

Meaning and concept of sustainable development law international essay

[Law](#)



**ASSIGN
BUSTER**

The term 'sustainable development' today has become a buzzword among the policy makers academicians, environmentalists, governmental or non-governmental organizations and nations at large across the world transcending the geographical boundaries. I would say it has become a catchword to every paper, policies that concern about developmental plans, projects and programmes. The term sustainable development as defined by the Brundtland Report called "Our Common Future" in 1987 states, "sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs". The definition deals with it two key concepts within it[1]; The concept of 'needs', in particular the essential needs of the world's poor, to which overriding should be given; and The idea of limitation imposed by the state of technology and social organization on environment's ability to meet present and future needs. According to dictionary meaning of the term it is, "any construction that can be maintained over time without damaging the environment; development balancing near term interest with the protection of the interests of the future generations"[2]. Moreover, the term sustainable development is defined by in varieties of way, "Sustainable Development is positive change which does not undermine the environmental or social systems on which we depend. It requires a coordinated approach to planning and policy making that involves public participation. Its success depends on widespread understanding of the critical relationship between people and their environment and the will to make necessary changes."[3]United Nations Environment Program (UNEP) defines sustainable development as: "Development which improves people's quality of life, within the carrying

capacity of earth's life support systems." [4] In addition, The World Conservation Union (IUCN) added to the definition of sustainable development in "Caring for the Earth" on: "The guiding rules are that people must share with each other and care for the Earth. Humanity must take no more from nature than nature can replenish. This in turn means adopting lifestyles and development paths that respect and work within nature's limits. It can be done without rejecting the many benefits that modern technology has brought. Provided that technology also works within those limits" [5] The meaning and scope of sustainable development is very broad. By the very nature of its flexibility, the precise definition cannot be expected. If we look into the various opinions on sustainable development; According to Schneider [6], "Although the term has assumed a guiding function since 'Our Common Future' in 1987, almost everything it is unclear from its translation through to its political consequences". Roe says, "... sustainable development is an oxymoron, however because, 'development' is always unsustainable, but because sustainability cannot be developed the way of its advocates suppose." [7] Likewise in the opinion of Gebaur, "the notion of 'sustainable development' has gone through an inflationary development over the past few years, although it is more than just a catchphrase. From its origin in forestry and sustainable forest use, it has advanced to become a guiding principle for renewing industrial society... the arguments that are used to introduce this concept as a guiding principle betray quite different cognitive status of this concept than that of a definition that can be made operable. They are arguments of critical reflections" [8]. These opinions on sustainable development reflect that the precise meaning

of the term has not been laid down and has not reached general acceptance. Thus, societies at different levels have their own concept of sustainable development and the object that is to be achieved by it. Justice B. N. Kirpal, CJI, laid an instance, " for rich countries, sustainable development may mean steady reduction in wasteful level of consumption of energy and other natural resources through improvements in efficiency and through changes in lifestyle, while in poorer countries, sustainable development would mean the commitment towards continued improvement in living standards[9]. According to Justice B. N. Kirpal, CJI, " sustainable development means that the richness of the earth's biodiversity would be conserved for future generation by greatly slowing and, if possible, halting extinctions, habitat and ecosystem destruction, and also by not risking significant alterations 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"[10]. In Narmada Case[11], the Hon'ble Supreme Court of India 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" The concept of sustainable development embodies various principles within it like, the precautionary principle; the polluter pays principle, intergenerational equity, conservation of biological diversity and ecological integrity, and doctrine of public trust which will be discussed in subsequent chapter in detail. Justice Y. K. Sabhrawal, CJI, says, " I would like to define the concept of sustainable development simply the process of overall development of the society the momentum of which can be sustained till eternity. In order to ensure this,

those engaged in the task of development would naturally guard against such exploitation of resources as leads to their permanent destruction"[12]. The concept of sustainable development attempts to balance the scale between the quantity of development and quality of environment, the effort being to ensure that the development does not disturb the delicate equilibrium.[13]It thus deals with two types of equity: first, the equity for human generations yet to come, whose interest are not represented by standard economic analysis or by market forces that discount the future, and second, the equity for people living now who do not have equal access to natural resources. The conflict between the two kinds of equities has given the rise to international treaty obligations, some of which have been incorporated into municipal law and by most of which India feels itself bound to abide[14].

