

# ROLE OF EQUITY IN SUSTAINABLE DEVELOPMENT: A CONCEPTUAL ENQUIRY

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Equity is the foundation of sustainable development. It rests on commitment of future generations to equity. This ethical and philosophical commitment constrains the inclination to take advantage of our temporary control over the earth's resources in order to use them for our own benefit without careful regard for what we leave for our children or for their descendents. Concerns about equity are central in the legal tradition. Law and philosophy provide a basis for analyzing the normative relationship among generations and the instruments for transforming normative values into rights and obligations. International environmental jurisprudence has witnessed stiff controversy among States on the conceptual issues relating to sustainable development. What are various forms of equity which form basis of sustainable development? What are planetary rights and duties? Are planetary rights and duties codified? Sustainable development is structured on two forms of equity, namely, intergenerational equity and intra-generational equity.

Intergenerational equity implies intergenerational fairness and mandates that the present generation should not look at the earth and its resources as mere investment opportunity but as a trust passed on to them by the ancestors, to be enjoyed and passed on to the future generations for their use. Each generation holds the earth and its resources as a steward or in trust for future generation. Earth and the resources constitute a planetary trust.

The theory of intergenerational equity stipulates that we, the human species, hold the natural environment of our planet in common with all members of our species: past generations, present generation, and the future generations. As members of the present generation, we hold the earth in trust for future generations. At the same time, we are beneficiaries entitled to use and benefit from it. Thus, the present generation being trustee, has the right to benefit from the use of the natural resources which constitute trust property.

The present generation also has the corresponding duty to maintain the quality of the natural system. All generations are inherently linked to other generations – past and future, in using the common patrimony of the earth.

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The theory of intergenerational equity stipulates that all generations have an equal place in relation to the natural system. There is no basis for preferring the present generation over future generations in their use of the planet. Each generation should use the natural system to improve the human condition. Improvements should be conserved for the future generations. Thus, the anchor of a legal framework is the notion of equality as the norm, connecting sequential generations in their use and care of the environment. The intergenerational equity views the human community as a partnership among all generations – a partnership not only between those who are living but also between those who are dead, and those who are yet to be born. The purpose of human society is to realize and protect the welfare and well-being of every generation in relation to the planet. This requires sustaining the life support systems of the planet as well as the ecological processes and the environmental conditions, necessary for a healthy and decent human environment. In this partnership, no generation knows beforehand when it will be the living generation, how many members it will have, or even how many generations there will ultimately be. Each generation wants to inherit the earth in at least as good condition as it has been in for any previous generation and to have good access to it as previous generations have had. This requires each generation to pass the planet on in no worse condition than that in which it received it and to provide equitable access to its resources and benefits. Thus, each generation is both a trustee, for the planet with an obligation to take care for it, and a beneficiary with rights to use it.

### I. INTERNATIONAL LAW AND INTERGENERATIONAL EQUITY

The theory of intergenerational equity has a deep basis in international law. The United Nations Charter, the preamble to the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and many other human rights documents reveal a fundamental belief in the dignity and equality of rights of all members of human society. The grant of licence to the present generation to exploit the natural and cultural resources at the expense of the well-being of future generations, would contradict the purposes of the United Nations Charter and the international human rights documents.

Since the World War II, States have begun to express concern in international legal instrument for the welfare of future generations and to set forth principles and obligations intended to protect and enhance the welfare of both present and future generations. Even the United Nations Charter, drafted in the aftermath of World War II, affirms the universal concern for the welfare of future generations in the opening words of its preamble:

We, the peoples of the United Nations determined to save succeeding generations from the scourge of war...<sup>1</sup>.

The Universal Declaration of Human Rights also states in its preamble:

...whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...<sup>2</sup>.

The term 'human family' has temporal element and includes dead, living and the unborn persons. In the same vein, the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights of 1966 recognizes:

...the inherent dignity and the equal and inalienable rights of all members of human family constitute foundation of freedom, justice and peace in the world ...<sup>3</sup>.

