on Human Rights and the Environment who performs crucial fact gathering missions and details extensive reporting requirements for the countries<sup>20</sup>. The third generation human rights (so called solidarity rights) are evolving to meet the changing needs of mankind. These rights include the right to development<sup>21</sup>, peace, adequate food supply, benefits from the common heritage of mankind, humanitarian assistance, environmental protection and so on<sup>22</sup>. The third generation human rights are still emerging. Sustainable Development involves an integration of development and environment. Both development and environment are

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 Page: 41

human rights. Thus, integration of the both, namely, sustainable development is also a third generation human rights.

## **3. Merger:**

The debatable question is whether the first, second and third generation of human rights are different from each other at conceptual level. Undoubtedly, there are different mechanisms to enforce these rights. Human Rights Committee has authority to monitor to violations of civil and political rights whereas there is reporting system to monitor violations of economic, social and cultural rights. The difference in the monitoring system underlies the adoption of two separate covenants—one for first generation human rights and the other for the second generation human rights. Third

generation human rights have emerged from the rights mentioned in the Universal Declaration of Human Rights as and when required to meet the changing needs of mankind. The three generations of human rights witness merger at conceptual level. Human right to sustainable development occupies pivotal place in the merger inasmuch as it forms part of first generation, second generation as well as third generation human rights.

#### **4. Peremptory Character:**

The crucial question which calls for answer is: what is the status of human right to sustainable development in the hierarchy of human rights? Has it acquired the character of *jus cogens*? Sustainable Development is a part of human right to life which is non-derogable even during the existence of emergency<sup>23</sup>. Similar provisions are contained in the regional conventions<sup>24</sup>. Thus, human right to sustainable development, a part of right to life, enjoys higher status within the hierarchy of human rights norms. Despite the problems surrounding the implementation of sustainable development all over the globe, legally speaking, human right to sustainable development is *jus cogens* and may not be derogated by any State even during public emergency.

#### **III. INDIAN JURISPRUDENTIAL STATUS::**

There are constitutional directives under Articles 48-A and 51-A(g) recognising the fundamental obligation of the State and the Fundamental Duty of the citizens to protect and improve the environment of India. Further more, Parliament from time to time enacted environmental



legislations but sustainable development does not find an express place either in the Constitution or any of the specialised legislations. However, Indian judiciary has demonstrated exemplary activism and innovatism to read sustainable development alongwith its essential components in the Constitution and also specialised environmental legislations.

In *Indian Council for Enviro-Legal Action v. Union of India*<sup>25</sup>, a public interest litigation was initiated by a non-government organisation on behalf of people living in Bichhri Village in Rajasthan, wherein it was brought to light that chemical manufacturing companies gave rise to enormous quantities of highly toxic effluents, namely gypsum based and iron based sludge. The toxic sludge was thrown in the open and percolated deep into the bowels of the earth, polluting the aquifers and the subterranean supply of water, rendering it unfit for human consumption and also for irrigation purposes. The soil, the main stay of the villagers also became polluted rendering it unfit for cultivation. The Supreme Court upheld the liability of the polluter to defray costs of remedial measures and directed the Central Government to determine amount required for remedial measures which would be paid by the chemical manufacturing companies. The Supreme Court observed that the "polluter pays principle" was universally accepted as sound principle and went on to apply the principle to hold the chemical manufacturing companies liable to bear the financial costs of preventing and remedying the damage caused by pollution. However, the Court did not rule on the issue of compensation to the victims of pollution and focused on ecological remediation measures alone.

In *Vellore Citizens' Welfare Forum v. Union of India*<sup>26</sup>, it was found that a number of tanneries in Tamil nadu discharged untreated effluents into agricultural fields, roadsides, waterways and open lands. The untreated effluents were finally discharged



into the river which was the main source of water supply to the residents. The Supreme Court held that the concept of "sustainable development" was accepted as a part of the customary international law to strike a balance between ecology and development. It was further held that the "precautionary principle" and the "polluter pays principle" constituted essential features of "sustainable development". Justice Kuldip Singh referred to international environmental law and stated that the "precautionary principle", the "polluter pays principle" and the special concept of onus of proof have been merged and governs the law of our country. And they have become a part of environmental law in India. The Supreme Court further held

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Page: 43

that even otherwise "precautionary principle" and "polluter pays principle" are part of customary international law and therefore, part of Indian domestic law.