Historical Background

The doctrine of Sustainable development is of recent origin and it is barely forty years old. Its development can be attributed to United Nations and its various conferences and programmes initiated under its auspices. The first step towards sustainable development was the United Nations International Conference on Human Environment held in Stockholm, Sweden from 5th - 16th of June, 1972, popularly known as ' Stockholm declaration'. However, it does not necessarily mean that the concept was never in existence before the said declaration. One hundred and thirteen nations across the globe took part in the Stockholm declaration under the leadership of United Nations Organization to combat environmental degradation, pollution and ecological imbalances[15]. The heavy cost of economic development and exploitation

of the mother earth in an unsustainable way to achieve the greed driven economic goals has finally brought the callings to the men. This eventually led to the Stockholm Declaration. The declaration enunciated twenty six principles which are also referred to as 'Magna Carta of human environment'. Among one hundred and thirteen nations taking part in the said declaration, India was one of the members represented by Mrs. Indra Gandhi, the then Prime Minister. Who was the first head of State to address the Conference and voiced her concern about the eco-imbances, environmental degradation and pollution problems[16]. The Stockholm Declaration became the basis for subsequent development of environment law in the form of numerous bilateral and multilateral Conventions and other legally binding instruments[17]. The notable Principles embodying the concept of Sustainable Development enunciated in the Declaration, though not binding to the signatories are 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[18]; and the natural resources of the earth including air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generation through careful planning or management, as appropriate[19]. The Stockholm Declaration however, did not postulate for complete stoppage or negative growth in economic sector in order to combat the challenges imposed by the pattern of unsustainable economic development taking place, but to go hand in hand and to bring the balance between the two

opposite sides of the coin. In spite of non-binding nature of the said Declaration, but it gave a breakthrough or paved the path for various programmes, laws, and policies to implement in the coming future to mitigate the environmental problems that the world is seriously facing with sheer consciousness both at the international and national level including non-governmental organizations. At the international level, in 1980, the International Union for the Conservation of Nature and Natural Resources (now known as the World Conservation Union or IUCN) collaborated with UNEP, the World Wildlife Fund (now known as the World Wildlife Fund for Nature or WWF) and the United Nations Food and Agriculture Organization (FAO) to prepare for the World Conservation Strategy[20](which was published in March 1980). The World Conservation Strategy identified a range of priorities and actions designed to achieve three main objectives viz., the maintenance of essential ecological processes and life support systems, the preservation of genetic diversity, and the sustainable use of species in the ecosystems[21]. Furthermore, it also addressed the need to integrate conservation objectives with the development policies, where it defined ' Conservation' as ' the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations whilst maintaining its potential to meet the needs and aspirations of future generations[22]. Thus, the term ' Sustainable Development' was coined for the first time by the IUCN in the year 1980 in its World Conservation Strategy[23]. Later in 1982, the World Conservation Strategy was supplemented by World Charter for Future which further gave guidance for national programmes and legislation including the practices and

governmental and non-governmental organizations[24]. In 1983, the UN established the World Commission on environment and Development (WCED) as an independent body to address the environmental problems globally. Further, the Commission was asked to formulate ' a global agenda for change'[25]. The Commission gave its Report ' Our Common Future' in the year 1987, which is also referred to as ' Brundtland Report' as being headed by Gro Harlem Brundtland, the then Prime Minister of Norway. The Brundtland Report for the first time defined Sustainable Development. It states as, ' Sustainable Development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. Including the definition, it also formulated twenty two legal principles and thirteen proposals for strengthening the legal and institutional framework[26]. Further, it also recommended that a comprehensive global conference on environment and development should take place[27]. In response to the WCED's recommendation, in 1989, the UN General Assembly resolved to hold the United Nations Conference on Environment and Development (UNCED). The mandate of the Conference was to devise integrated strategies that would halt and reverse the negative impact of human behavior on the physical environment and promote environmentally sustainable economic development in all countries[28]. In the meantime, the IUCN prepared and published " Caring for The Earth, A Strategy for Sustainable Living", which was designed to update the earlier World Conservation Strategy and it also defined action necessary to achieve sustainable development in a variety of areas including energy, business, industry and commerce, human settlement, farm and rangelands, forest,