Concern for justice to future generations regarding the natural environment emerged in the preparatory meetings of the UN Conference on Human Environment, 1972. The preamble to the Stockholm Declaration on the Human Environment expressly refers to the objective of protecting the well-being of future generations and reaffirms the commitment of the States to defend and improve the environment for present and future generations<sup>4</sup>. The World Charter for Nature 1982, while not a binding agreement, explicitly refers to the requirement to protect species and ecosystems for future generations.

The concept of 'sustainable development' in the Brundtland Report of 1987 is based on intergenerational equity. According to the Report, 'sustainable development' is the development which meets the needs of the present generation without compromising with the ability of the future generations to meet their own needs. The reference to the 'ability of the future generations' implies intergenerational equity. The present generation holds the earth and its resources in trust, to be passed on to the future generations in the same quality as these were inherited by the present generation from the past generation.

The Earth Summit held at Rio de Janeiro, Brazil from 3-14 June 1992

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<sup>1</sup> Preamble, United Nations Charter, 26 June 1945.

<sup>2</sup> Preamble, Universal Declaration of Human Rights, 10 December 1948.

<sup>3</sup> Preamble, International Covenant on Civil and Political Rights, 1966; Preamble, International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>4</sup> Preamble, UN Conference on Human Environment, Stockholm 1972.

was aimed at integration of environment and development. Principle 3 of the Rio Declaration is based upon intergenerational equity. It provides that the right to development must be fulfilled so as to equitably meet development and environmental needs of the present and the future generations.<sup>5</sup> The component of intergenerational equity is inherent in the concept of sustainable development.

## II. THREE PRINCIPLES OF INTERGENERATIONAL EQUITY

Three principles frame intergenerational equity. Firstly, each generation should be required to conserve the diversity of the natural and cultural resource base so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and it should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called 'conservation of options'. It can be accomplished in part by technological innovation that creates substitutes for existing resources for extracting and using them more efficiently.

Secondly, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and it should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of 'conservation of quality.' It does not mean that the environment either could or should remain largely unchanged. Rather it recognizes that trade-offs are inevitable and that a framework must be developed in which such balancing can take place. This requires the development of predictive indices of environmental quality, the establishment of baseline measurements, and an integrated monitoring network.

Thirdly, each generation should provide its members with equitable right of access to the legacy of past generations and should conserve this access for future generations. This is the principle of 'conservation of access'. It means that the members of the present generation have a non-discriminatory right to use the resources of the planet to improve their own economic and social well-being provided they do not unreasonably interfere with the access of other members of their generation to do so as well.

Four criteria guide the development of the principles of intergenerational equity. Firstly, the principles should encourage quality among generations, neither authorizing the present generation to exploit resources to the exclusion of future generations nor imposing unreasonable

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<sup>5</sup> Principle 3, UN Conference on Environment and Development, Brazil 1992.

burdens on the present generation to meet indeterminate future needs. Secondly, they should not require one generation to predict the values of future generations. They must give future generations flexibility to achieve their goals according to their own values. Thirdly, they should be reasonably clear in their application to foreseeable situations. Fourthly, they should be generally shared by different cultural traditions and be generally acceptable to different economic and political systems.

The proposed principles recognize the right of each generation to use the earth's resources for its own benefits but constrain the actions of the present generation in doing so. Within these constraints, they do not dictate how each generation should manage its resources, and they do not require the present generation to predict the preferences of future generations, which would be difficult if not impossible. Rather, they try to ensure a reasonably secure and flexible natural resource base for future generations, which they can use to satisfy their own values and preferences. The principles of options (diversity), quality, and access form the basis of a set of intergenerational rights and obligations, or planetary rights and obligations, that are held by each generation. These rights and obligations derived from each generation's position form a part of intertemporal entity of human society.

