

**NEED TO RECOGNISE SUSTAINABLE DEVELOPMENT AS FUNDAMENTAL
RIGHT IN INDIA – A STUDY**

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ABSTRACT: The paper reviews the existing gap in recognising right to sustainable development as inclusive in right to life in Indian scenario. While the LPG concept has reduced the world into a ‘Global Village’ where economic growth and development is a parameter based on industrialisation, sustainability of resources raises itself as a concern. It is by referring to numerous World Forums that the meaning of ‘life’ vehemently targets ‘sustainability’.

KEY WORDS: Sustainable development, Right to Life, Major concerns, World Forums, Stakeholder, Judicial Activism

INTRODUCTION:

Through this research paper, it is intended to trace from Vedic times till today, the development and study the horizons of concept of Sustainable Development. The paper focuses on international awakening on environmental issues and their amalgamation under Indian Constitution and Policy making. It aims to study the impact of these international trends on the Indian Legal System Vis-à-vis Judicial Activism being the major player for chalking out guidelines in tandem with these trends. Various landmark judgements and cases have been discussed to observe India as a stakeholder amidst this era of LPG, ensuring growth and development in cabined scenario. It therefore, paves path for an obvious question, Why Sustainable Development under India Constitution is still not recognised as a Fundamental Right?

OBJECTIVES:

To establish the adoption and implementation of provisions of Customary International Law to Municipal Law of Nations.

To find out the role of Judicial Activism in shaping definition of term ‘life’ for ‘Right to Life’ as inclusive of Sustainable Development.

‘Life’ and Environment: Indispensably intertwined

The concept of Environment Protection has been innate to the very existence of human civilization. It is not a novel concept that came to limelight on the world forum suddenly in the late 19th century.

Awareness on environment forms fundamental of human existence for, without sensitivity about surrounding, biotic and abiotic environment and maintaining balance among these elements, sustainability is preposterous. It is the Charter of UDHR that declares a pledge on behalf of the member nations for observing and promoting universal respect for human rights and fundamental freedoms. It is a declaration released in 1948, majorly to pacify the after effects of Second World War, with the prime objective of ensuring security of life and combating the economic losses to the nations. The establishment of Breton Woods Twins in 1944 was not comprehensive enough a step to recognise right to clean environment as part in parcel of right to life as it focussed majorly on uplifting the European economies devastated in the war. The Bank focuses on providing number of financial support services including flexible loans, grants, risk guarantees, financial derivatives and catastrophic financing. It is Article 3 of the Declaration that provides everyone the right to life, liberty and security of person. Almost after seven decades of the Declaration, the definition of 'life' has been altered and amended many folds. It weighs within itself a whole new gamut of rights, not commonly associated with 'life' at the inception of concept of recognition of human rights including the right to life.

'Quality of life' – shapes the true meaning of 'life', for being inclusive of an environment that propagates healthy, hygienic and sanitised living conditions for all. An immediate facet that surrounds man and became a matter of preoccupation for the world community; it was the 'environment'. In the year 1972 the United Nations General Assembly convened the United Nations Conference on Human Environment initiated by Swedish government in Stockholm. Amidst development, sustainability became indispensable concern for the global community. To fruitify the impact of idea of connecting the world economies as a 'global village', it was suggested to the member nations to draw out integrative development plans to assure lesser pollution and appropriate disposal of wastes. This very conference paved the way for 113 member nations to procreate their own policies for regulating environment protection on the 26 principles recognised in the Conference as having deteriorating effect on the environment. The augmentation of this Conference led to the establishment of United Nations Environment Program in the year 1972. The Conference thus triggered a conscious effort on part of world community and global organisations to formulate ideas into policies for reducing pollution and

improving environment using science and technology. To testify this urge Principle 1 of the Stockholm Declaration has been referred to, by the Background Paper for WHO(1 – prepared by Professor Dinah) which reads-

Principle 1 of the Stockholm Declaration established a foundation for linking human rights, health, and environmental protection, declaring that Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. In resolution 45/94 the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment.

Major Concerns of Nations At World Forums

Some of the major concerns that were highlighted by the nations, all across the globe were ozone depletion, green-house effect, global warming, deforestation, desertification, loss of biodiversity and disposal of wastes. These were some of the inevitable resultants of industrialisation leading to growth, development and evolution of human civilization. Numerous multilateral agreements, treaties and conventions were adopted by the nations for ensuring sustainable development by appropriate exchange of technologies in manufacture of goods and disposal of waste, known to degrade both biotic and abiotic environment, causing serious concerns like depletion of ozone from stratosphere, increased quantity of green house gases and planned disposal of hazardous waste from industries.

