

LEGAL ASPECTS OF SUSTAINABLE DEVELOPMENT

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Sustainable development is a modern fashionable phrase that is freely and frequently used in academic, legal, social, political, scientific, and even business circles. The critics of the phrase aver that it does not offer any precise, succinct and final meaning of universal acceptance. It seems to convey different meaning to different people. An environmentalist would interpret it as ample heritage for future generations. A legal scholar would describe it as balanced synthesis of environmental and developmental imperatives. An economist would view it as economic growth which can be sustained for generations. A social ecologist would look upon it as sustained use of forests. A businessman who harvests and sells timber may look upon it as sustained projects. In the West, somewhat jocularly, the multinational companies reckon sustainable development as sustained growth or sustained profits. Politicians find their vote bank in the phrase and adopt it in election campaign.

Sustainable development is a process in which development can be sustained for generations. It means improving the quality of human life while at the same time living in harmony with nature and maintaining the carrying capacity of life supporting ecosystem. Development means increasing the society's ability to meet human needs. Economic growth is an important component but cannot be a goal in itself. The real aim must be to improve the quality of human existence to ensure people to enjoy long, healthy and fulfilling lives.

Sustainable development focusses at integration of developmental and environmental imperatives. It modifies the previously unqualified development concept. To be sustainable, development must possess both economic and ecological sustainability. The concept of sustainable development indicates the way in which development planning should be approached.

I. CONCEPTUALISATION

The concept of sustainable use of the earth's resources is an ancient one. Without the principle of sustainability as a way of life, humans would not have survived into the twentieth century. The principle of sustainable development, however, received impetus with the adoption of Stockholm Declaration in 1972, World Conservation Strategy prepared in 1980 by the World Conservation Union (IUCN) with the advice and assistance from the United Nations

Environment Programme (UNEP) and the Worldwide Fund, the World Charter for Nature of 1982, Report of the World Commission on Environment and Development (Brundtland Report) and the document *Our Common Future of 1987*, the document *Caring for the Earth: A Strategy for Sustainable Living* developed by the second world conservation project comprised of the representatives of the IUCN, UNEP and the Worldwide Fund for Nature. The Concept of sustainable development is the foundation stone of the Montreal Protocol for the protection of ozone layer of 1987 and the instruments adopted at the Earth Summit held at Rio in 1992.

A. Definition

The Brundtland Report defines sustainable development as development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The report emphasizes 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 state that can be maintained indefinitely whereas development is defined as the increasing capacity to meet human needs and improve the quality of human life. This means that sustainable development would imply improving the quality of human life within the carrying capacity of supporting ecosystems.

The Brundtland report as well as *Caring for the Earth* have developed the World Ethic of Sustainability which may be summarised as follows:

- a. Every human being is part of community of life, made up of all living creatures.
- b. Every human being has fundamental and equal rights, including the right to access to the resources needed for a decent standard of living.
- c. Each person and each society is entitled to respect of these rights and is responsible for the protection of these rights for all others.
- d. Every life form warrants respect independently of its worth to people.
- e. Everyone should take responsibility for his or her impacts on nature.
- f. Everyone should aim to share fairly the benefits and costs of resource use.
- g. The protection of human rights and the rights of nature is a worldwide responsibility that transcends all cultural, ideological and geographical boundaries.

B. Intragenerational 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 maldistribution of power is major obstacle to 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 hold the wealthy accountable. Having no resource, they place greater stress on their environments, by moving deeper into the forest, occupying marginal land unsuitable for agriculture or herding, or adopting some other way of staying alive.¹

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 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.² The two conventions, namely Climate Change Convention and the Biodiversity Convention adopted at Rio alongwith Agenda 21 which is an action plan for the future also give expression to this proposition.

C. Sustainability and Economic Growth

Economic growth is not an antithesis to sustainability but a condition underlying sustainability. The 1987 World Commission on Environment and Development (Brundtland Commission) asserts that only economic growth can eliminate poverty. Economic growth can create capacity to solve environmental problems. To achieve sustainability, economic growth cannot be based on overexploitation of the resources but must be managed to enhance the resource base. What the Mankind needs is global consensus on economic growth which is consistent with sustainable development.³ Such global consensus must take into account the ecological constraints.