### III. PLANETARY RIGHTS AND OBLIGATIONS

Planetary intergenerational rights and obligations are integrally linked. The rights are always associated with obligations. These are rights of each generation to receive the planet in no worse condition than did the previous generation, to inherit comparable diversity in the natural and cultural resource bases, and to have equitable access to the use and benefits of the legacy.

Intergenerational planetary rights may be regarded as group rights, distinct from individual rights, in the sense that generations hold these rights as groups in relation to other generations – past, present and future. They exist regardless of the number and identity and individuals forming each generation. When held by members of the present generation, they may acquire attributes of individual rights in the sense that they are identifiable interests of the individuals protected by rights. However, those interests are derived from the fact that those living now are the members of the present generation and have rights in relation to other generations to use and derive benefit from the planet.

Enforcement of the intergenerational rights is accomplished by a guardian or representative of the future generations as a group, not of future individuals, who are indeterminate. While the holder of the rights may lack the capacity to bring grievances forward and is dependent upon the

representative's decision to do so, this inability does not affect the existence of the right or the obligation associated with it. Thus, the issue of representation of the future generations in decision-making process assumes enormous importance. What mode should be adopted to give representation to the future generation? Should an ombudsman for future generations or commissioners for future generations be appointed? If yes, at what levels – international, regional, national or local? The Brundtland Report recommended the countries to appoint an ombudsman for future generations at the national level.<sup>6</sup>

Future generations need to be effectively represented in decision making today, but they are not. This requires an understanding of the fundamental entitlement correctly. Future generations have an equal right with the present generation to use and benefit from the natural environment. International community of sovereign States faces the undaunting task of elaboration and codification of the intergenerational rights and obligations to correctly determine the generational entitlements.

The codification of intergenerational rights and obligations encourages co-operation between countries and amongst communities to fulfill the obligations of future generations. Codification reduces ambiguities about the behaviour that is expected of parties. It also leads to the creation of international institutions to manage or to coordinate measures for managing particular natural or cultural resources or activities affecting these resources. Such institutions facilitate the development of new norms.

#### IV. INTRAGENERATIONAL EQUITY

Intragenerational equity signifies equity within the countries and between the countries. It underlies intergenerational equity and is a condition precedent to achieve intergenerational equity. Intragenerational equity is a ladder to achieve intergenerational equity. The problem of intragenerational equity must be approached in the light of different economic, environmental, cultural and political circumstances prevailing within the countries and between the countries. The inequality between people as a result of greed and the misdistribution of power is major obstacle in achieving sustainability. Unsustainable behaviour by the poor people is almost always due to factors such as loss of land, growing indebtedness, or loss of access to markets that leave them unable to support themselves properly. When wealthier people appropriate resources for themselves at costs far below their value for production, poor people who lose by such appropriations are powerless to

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<sup>6</sup> The World Commission on Environment and Development, *OUR COMMON FUTURE* (1987 Brundtland Report) at 332.

hold the wealthy accountable. Having no resource, they place greater stress on their environment by moving deeper into the forest, occupying marginal land unsuitable for agriculture or herding or adopting some other way of staying alive.

The Brundtland Report also recognizes the inequalities between countries and stresses that several problems arise from inequalities and access to resources. The Report maintains that inequitable land ownership structures can lead to overexploitation of resources in the smallest holdings with harmful effects on both environment and development. Accordingly, 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 emphasizes that the reduction of poverty is a precondition for environmentally sound development in lower income countries.

Intragenerational equity requires that the developed countries should provide environmentally friendly technology and the 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 intergenerational equity which is essential component of sustainable development. Accordingly, international treaties and conventions concerning protection of the environment effectuate intragenerational equity by providing for transfer of technology and the funds by the developed countries to the developing countries. International funding mechanisms to build the capacities of the developing countries to protect the environment aim at the fulfillment 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 to protect the environment. The responsibilities are differentiated due to the difference in the economies. The concept of intragenerational equity is based on the realization 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.