In *Narmada Bachao Andolan v. Union of India*<sup>27</sup> a public interest litigation was initiated against Sardar Sarovar Project which consisted of the construction of a large dam on Narmada river. The petition alleged that project would lead to ecological destruction. On the other hand, it was submitted that there would be a positive impact on preservation of ecology as a result of the project. The project would make positive contribution for preservation of environment in several ways. The Supreme Court balanced environmental and developmental imperatives and in the balancing process, the Court introduced new dimension in "precautionary principle" by way of interpretation.

The Supreme Court held that the 'precautionary principle' and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry, where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused, then in order to maintain the ecological balance, the burden of proof that the said balance be maintained must necessarily be on the industry or the unit which is likely to cause the pollution. On the other hand, where the effect on ecology or environment of setting up an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken on set off the same. Merely because there will be a change is no reason to presume that there will be ecological disaster. The Supreme Court, accordingly, stated that the present case involves the construction of a dam which is neither a nuclear establishment nor a polluting industry.

The construction of a dam, it may be pointed out, would undoubtedly result in the change of environment but it would not be correct to presume that the construction of a large dam like Sardar Sarovar would result in ecological disaster. India has 40 years experience in the construction of dams. The experience does not show that the construction of a large dam is not cost effective or leads to ecological or environmental degradation. On the contrary, there has been ecological upgradation with the construction of large dams. What is its impact on the environment is well known in India. And, therefore the precautionary principle would be inapplicable.

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Page: 44

In the popular *CNG litigation, M.C. Mehta v. Union of India*<sup>28</sup>, the Supreme Court was faced with the problem of vehicular pollution and regretted inaction of the Union of India and other governmental authorities to phase out non-CNG buses and setting up facilities to ensure adequate supply of CNG. The Supreme Court stated that one of the principles underlying environmental law is that of sustainable development. In order to satisfy the sustainable development, the Court required that the auto policy must, therefore; (a) focus upon measures to anticipate, prevent and attacks the causes of environmental degradation in this field; (b) in the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental; (c) adopt the precautionary principle and thereby, ensure that unless an activity is proved to be environmentally benign in real and practical terms, it is to be presumed to be environmentally harmful; (d) make informed recommendations which balance the needs of transportation with the need to protect the environment and reserve the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.

In *M.C. Mehta v. Union of India*<sup>29</sup>, the Supreme Court was faced with the issue of pollution caused by mining activities. The Court, while balancing environment and development, had to say:

Development and protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one can not lose sight of the need for development of industries, irrigation resources and power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck.

In this case the Court also insisted on the application of precautionary and polluter pays principles and observed:

If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can

be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

Applying the polluter pays principle the Court held the errant or negligent public officers also liable for compensation.

In *N.D. Jayal v. Union of India*<sup>30</sup>, the Supreme Court evolved a new dimension of the right to life and personal liberty guaranteed by Article 21, the right to development. In view of this the Court was faced with the problem how to balance both the rights that of environment and development. This conflict has been solved by the Court in the following words:

The adherence to sustainable development is sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. The right to environment is a fundamental right. On the other hand, right to development is also one. Here right o sustainable development can not be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of "life" under Article 21. The weighty concepts like intergenerational equity, public trust doctrine

and precautionary principle which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

In this case the court warned that if the environmental legislation is not armed with the powers to ensure sustainable development, it will become a barren shell. The Court finally suggested that acknowledgement of this principle will breathe new life into our environmental jurisprudence and constitutional resolve.