fresh waters, and oceans and coastal areas[29]. Accordingly, the UNCED was held in Rio de Janeiro, Brazil from 3rd-14th June, 1992. It is considered to be an unprecedented historical event with the largest gathering of 114 heads of State, including 10, 000 representatives from 178 Countries and 1400 non-governmental organizations[30]. The Conference as stated in Preamble is said to " reaffirm the declaration of the United Nations Conference on Human Environment adopted at Stockholm, 1972 and seeking to build upon it. With the goal of establishing new and equitable global partnership through the creation of new level cooperation among states, key sectors of societies and people. Working towards international agreements which respect of all and protect the integrity of the global environmental and developmental system"[31]. The Conference resulted into five instruments, namely; Rio Declaration on Environment and Development; Agenda 21; The Convention on Biological Diversity; The Framework Convention on Climate Change; and The Statement of Forest Principles[32]. These documents enunciated the concept of ecologically sustainable development and recommend a programme of action for the implementation of the concept at international, national and local levels[33]. The Rio Declaration contains 27 Principles, to mention few, it incorporates, Intergenerational Equity[34]Principle of Integration[35], Precautionary Principle[36], and Polluter Pays Principle[37]. Interestingly, these principles are regarded as core Principles of the doctrine of Sustainable development, which will be discussing in detail in subsequent chapter of this paper. On the other hand Agenda 21 comprises 40 Chapters and hundreds of Programme areas, it is a plan of actions designed integrate environmental development concerns for the fulfillment of basic need,

improved living standards for all, better protected and managed ecosystems and a safer and more prosperous future[38]. Agenda 21 activities are organized under environmental and development themes, quality of life, efficient use of natural resources, protection of the global commons, management of human settlement and sustainable economic growth[39]. In 1993, the doctrine of sustainable development got a new face, by establishing a Commission on sustainable development under the auspices of the Economic and Social Council of the United Nations Organisation. The primary function of the Commission is to monitor progress in the implementation of the Agenda 21 and to make necessary recommendations to UN General Assembly through its nodal agency i. e., Economic and Social Council. In the same year in its first session, the Commission formulated a five year plan culminating in 1997 with overall review and appraisal of Agenda 21 and its implementation[40]. Further, in 1997 a special Session of the UN General Assembly was held to conduct a five year review of the progress of the UNCED Earth Summit goals and objectives. This Session is also known as 'Earth Summit+5'[41], where it adopted a programme for further implementation of Agenda 21 prepared by Commission of Sustainable Development[42]. In September 2000, the UN General Assembly adopted the 'Millennium Declaration'. The Millennium Declaration stated certain 'fundamental values' to be essential to international relations in the 21st century of which it included 'Respect for Future-prudence must be shown in the management of all the living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can they immeasurable riches provided to us by nature be preserved and

passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future and that of our descendants[43]'. The World Summit on Sustainable Development (WSSD) was held at Johannesburg, South Africa, from 26th August to 4th September, 2002. The Indian delegation to the Summit was led by the External Affairs Minister Sri Yashwant Sinha[44]. The Summit adopted a plan known as "Johannesburg Plan of Implementation" to promote the integration of the interpretation of the three components of sustainable development-economic, social development and environmental protection-as interdependent and mutually reinforcing pillars[45]. The said plan recognized that, at the domestic level of each Country, sound environmental, social and economic policies, democratic institution responsible to the needs of the people, the rule of law- anti corruption measures, gender equality and enabling environment for investment are the basis for sustainable development[46], and it also emphasized the need to strengthen institutional arrangement on sustainable development. In a meanwhile, prior to the WSSD, between 18th and 20th August, 2002 in Johannesburg, UNEP organized a 'Global Symposium on Sustainable Development and Role of Law'[47]. There the Global Judges Symposium "The Johannesburg Principle on the Role of Law and Sustainable Development" was adopted. It mainly contains the principle of sustainable development and the role of Judiciary in their implementation.[48] Thus, with series of declaration at the international level the concept of sustainable came into existence and today the concept is universally accorded in the national statutes or through the judicial intervention by almost every country across the world. The factors

attributing for its development are : mainly escalated by the concern for the environment at national, regional and at the international level; by unveiling the consequences of existing unsustainable pattern of development at the cost of extreme exploitation of environment both by the developed and developing nations of the world; uncertainty of new technological development; by infusing the awareness of environmental protection and its necessity for the very existence of the human races including other living beings to the leaders, policy makers, industrialists and to the individuals across the world through various declaration and programmes as mentioned earlier at the global level.

