

IMPLEMENTING SUSTAINABLE DEVELOPMENT GOALS: LEGAL AND POLICY PERSPECTIVES

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Abstract

The fundamental activity of environment protection has been taken for granted since a long time. The current COVID-19 Pandemic has forced us to revisit and revamp our legal policies for growth in sustainable development. Green recovery has now become the most pressing need for a sustainable change in the environment. This essay focuses on the critical analysis of, whether the existing legal framework of the Sustainable development gives protection to the environment or not. This piece of study has been briefly divided into 6 Parts. Where, Head 1 provides a brief description of concept of Sustainable development. Head 2 offers the treaty provisions of the Sustainable development to protect the environment. Head 3 looks at the contribution of the Judiciary and Constitution in Application of Concept in India. Head 4 focuses on the criticism of concept. Further, Head 5 analyses the problem of plastic use amid pandemic and application of sustainable development principles to curb plastic use and lastly, Head 6 provides for green recovery to materialise the line of action to be followed to reach an equilibrium of development and environment protection

Keywords: Sustainable Development, Pollution, Plastic, Green Recovery, Paradigm

SUSTAINABLE DEVELOPMENT: A NEW PARADIGM FOR PROGRESS AND RECONCILIATION

The quest for environmental protection alongside economic development has been one of the fundamental concerns propelling over the decades. Sustainable development emphasises on a balanced synthesis of environment and development imperatives. The contrivance was conceived at the United Nations Conference on the Human Environment at Stockholm (1972). The deliberations were followed by the Stockholm Declaration whereby a base for superstructure of 'Sustainable Development' was provided. The World Commission on Environment and Development in its Report titled "Our Common Future", gave a concrete shape to the concept by defining it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". The concept is bolstered on the fragility of diverse ecosystem and is based on the idea that present generation should use resources in a judicious manner. It is based on colloquial aphorism that "we do not inherit the earth from our ancestors; we borrow it from our children".

The current pandemic reiterates that Earth itself is a complex and dynamic system where no process is independent of other even if it is spreading of a disease. It is estimated that 75 per cent of infectious diseases in humans like Zika, Sars, Ebola, Swine flu and Nipah virus are zoonotic, i.e., they are transmitted to people by animals. Therefore, the sudden emergence of pandemics must be viewed holistically considering the overlapping myriad of biological, chemical, physical, and social processes.

In the wake of Coronavirus pandemic, there is perceptibly a desideratum for a comprehensive analysis of how sustainable development manoeuvres as an instrument of environmental bulwark.

INTERNATIONAL PERSPECTIVE

The concept of sustainable development came into limelight during UN Conference on Human Environment at Stockholm in 1972 which led to evolution of a global phenomenon and attained a legal framework in Brundtland Report of 1987. The United Nations Conference on Environment and Development (UNCED) held at Rio in 1992 is considered to be the most important when it comes to steps taken by the UN for environment protection and sustainable green environment which included "Agenda 21" and "Statement of principles for the Sustainable Management of Forests" which were adopted by more than 178 countries with the aim of achieving global sustainable development. A Commission on Sustainable Development (CSD) was also created in December 1992 to maintain effective follow-up of UNCED.

The United Nations has been actively helping its member countries in Europe with the "17 Sustainable Development Goals" also known as the SDGs or Agenda 2030 adopted in 2015. The Agenda is the

comprehensive blueprint for the reorganization of human society and Agenda 2030 talks about implementation of the same in detail. However, the effective implementation of the same seems rather improbable in praesenti due to the outbreak of pandemic.

In addition to SDGs, the Paris Agreement on Climate Change, United Nations Global Compact and United Nations Environment Programme (UNEP) are actively working on a brighter environmental future in the post COVID-19 Era. The UNEP will help countries with green investments through its plans, advance sustainable development goals while reserving the prime focus on introducing new economic models for the betterment of poor and vulnerable people as they are affected the most during environmental pandemics.

INDIAN JURISPRUDENTIAL STATUS

The Constitution of India was amended by the 42nd Constitution (Amendment) Act, 1976 to include Articles 48-A and 51-A (g) that creates a constitutional obligation on the 'State' and the 'citizens' to conserve, preserve, protect and improve the environment. The terminology 'protect and improve' in the article(s) calls for an affirmative action on the part of the government to improve quality of environment and not just to preserve the environment passively.

The Apex Court has adopted a liberal interpretation to widen the scope of the right to life and personal liberty under Article 21 to the extent that it has held that the adherence to sustainable development as sine qua non to stabilise the rights to environment and development, thus mutually inter-dependent. The Hon'ble Court treated sustainable development as an integral part of "life" under Article 21 and warned that if the environmental legislation is not armed with the powers to ensure sustainable development, it will become a barren shell.