In *Bombay Dyeing & Mfg. Co. Ltd.(3) v. Bombay Environmental Action Group*<sup>31</sup>, while balancing on the one hand the regulation of town planning in favour of environment; and on the other, the development process, the Court insisted on the environmental impact assessment and pointed out that it must not be forgotten that before constructions are allowed to be commenced and completed, the exercise for environmental impact assessment is mandatorily required to be done by the competent authority consisting of experts. Therefore, the Supreme Court held that in appropriate cases the court can monitor implementation of constitutional policy of sustainable development upon directing the State to appoint expert committees.



#### **IV. CONCLUSION:**

International environmental law and human rights jurisprudence converge in proclaiming sustainable development as fundamental, central and basic human right. No State has ever denied the existence of right to sustainable development which is, undoubtedly, an essential part of right to life. What amazes and astonishes is that interestingly, States do not prefer to file petitions in the Human Rights Committee for frequent and habitual violations by State parties of human right to sustainable development. In the absence of the exercise of monitoring authority by the Human Rights Committee, newly established Human Rights Council owes responsibility to step into the domain of implementation of the human right to sustainable development. However, there are two global institutions to ensure sustainable development, namely, UN Commission on Sustainable Development and WTO Committee on Trade and Environment. Unfortunately, there are no linkages between these two bodies which are working in different directions. The future of mankind can be common only if the international institutions function in coordination with each other to achieve sustainable development.

The concept of sustainable development is based on equitable considerations, inter-generational equity demands that planetary rights and obligations must be codified. The codification of planetary rights and obligations will not only facilitate but transform into reality the vision of having common future for mankind. The task of elaboration and codification of the planetary rights and obligations to correctly determine generational entitlements is by no means an easy task. It is an undaunting task and poses big challenge to international community of sovereign States.


The human right to sustainable development has witnessed operationalisation in international environmental law through adoption of international treaties and Conventions to prevent and control various forms of environmental degradation. It is a well come approach in the existing North-South fights. Let the nation States adopt such balance as a part of their fundamental obligation towards the environment.

In this regard, it may be suggested that there is a pressing need to build partnerships between Governments of the North and South, on the one hand, and



between Governments and major groups, on the other hand, to achieve the widely shared goal of sustainable development. Such partnerships are key to presume sustainable development in a globalising world. What the mankind needs today is to eradicate poverty and build capacities for change in a world order premised on sustainability, equity, prosperity and security for all. The plan of implementation, adopted at the World Summit on sustainable

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 Page: 47

development held at Johannesburg Summit in 2002, called upon all countries to promote sustainable development at the national level by *inter alia* enacting and enforcing clear and effective laws that support sustainable development.

In this regard, though the Constitution of India and the environmental legislations have not specifically provided for the sustainable development, yet the judiciary has made sustainable development and its components a part of the law of the land. Thus the judicial concern of a friendly relationship between environment and development is commendable. However the need is to have implementation of the judiciary made law till such time the Indian environmental law specifically makes provisions in this regard.

To conclude, in the present time, sustainable development has become a fundamental obligation of each nation States at the international and also national levels.

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21. On 4-12-1986, UN General Assembly adopted landmark Declaration on Right to Development.
22. W. Paul Gormley, The Right to Save and Decent Environment, 28 *Indian Journal of International Law*, 1988, 20.
23. *International Covenant on Civil and Political Rights*, Article 4 mandates that no derogation from Article 6 (Right to Life) is permitted even during existence of emergency.
24. *European Convention on Human Rights*, Article 2; *American Convention on Human Rights*, Article 4.
25. (1996) 3 SCC 212 : A.I.R. 1996 SC 1446.
26. (1996) 5 SCC 647 : A.I.R. 1996 SC 2715. See also *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718 : A.I.R. 1999 SC 812.
27. (2000) 10 SCC 664 : A.I.R. 2000 SC 3751.
28. (2002) 4 SCC 356 : A.I.R. 2002 SC 1696.
29. (2004) 12 SCC 118.
30. (2004) 9 SCC 362.
31. (2006) 3 SCC 434.

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