Vienna Convention 1988

The Vienna Convention on Protection of Ozone Layer was agreed to in 1985 but came into effect on 22 September 1988. A striking feature of the convention is that, it doesn't require the member nations to take control measures and steps for reducing Ozone depletion however; it is the Montreal Protocol that calls for such actions. It furthers studies through exchange of information among member nations on ozone depletion.

Montreal Protocol 2009

The Montreal Protocol is the ever existing universally accepted treaty by 197 nations in 2009. It regulates the production and consumption of nearly 100 man-made chemicals referred to as ODS (Ozone Depleting Substances). It is a treaty, comprehensive enough to focus on major development concerns like Control measures, calculation of control levels, control of trade

with non-parties, special situation of developing countries, non compliance, technical assistance and other related matters.

Basel Conventions 1989 -2018

The Basel Convention on the control of trans-boundary movement of hazardous waste and their disposal was adopted in March 1989 in Basel, Switzerland. However, the convention came into force in 1992 but was joined by 187 member nations by the year 2018. It associates itself with the most desired ban of the civilization for improving environment and regulating waste disposal of hazardous waste from developed to under developed or developing economies: The Basel Ban of 1995. It is a notable feature that only few developed nations have ratified it till date.

Kyoto Protocol

Kyoto Protocol adopted in December 1997, was a step forward towards operationalizing United Nations Framework Convention on Climate Change by outlining regulations for industrialised nations to limit and reduce emission of green-house gases in compliance with the agreed individual limits. The Protocol in its first phase or period of commitment in 1990's, was marked by a targeted decrease in GHGs up to 5% by the member states. This decrease was further increased upto 35% for the second commitment period of member states between 2013-20 The Protocol is powered by a monitoring mechanism with a four dimensional approach towards emissions– to register, report, comply with and adapt.

Besides these milestones in evolution of environment protection, there has been a series of numerous conventions, instrumental in regulating diversified aspects of environment seeking immediate redressal. To name a few are- Convention on Biological Diversity- 1992, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on Long Range Trans-Boundary Air Pollution, Convention on Migratory Species of Wild Animals and many more, United Nations Framework Convention on Climate Change, World heritage Convention, Stockholm Convention on Persistent Organic Pollutants and many more.

Environment and Vedic Period

For understanding the concept of environment protection in India, it is, therefore important to have a deeper insight of the evolution of this concept. Starting from the Pre-Vedic Era, it was the architecture of Indus Valley Civilization that supported basic web of environment suited for human existence. It was almost about 5000 years ago, that the architecture guaranteed hygiene and sanitation to the dwellers. The town planning was so well designed that people could, at ease, connect with their work places (agricultural fields), public granaries and Costs of rivers. The sewage and drainage were well engineered and houses were well ventilated too.

The Vedic Period marked an era of protection and conservation of environment. The message of environment protection forms constitutive part of many ancient Indian literatures like the Upanishads, Charak Samhita, Ramayana and Mahabharata which are intrinsic to Hindu philosophy. These literatures emphasised on 'Non-violence' that is non-injury to both the living as well as non-living creations of nature such as plants, animals, air, water, land, hill, forest as inextricable facet of Hindu philosophy that later extended to Jainism and Buddhism. It was a common practice to worship trees, rivers, forests for satisfying basic human needs of the dwelling civilizations. Some hymns in Atharvaveda, call for forest conservation and protection of three trees, namely- 'Parijath, Banyan and Peepal'. Several Vedic hymns have been used as Prayers for maintaining ecological balance in nature. Though India has been blessed with ample rain and perennial rivers, the Vedas emphasise on water conservation.

Environment and Medieval Period

The medieval period had no peculiar policy with respect to environment protection except for that only the Emperor was allowed to hunt and no other in the kingdom. It was the British India (1800-1947) where the development of environment related laws and regulations were initiated. Trade being the only driving factor for British settlement in India near Ports, laws relating to prevention of water pollution were the first ones to be enacted. It served dual purpose of safeguarding the sea life that was the only source of food during long voyages and ensuring clean sea surfaces to prevent damage and deterioration of the floating vessel which essentially is a characteristic feature of a cost effective voyage. Numerous legislations were enacted by the British Parliament for protecting the same, like- Shore Nuisance (Bombay and Kolaba) Act-1853, Merchant Shipping Act-1858, The Fisheries Act -1897, The Bengal smoke Nuisance Act of 1905, Bombay Smoke Nuisance Act of 1912, Wild Birds and Animals Protection Act of 1912 were some major legislations enacted for effective control over sea environment.