The threats to the global environment have the potential to open our eyes and make us accept that North and South will have to forge equal partnership. It is time to launch a new era of international co-operation. Issues like debt crisis, trade policies, resources for the international financial institutions, harnessing technology for the global benefit, strengthening the United Nations system, and specific major threats to the environment such as global warming and loss of biological diversity are interrelated. Is it not appropriate to consider our economic and environmental concerns together, given the critical links between the two?

II. INTERNATIONAL LAW AND SUSTAINABILITY

International law is an increasingly important mechanism in the quest for sustainable development. *Trail Smelter Arbitration* holds States responsible for the damage resulting from the transboundary pollution to the other States or the property of persons therein.⁴ In 1972, United Nations Conference on Human Environment was held at Stockholm where a wide range of resolutions were adopted which formed an action plan for international co-operation on environmental matters. It produced Stockholm Declaration containing 26 principles which opened the floodgates for subsequent developments for the protection and promotion of the environment. The United Nations Environment Programme was also established under the auspices of the Stockholm Conference.

The Declaration loudly proclaims that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. It affirms international customary law which requires a State to pay compensation for injury to another State caused by activities originating in its own territory. Principle 21 of the Declaration confers responsibility on States to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyond their national jurisdictions. Principle 21 is reinforced by principle 22 which requires the States to co-operate to develop international standards regarding liability and compensation for the victims of pollution and other ecological damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction. The Stockholm Declaration provided the basis for further developments in the field of environmental protection. In the process, the work of UNEP acted as a catalyst and geared the momentum for further developments.

To achieve sustainability, the Vienna Convention to prevent the depletion of ozone layer was concluded which served as a framework convention and laid

down broad guidelines. The Vienna Convention was followed by Montreal Protocol which came up in 1987. The Protocol aims at the protection of ozone layer which is vital for the survival of mankind as it protects mankind from the dangerous effects of ultraviolet radiations.

In 1992, United Nations Conference on Environment and Development (UNCED) was held wherein more than 170 governments participated. UNCED's mission was to put the world on a path of sustainable development which aims at meeting the needs of the present without compromising the ability of future generations to meet their own needs.⁵ The Earth Summit was held with a view to provide principles of economic and environmental behaviour for individuals and nations. As a matter of fact, UNCED heralded a new global commitment to sustainable development, premised on the interconnectedness of human activity and the environment.⁶

The Earth Summit produced five documents which are as follows:

A. Rio Declaration on Environment and Development

The Rio Declaration sets out 27 principles to guide the behaviour of nations towards more environmentally sustainable patterns of development. The declaration, a delicate compromise between developing and industrialized nations which was tortuously crafted at preparatory meetings, was adopted in Rio without negotiations due to the fears that further debates would jeopardize any agreement. UNCED Secretary General Maurice Strong and U.N. Secretary General Boutros Ghali called on States to negotiate a more inspirational and legally progressive "Earth Charter" for adoption in 1995 on the 50th anniversary of the United Nations.

B. Agenda 21

Agenda 21 was also adopted at UNCED which is a voluntary action plan. It is named as Agenda 21 because it is intended to provide an agenda for local, national, regional, and global action into the 21st century. Agenda 21 comprises hundreds of pages of recommendations to address environmental problems and promote sustainable development. Agenda 21 is primarily composed of four sections which are as follows:

(i) Social and Economic Dimensions

This section includes recommendations on : sustainable development co-operation, poverty, consumption, demographics, health, human settlements, and integration of environment and development in decision making.

(ii) Conservation and Management of Resources

This section includes chapters on atmospheric protection, land resources, deforestation, desertification and drought, mountains, agriculture, biological

diversity, biotechnology, oceans, freshwater resources, toxic chemicals, hazardous waste, and radioactive wastes.