The enactment of the Environment (Protection) Act, 1986 statutorily recognized the Principle of Sustainable Development in India. The notion of symbiotic relationship between development and environment has been harmonised by the Hon'ble Supreme by the ratio laid in Vellore Citizens' Welfare Forum v. Union of India. The Court vehemently rejected the traditional approach that believed development and ecology are antithesis of each other. It further added that the "precautionary principle" and the "polluter pays principle" constituted essential features of "sustainable development". Hon'ble Justice Kuldip Singh referred to International Environment Law and stated that the above said principles and the concept of onus of proof have been merged to govern the law of country. Hence, the Court adopted 'transnational law' as a lens to meet environmental challenge.

The Apex Court in Indian Council for Enviro-Legal Action v. Union of India, laid down the dictum that "the necessity to preserve the environment must be seen as compatible with economic and other developments". The objective of law should be to create harmony between development and environment, as neither one can be sacrificed at the altar of the other.

CONCEPTUAL SHORTCOMINGS

The practical and theoretical aspects of Sustainable development are poles-apart. Many opponents of sustainable development believe that it is 'jack of all trades but master of none'. Criticisms and drawbacks lie not only in the SDG's but in the inherent concept of sustainable development itself. It is a paradox that despite the presence of concept, the pollution rate has crossed all frontiers. This is probably because of the reason that the concept is so multifaceted and nebulous that even the expert may not ken the intricacies of it.

Environmental economists say that when no clear perception of non-renewable resource is given anywhere "it makes no sense to talk about the sustainable use of a non-renewable resource." The term sustainable itself is very vague, and it cannot be measured in any unit. Also, there is no mechanism to estimate and calculate the present and future needs.

Environmental protection groups and economic lobbyist often reach a conflicting point where the latter says that the definition of sustainable development is inclusive of economy as well and not only environment but the former disagree. However, the economists always have an upper hand and resultantly the ecological aspects are often ignored.

Many economic solutions for environmental protection do not actually tackle environment degradation and treat the ecological systems differently. For instance, many national and international agreements allow the industries to carry on with their actions if they manage to reduce the damage to one particular eco system. In this process other eco systems are compromised. Hence, trying to solve one aspect of environmental degradation does not necessary mean solving the rest and a more holistic approach to environmental protection should be applied which recognizes the inter relation and complexity of the global system.

When it comes to the flaws of the SDGs, the following setbacks can be considered:

The foundation on which they were built has shifted.

Their success was based on the factors like, economic growth and globalization which have been disrupted due to COVID-19. The economy is expected to fall by at least 5% this year and its recovery will take a longer time.

The current pandemic indicated that the SDGs are not strong enough to handle global catastrophes.

Hence, we need to reframe the paradigm of three pillars of sustainable development namely, economic, social and environmental and instead view it as a nested concept.

THE CASE OF PLASTIC POLLUTION

The Problem with Plastic Use

Plastic has infiltrated into all spheres of lives so much that it is anticipated that an extra 33 billion tonnes will be added to Earth by 2050. Plastic is extremely resistant to degradation and its influx poses a risk to humans and ecosystem. The production, recycling, and incineration of plastic items emits 400 million tonnes of CO₂ each year. If this trend persists, the contamination of nature with plastic will reach 12,000 million tonnes by 2050.

The other method of plastic waste disposal is incineration which has its own bundle of problems. Firstly, the burning plastics emit toxins; secondly, it fails to obliterate plastics completely leaving behind nano- and micro-particles; thirdly, if plastic materials having the slightest amount of chlorine in its composition are incinerated, it leads to production of dioxin- a known carcinogen.

Profit Making v. Environment Protection

The use of plastic has become inexorable and the only preventive measure for suppression of Coronavirus. The Plastics Industry Association has posed plastic as a saviour due to its non-proliferation capacity. The petrochemical refinery companies have also funded studies to promote plastic use.

On one hand, the recent studies have found that plastics remain infected with the virus much longer than other materials like cardboard, steel and copper. On the other hand, single use plastic waste is more as is it may have residual pathogens that could exacerbate infection if not properly treated. The urge for profiteering has outweighed the moral dilemma of protecting environment.

Sustainable Development Vis-A-Vis Plastic Use

The pandemic has made plastic use synonymous with health, hygiene and safety. The situation demands a tradeoff between extenuation of virus and environment protection by application of Sustainable Development principles.

Precautionary Principle

Precaution is a guiding principle that can mitigate environmental degradation. Principle 15 of the Rio Declaration creates obligation on the states to apply precautionary approach according to their capabilities. It is based on the dictum that activities posing an uncertain substantial harm should be prohibited until the proponent of the activity establishes that there is no significant risk to the environment. It is founded on four fundamental formulations;

Firstly, it suggests to take preventive action in the case of uncertainty. A margin of safety should be incorporated in regulatory controls and the best available technology should be used to minimise the risk of harm posed. Secondly, it explores alternatives to possible harmful actions. Thirdly, it shifts burden of proof to the proponents of the activity a scientific uncertainty. The implication of this duty is that the developers must assume from the nature of their activities that harm to environment may occur and the necessary action to prevent that harm. It does not imply that an activity should be automatically precluded on mere possibility of environmental harm. Lastly, it insinuates on increasing public participation in the decision-making.