The Rio Declaration of 1992 proclaims that poverty is the main culprit for environmental degradation and aims at complying with the mandate of

intragenerational equity. Principle 5 provides that all States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease disparities in standards of living and better meet the needs of the majority of the people of the world. Principle 6 states that the special situation and needs of the developing countries, particularly the least developed and those most environmentally vulnerable, shall be given priority. International actions in the field of environment and development should also address the interests and needs of all the countries. Principle 7 requires the States to cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibilities that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and the financial resources they command.

The deliberations at UNCED led to the realization that they had common stake in resolving the interrelated problems of environmental degradation, poverty and population pressures. The developed States accepted their special obligation to help developing States in building the capacities to make transition to more sustainable paths of development not as charities but as investments for shared benefits. This emphasis on *common but differentiated responsibilities* constitutes one of the most important UNCED's legacies, pointing to the potential of sustainable development capacity building as a new rationale for, and a new approach to, development assistance.

Agenda 21 highlights several areas where partnerships for capacity building are needed. Each country is urged to review its national capacities and capacity building needs for developing national sustainable development strategies. Donors are urged to provide financial and technical assistance for these reviews and for the country's subsequent efforts to implement their Agenda 21 plans.

At Rio, the need for environmentally sound technologies was also highlighted. Agenda 21 also calls for the development of regional information clearinghouses and research network to help link national and global information on environmentally sound technologies. International assistance is requested to build national capacities of the developing countries to assess and adopt appropriate technologies. Governments are encouraged both to share publicly available technologies with poorer countries and to provide

incentives to the private sector to share privately owned technologies. The mandate of equity is that concerted action and shared responsibility by developed and developing countries are crucial in addressing the linkages between development and environment.

The plan of implementation of the World Summit on Sustainable Development held at Johannesburg in 2002 projected the need to enhance international cooperation taking into account the Rio principles, including, *inter alia*, the principle of common but differentiated responsibilities as set out in principle 7 of the Rio Declaration on environment and development. The plan recommended further action to mobilize the provision of capacity building, technology transfer and diffusion of environmentally sound technologies. The use of environmental impact assessment is also stressed in the plan. The principle of common but differentiated responsibilities has been further projected in the eleventh meeting of conference of parties to U.N. Convention on climate change held at Montreal during 28<sup>th</sup> November to 9<sup>th</sup> December 2005. The Montreal Conference witnessed the support by the majority of States to the Kyoto Protocol which entered into force in February 2005. United States and Australia have been averse to Kyoto Protocol. The Montreal meet has generated greater awareness on issues of human activity induced climate change and recognised the need to adapt to climate change and also served as a platform for exchange of scientific ideas and political processes to save the planet.

## V. CONCLUSION

The two forms of equity, namely, intergenerational equity and intragenerational equity provide legal wheels to sustainable development. Equitable considerations bring the countries belonging to North and South closer in international environmental negotiations and facilitate operationalisation of sustainable development. The road to achieve sustainable development is very tough and poses stiff challenges to North as well as South.

The international environmental negotiations have rejected the concept of common heritage of mankind which, in the past, aggravated the differences between developing and developed countries on various issues of international law. The negotiations of the law of the sea have also experienced difficulties due to application of the concept of common heritage of mankind to the resources of international seabed area. The political saturation of the concept of common heritage of mankind has resulted in major shift in the international environmental jurisprudence when General Assembly proclaimed environment as common concern of mankind in place of common

heritage of mankind. The challenge for the North and South is the implementation and institutionalization of common concern of mankind. The industrialized countries owe responsibility to help the developing countries in building capacities to protect and improve environment which is common concern of mankind. The task of building capacities in the developing countries requires transfer of technology and funds by developed countries to developing countries. Equity has dominating role to play in building environmental capacities. The mandate is loud and clear. Build environmental capacities with the bricks and mortar of equity.