India as a Stakeholder of Environment Protection amidst Developing Nations

Once India got independent in 1947, the drafting of Indian Constitution started. It culminated into giving the world its first lengthiest written Constitution of a country. Strikingly, Indian Constitution did not mention the word 'Environment' anywhere. Though phrases like 'public health', 'organisation of agricultural and animal husbandry on modern and scientific lines' (art 48), 'protection of natural monuments from spoliation and disfigurement'(art 49), are evident of the legislative intent towards environment awareness and concerns. Also Parliament can legislate on the matters like environment, listed in the State List, in 'national interest by virtue of art 249 of the Constitution. The Environment Impact Assessment (EIA) shoulders the responsibility of balancing conflicting interests between development and environment, thereby settling conflicts of Centre and State.

India, as an environment concerned state, began its journey with playing a key role in Stockholm Conference of 1972, Earth summit of 1992, Earth Summit of plus Five of 1997 and the Earth summit at Johannesburg in 2002. Legislations like Air (Prevention and Control of Pollution Act) 1981 and Environment Protection Act 1986 are a major legislative leap to combat environment issues and ensure appropriate protection in such matters. The courts have played pro active role in matters concerning environment protection. Some landmark rulings like –

People's Union for Civil Liberties v Union of India ((1997) 3 SCC 433 at 422)

it was held that an International Covenant may be used to effectuate the Fundamental rights provided by the Constitution.

Vellore Citizen's Welfare Forum v Union of India AIR 1988 HP 4

It was held that it is an accepted proposition of law to incorporate rules of customary International Law, not contrary with Municipal Law, through the courts.

The Right to Life, guaranteed by Constitution is the most fundamental in nature. Advent of concepts like 'Judicial Activism' and 'Judicial Review', has been significant in rendering appropriate interpretation to the term 'life' which is not cabined anymore to attaining food, shelter and clothing. The new meaning is sufficient enough a term that is inclusive of not merely the basics of biological survival but also hygienic surroundings that proportionally

affect the mental health and well being of a human. Some landmark judgements of the Apex court are worth mentioning here that widened the horizons of 'Right to Life' as follows-

A.K. Gopalan v State of Madras (AIR 1950, SC 27)

Kharak Singh v State of U.P. (AIR 1963, SC 1295)

Rural Litigation and Entitlement Kendra, Dehradun V. State Uttar Pradesh (AIR, 1985, SC 652, AIR 1988 SC 2187)

T. Damodar Rao V. Special Officer Municipal Corporation Hyderabad (AIR, 1987 AP 171)

The Ministry of Environment, Forest and Climate change is the nodal body for planning, promoting, co-ordinating and monitoring India's internal and international policies and programs on environment and climate concerns. It is also endowed with the prime responsibility of acting as nodal agency for United Nations Environment Program, responsible for identifying environment and climate change concerns and ensuring collective measures by the member states. The Ministry works with the objective of not only ensuring environment protection by conserving flora and fauna along with prevention and control of pollution but also controls major policy orientations concerning afforestation, regeneration of degraded areas and ensuring welfare of animals. In tandem with its functions, notable policies have been released by the Ministry from time to time. Few notable and progressive policies one must refer to are- National Conservation Strategy and Policy Statement on Environment and Development - 1992, National Forest Policy - 1988, Policy Statement on Abatement of Pollution – 1992, National Environment Policy – 2006. The launching of e-portal Parivesh, for filing and obtaining clearances of proposals concerning environment, forest, wildlife and Coastal Regulation Zones, is a fervent breakthrough in the radical process of obtaining clearances for District, State and Central authorities. Also, the Integrated Waste Management System (IWMS), set up for managing solid, chemical, plastic, industrial and bio-medical waste, now effectively triggered actions for e-waste management too.

CONCLUSION

Environment as a resource has been valued since human existence. It is not only the mythology that speaks volumes about protecting environment through worshipping nature but also, the scientific establishment of very first civilizations that manifests town planning with adequate

and appropriate sanitation. It started with culmination of Breton Wood's Twins that nations got access to international bodies to aid them in financial crisis and encouraged them for converting the world into a 'Global Village' by exchange of science, technology and partnering in development. Numerous treaties, Conventions, Conferences, Memorandum have been into by member States of United Nations for the same. However, due to lack of adequate implementation policies, many third world countries have not assured effective implementation. Sustainability is now considered the other side of development, as, there cannot be development with depletion and erosion of resources. There has also been a calling for special provisions for disposal of medial and e-waste as paramount need of the hour. With judicial activism, encouraging wider horizons of concepts, the meaning of 'Right to life' has widened manifolds. It is now the time for judiciary, as the apex institution of giving effect to international laws and convention, to put forth a novel definition of this right as being inclusive of 'Right to Sustainable Development'.

BIBLIOGRAPHY

https://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf

https://unfccc.int/kyoto_protocol

<https://www.unenvironment.org/ozonaction/who-we-are/about-montreal-protocol>

<https://ozone.unep.org/treaties/vienna-convention/vienna-convention-protection-ozone-layer>

<https://www.unenvironment.org/ozonaction/who-we-are/about-montreal-protocol>