(iii) Strengthening the Roles of Major Groups

It includes ways to increase the participation in sustainable development efforts of major social groups: women, youth, indigenous groups of people, non governmental organisations, local authorities, trade unions, business and industry, scientific and technological communities and farmers.

(iv) Means of Implementation

It includes chapters on financial resources, technology transfer, co-operation and capacity building, institutional arrangements, legal instruments and mechanisms, and information collection, analysis and dissemination.

C. Forest Principles

These are non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests. Many States and experts sought further negotiations on a framework convention on forests.

D. Framework Convention on Climate Change

The Convention requires signatories to take steps to reduce their emissions of greenhouse gases. The Convention, however, sets no mandatory targets and timetables for such actions.

E. Framework Convention on Biodiversity

It prescribes steps for the protection and sustainable use of the world's diverse plant and animal species. The benefit sharing and technology transfer provisions of the Convention give expression to the concept of intragenerational equity. Moreover, the Convention insists on the sustainability of biotechnological research and development.

III. U.N. COMMISSION ON SUSTAINABLE DEVELOPMENT

The U.N. Commission on Sustainable Development (CSD) was established to serve as a permanent forum through which governments could review progress towards the goals of sustainable development and integrate economic and environmental decision making. The CSD will 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.

It is feared that CSD would act only as a watchdog body to monitor compliance of governments and international institutions with environmental

agreements inasmuch as Human Rights Commission does in its field. However, we cannot lose sight of the fact that CSD's mandate is sustainable development—integrating environmental and economic objectives rather than just environmental protection. In view of the fact that there are few widely accepted standards in this evolving area by which the body could evaluate behaviour, it falls to the CSD itself to build consensus on norms of behaviour which over time could provide a basis for more effective monitoring and compliance.

The CSD will rely on political rather than legal authority to integrate global environmental and economic policies. Its success will depend heavily on the participation from national governments, including the reports and information they provide, the technical expertise and political authority their delegates bring, and to the degree to which these governments reinforce CSD decisions through national representatives to other international fora. If the States use the Commission to build consensus on global sustainable development goals and thereafter the States reinforce that consensus through their national and international efforts, the Commission can in turn greatly strengthen their collective capacities to tackle environment and development problems.

IV. CONCLUSION

The challenges of environment and development are daunting. The real work of integration of environment and development lies ahead. The survival of mankind rests on the implementation of the concept of sustainable development. The agreements at UNCED mark the beginning of an international political will to take the necessary steps to protect the earth. What the mankind needs is to supplement the framework conventions adopted at Rio with the adoption of specialised protocols. At the first meeting of the Parties to the Convention on Biological Diversity held in December 1994 at Nassau, Bahamas, India demanded immediate and adequate safeguards against hasty experimentation and use of Genetically Modified Organisms (GMOs), since these could have unimaginable repercussions.⁷ The indiscriminate and unregulated use of GMO's poses a threat to the mankind which can only be checked through a legally binding agreement. It is, therefore, necessary to adopt clear, comprehensive and legally binding international protocol on bio-safety under the convention on biodiversity.

The Convention on Climate Change does not contain specific targets and timetable for the reduction of greenhouse emissions. In view of the horrifying threat of the extinction of mankind as a result of global warming in 500 years, the Climate Change Convention needs to be supplemented by a protocol containing specific targets to be followed by the States. This would equip the Convention with the teeth necessary to implement the concept of sustainable

development.

India has been an active player in implementing the decisions arrived at the Stockholm Conference by enacting various environmental legislations and adopting forty second constitutional amendment. It would be in the fitness of things if India enacts legislations to implement the decisions arrived at Rio especially Biodiversity Convention which is based on the principle of intragenerational equity. There is a pressing need to work within the global community and build capacity for change in a world order based on sustainability, equity, prosperity and security for all.

NOTES AND REFERENCES

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- 6. Kathi Sessions, *Building the Capacity for Change*, EPA JOURNAL 15 (April-June 1993).
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