In the realm of plastics, policymakers can realign incentives, facilitate secondary markets, define standards through regulation etc. Such decisions manoeuvre in obfuscated areas of scientific uncertainty. With waste management and sustainability issues becoming increasingly multifaceted in scope, scientific documentation alone would not be adequate, a legal framework would also be required.

Polluter Pays Principle

The principle exposes the polluter to two-fold liability, namely compensation to the victims of pollution and ecological restoration. In the backdrop of plastics, it would impose penalty on the plastic producing industries and people using plastics for the extent of damage done and also for restoration of the environment. The amount of damage done at time of production can be measured by the procedure of Environmental Impact Assessment.

Environmental Impact Assessment

It is a technique to ensure that the prospective effects of an activity on the environment will be deliberated before the activity is authorised to be materialised in action.

The process requires developer to submit Environmental Impact Assessment to the competent authority. This statement should identify the potential environmental effects and the measures that are envisaged to avoid, reduce or remedy these effects. The competent authority then consults public bodies, environmental

organisations and other institutions concerned authorities. An opportunity to the public is also provided to the public to express objections.

The Application of the procedure to plastic waste management would obligate the states to conduct pre-production assessment of the impact on environment and assessment with regard to the magnitude of plastics that would be created.

Principle of Good Governance and Stakeholder Participation

The principle demands for a transparency in governance, decision making and involvement of all stakeholders in the decision-making process.

It refers to presence of well-defined institutional mechanism to ensure the environment protection. The participation of all stakeholders in decision making requires a dedicated regulatory legislation and monitoring body relating to all the issues of plastic waste management.

India has implemented Plastic Waste Management Rules, 2016 to curb the unabated proliferation of plastic waste. The rules lay down a duty on local bodies to develop infrastructure for segregation, collection, storage, transportation, processing and disposal of the plastic waste. Gram Panchayats in addition to the above mentioned responsibility have been directed to create awareness among stakeholders about their responsibilities and to ensure that plastic is not openly burnt. The rules furthermore convolute that waste generators shall take steps to minimize plastic waste, appoint registered waste pickers and authorize local bodies to collect user fee as may be specified in the bye- laws of the respective local bodies for plastic waste management and allied facilities.

Despite of the legislation in place, the problem of plastic pollution is ever increasing and the apocalypse of Corona Virus has made a downhill progress on plastic pollution.

GREEN RECOVERY: A WAY FORWARD

The disaster has made us realise that we not only need to strengthen and reset our sustainable development plans for a green recovery but also compensate resilience, innovation and cooperation in our environmental legal policies. The strategies which the countries will be forming and implementing now will be the most important for future generations in handling other, inevitable crisis.

Briefly set out below are recommendations that can go a long way in sustainable and green recovery post COVID-19:

Changing Economic Indicators: The current economic indicators like GDP (Gross Domestic Product), which only consider factors of market values, should be substituted with new indicators which include the non-market factors as well like human health and nature which constitute sustainable well -being.

Green Economy Principles: The principles of Wellbeing, Justice, Sufficiency & Efficiency, Planetary Boundaries, and Good Governance should guide recovery plans and actions.

Green Fiscal Policy: The countries can rationalize expenditures which are done on environmentally harmful subsidies and redirect the funds to other sectors which are in need for example the health sector. Subsidy swaps from fossil fuels to clean energy have direct sustainable development benefits, including job creation, skill development, gender equality and improving public health.

Condemning Plastic Use: Disposables need to be made from biomass resources, biodegradable or compostable plastics, new business models for collection and sorting of plastic wastes need to be developed and new technologies to recycle mixed plastics are needed. Moreover, proper disposal of plastic waste and plastic medical equipment should be followed.

Funding for Zero Emission Technologies: There has been a slight drop in the air pollution levels due to the lockdown during COVID-19, but the change is temporary. Air pollution kills about 7 million people annually, morbidity and premature mortality associated with air pollution from road transport had costed OECD countries a \$1.7 trillion in 2010. Since there is a direct link between air pollution and fatality by COVID-19, improvement in air quality should be prioritised. Measures such as renewable electricity generation, electric vehicle adoption, and use of energy efficient construction materials should be emphasized.

Worldwide Collaboration and Coordination: The Setting up of international observing stages to diagram the effect of recuperation measures on progress towards the SDGs, atmosphere objectives, biodiversity targets offer an open door for improved national and provincial coordination.

“The challenges and the opportunities are certainly far larger than anything the world has seen since the end of WWII in terms of the amount of money that’s available to shift and build economies. It would be dreadful if we miss this opportunity because in a generation there is no such further opportunity coming.”

To build back, a restorative equilibrium between developmental rights and environmental protection is needed.

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