**Role of Indian Judiciary in Sustainable Development**

 **Dr.Vijeta S.Singh**1

**Meaning:** Right to wholesome environment is a fundamental right protected under Article 21 of the Constitution of India.2 But the question is, can the environment be protected at present times when almost all the countries in South-East Asia are still at their developing stages? Development comes through industrialization, which in turn the main factor behind the degradation of environment. To resolve the issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology. Sustainable development means that the richness of the earth’s biodiversity would be conserved for future generations by greatly slowing and, if possible, halting extinctions, habitat and ecosystem destruction, and also by not risking significant alternations of the global environment that might – by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation - alter the opportunities available for future generations.

**Origin of the doctrine:**

The concept of 'Sustainable Development' is not a new concept. The doctrine had come to be known as early as in 1972 in the Stockholm declaration. It had been stated in the declaration that3

" 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 and he bears a solemn responsibility to protect and improve the environment for present and future generation "

But the concept was given a definite shape in a report by world commission on environment, which was known as ' our common future'. The commission, which was chaired by the then Norway Prime Minister, Ms. G.H. Brundtland defined 'Sustainable Development' as4

**Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.**

**---------------------------------------------------------------------------------------------------------------------**

1.Assit. Prof.S. S. Maniyar Law College, Jalgaon. Maharashtra

2. Indian Constitutional law, Prof. M.P Jain. Sixth edt. Reprint 2011, pg.no.1178.

3. U.N International Conference on Human Environment, (June 5-16-1972)

4. World Commission on Environment and Development (WCED),

**How has this phrase understood in India?**
Perhaps the answer lies in the decision of the Supreme Court in **Narmada Bachao Andolan v. Union of India**5 wherein it was observed that “Sustainable development means what type or extent of development can take place, which can be sustained by nature/ecology with or without mitigation.” In this context, development primarily meant material or economic progress.
**Various principles of 'Sustainable Development':**

Some of the basic principles of 'Sustainable Development' as described in 'Brundtland report' are as follows: -
a) Inter-Generational Equity: The principle talks about the right of every generation to get benefit from the natural resources. Principle 3 of the Rio declaration states that6

**The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations**

" The main object behind the principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefit.b) The Precautionary Principle:

This principle has widely been recognized as the most important principle of 'Sustainable Development'. Principle 15 the Rio declaration states that7 "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

**In other words it means:**

1. Environmental measures by the state government and the local authority must anticipate prevent and attack the causes of environmental degradation.

-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5. (2000) 10 SCC 644

6. Earth Summit- The Rio Declaration on Environment and Development, 1999.

7. Abid.

2) Where there are threats of serious and irreversible damage, lack of scientific certainty should not used as a reason for postponing measures to prevent environmental degradation.
3) The 'onus of proof' is on the actor or the developer to proof that his action is environmentally benign.

**c) Polluter Pays Principle8**

Principle 16 of the Rio declaration states that:

**National authorities should endeavor to promote the internalization 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.**
It is quite obvious that the object of the above principle was to make the polluter liable not only for the compensation to the victims but also for the cost of restoring of environmental degradation. Once the actor is proved to be guilty, he is liable to compensate for his act irrelevant of the fact that whether he's involved in development process or not.
**Role of judiciary:** Judiciary in India, more precisely, the Supreme Court and the High Court has played an important role in preserving the doctrine of ' Sustainable Development '. Parliament has enacted various laws to deal with the problems of environmental degradation. In such a situation, the superior courts have played a pivotal role in interpreting those laws to suit the doctrine of ' Sustainable Development'.

**It is worthwhile to mention here that principle 10 of Rio declaration, 1992 states that9**

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information

8. (1996) 4 SCC750.

9. Earth Summit- The Rio Declaration on Environment and Development, 1999.

concerning the environment that is held by public authorities, including information on hazardous materials and activities
In their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."
It is also to be remembered that most of the environmental cases have come before the court through PIL (public interest litigation) either under Article 32 or under 226of the constitution.
The first case on which the apex court had applied the doctrine of ' Sustainable Development' was **Vellore Citizen Welfare Forum vs. Union of India**.10 In the instant case, dispute arose over some tanneries in the state of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was the main source of drinking water in the state .The Hon'ble Supreme Court held that:

**We have no hesitation in holding that the precautionary principle and polluter pays principle are part of the environmental law of India
The court also held that: Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.**

But before Vellore Citizen's case, the Supreme Court has in many cases tried to keep the balance between ecology and development. In **Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh, which was also known as Doon valley case11** dispute arose over mining in the hilly areas. The Supreme Court after much investigation ordered the stopping of mining work and held that:

-------------------------------------------------------------------------------------------------------------------

10. (1996) 5 SCC 647

11.(1985) 2 SCC 43

This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment."

However in 1991, in the Rural Litigation and Entitlement Kendra vs. State of U.P12 the Supreme Court allowed a mine to operate until the expiry of lease as exceptional case on condition that land taken on lease would be subjected to deforestation by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lacks to the fund of the monitoring committee. This has been directed on the principle of 'polluter pays'.

Likewise, various forests have also been protected. In a landmark case **Tarun Bhagat Sangh vs. Union of India**13 the petitioner through a PIL brought to the notice of the supreme court that the state government of Rajasthan though empowered to make rules to protect environment, failed to do so and in contrary allowed mining work to continue within the forest area. Consequently, the Supreme Court issued directions that no mining work or operation could be continued within the protected area.

But it would be unwise to hold that the courts always favour environment without giving any significance to the development aspect when dispute arises between environment and development.

In [M.C.Mehta vs. Union of India](http://www.legalserviceindia.com/article/l265-M.C.-Mehta-v.-Union-of-India.html)14 the Supreme Court issued directions towards the closing of mechanical stone crushing activities in and around Delhi, which was declared by WHO as the third most polluted city in the world. However it realised the importance of stone crushing and issued directions for allotment of sites in the new 'crushing zone' set up at village Pali in the state of Haryana.

**How can sustainable development, with economic progress and without environmental regression, be ensured within the Indian legal framework?**

This can be achieved through the implementation of good legislation.

---------------------------------------------------------------------------------------------------------------------

12. AIR 1987 SC 359

13. 1993 Supp (3) SCC 115

14. (1996)4 SCC 750

The courts have attempted to provide a balanced view of priorities while deciding environmental matters. As India is a developing country, certain ecological sacrifices are deemed necessary, while keeping in mind the nature of the environment in that area, and its criticality to the community. This is in order that future generations may benefit from policies and laws that further environmental as well as developmental goals. This ethical mix is termed sustainable development, and has also been recognized by the Supreme Court in the Taj Trapezium case.15

In State of Himachal Pradesh v. Ganesh Wood Products16 the Supreme Court invalidated a forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development.

Thus it is quite obvious that the courts give equal importance to both ecology and development while dealing with the cases of environmental degradation.

**Conclusion:** Environment and development are two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future. Thus the responsibility lies on the Supreme Court and the various High Courts to deal with these cases with caution of high degree. Then only, we will achieve our goal i.e. to secure a pollution free developed country for our next generation.

15. M.C Mehata V. Union of India, (1997)2 SCC 353

16. AIR 1986 SC 847.

**References:**

1. Paras Diwan - Environment Administration Law and judicial attitude.
2) Environmental Law by H.N.Tiwari.
3) Law relating to Environmental pollution and protection by Dr. N.Maheshwara Swamy
4) Environmental Law by Dr.Paramjit Jaswal and Dr. Nistha Jaswal.
5) Environmental Law and Policy in India by S.C Shashtri

6) Sustainable Development and Indian Judiciary Written by: Written By : Soura Subha Ghosh

#  7) Indian Constitutional Law. Professor M.P Jain

 Abstract

 **Role of Indian Judiciary in Sustainable Development**

 **Dr.Vijeta S.Singh**

Right to wholesome environment is a fundamental right protected under Article 21 of the Constitution of India. But the question is, can the environment be protected at present times when almost all the countries in South-East Asia are still at their developing stages? Development comes through industrialization, which in turn the main factor behind the degradation of environment. To resolve the issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology.

 The concept of 'Sustainable Development' is not a new concept. The doctrine had come to be known as early as in 1972 in the Stockholm declaration. It had been stated in the declaration 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 and he bears a solemn responsibility to protect and improve the environment for present and future generation ."

Judiciary in India, more precisely, the Supreme Court and the High Court has played an important role in preserving the doctrine of ' Sustainable Development '. Parliament has enacted various laws to deal with the problems of environmental degradation. In such a situation, the superior courts have played a pivotal role in interpreting those laws to suit the doctrine of ' Sustainable Development'.

Environment and development are two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future. Thus the responsibility lies on the Supreme Court and the various High Courts to deal with these cases with caution of high degree. Then only, we will achieve our goal i.e. to secure a pollution free developed country for our next generation.