Principles of Sustainable Development.

The precautionary Principle.

The origin of the precautionary principle can be found in German environmental policy known as Vorsorgeprinzip[49], the precautionary principle for the first time made its work in the year 1925 in ‘ Vienna Convention for The Protection of The Ozone layer’ where then the parties adopted the ‘ precautionary measures’ for the protection of the ozone layer from depleting[50]. This was followed by ‘ Montreal Protocol on Substance that Deplete the Ozone Layer’ in the year 1987. Thereafter, the precautionary principle became a well recognized at the international level and it has made its place in almost every international policy, declaration that concerns environment. The reference can be made to ‘ Second North Sea Conference Ministerial Declaration (also known as the London Declaration) in 1987, the principle was mainly accepted to safeguard the marine ecosystem of the North Sea by reduction of substances that

threatens the marine ecosystem. The Thrid North Sea Conference held in 1990 also agreed to continue to apply the precautionary principle. The Convention on the Protection on the Marine Environment of the North-East Atlantic (the OPSAR Convention) of 1992 also subscribed the precautionary principle. The Bergen Ministerial Declaration on Sustainable Development in the economic Commission for Europe Region making it the first international instrument to treat the principle as one of the general application and linked to sustainable development[51]. The Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes with Africa (The Bamako Convention) in 1991 contains and adopt the precautionary principle[52]. In 1992, the parties to the Helsinki Convention on the Protection and use of Transboundary Watercourse and International Lakes also adopted the precautionary principle. The next level came in the year 1992, where by then the precautionary principle has gained a universal recognition. The UN Conference on Environment and Development (Rio Declaration) 1992 also adopted the precautionary principle in its Principle 15. Followed by, The Framework Convention on Climate Change and similarly, by the Convention on Biological Diversity and Agenda 21[53]. Lately, the precautionary principle is also adopted by the parties to the Convention on Biological Diversity in its ' Cartagena Protocol on Biosafety' in the year 2000 and also in European Commission's ' Draft Declaration on Guiding Principles for Sustainable Development'[54]. The precautionary principle is adopted by countries included in its national laws, likewise, various Courts across the world now adopt the principle and for this, India is no exception. What is

precautionary principle? The precautionary principle is basically linked with irreversible damage with scientific uncertainty. Principle 15 of Rio Declaration, 1992, provides that " in order to protect the environment, the precautionary approach shall be widely applied by states according their capabilities, where there are threats of serious ore irreversible damage, lack of full scientific certainty shall be used as a reason for postponing cost-effective measures to prevent environmental degradation". O'Riordan and Cameron have identified six basic concepts that are now enshrined in theprecautionary principle, they are[55]: Preventative anticipation: a willingness to take action, in advance of scientific proof of evidence of the need for the proposed action, on the grounds that further delay will prove ultimately most costly to society and nature, and, in the longer term, selfish and unfair to future generations. Safeguarding of ecological space or environmental room for maneuver as recognition that margins of tolerance should not even be approached, let alone breached. This is sometimes known as widening the assimilative capacity of natural systems by deliberately holding back from potential undesirable resource use. Proportionality of response or cost-effectiveness of margins of error to show that the selected degree of restraint is not unduly costly. This introduces a bias to conventional cost benefit analysis to include a weighting function of ignorance, and for the likely greater dangers for future generations if life support capacities are undermined when such risks could consciously be avoided. Duty of care or onus of proof on those who propose change: this involves a shifting of the onus of proof to the proposers of a new technology or activity likely to adversely affect the environment in ways that cannot be

guaranteed to be sustainable. Promoting the cause of intrinsic natural rights: the legal notion of ecological harm is being widened to include the need to allow natural processes to function in such a manner so as to maintain the essential support for all life on earth. The application of ecological buffers in future management gives a practical emphasis to the ethical concept of intrinsic natural rights. Paying for past ecological debt: precaution is essentially forward looking but there are those who recognise that in the application of care, burden sharing, ecologically buffered cost effectiveness and shifting the burden of proof, there ought to be a penalty for not being cautious or caring in the past. This suggests that those who have created a large ecological burden already should be more "precautious" than those whose ecological footprints have to date been lighter. In a sense this is precaution put into reverse: compensating for past errors of judgment based on ignorance or an unwillingness to shoulder an unclearly stated sense of responsibility for the future. The precautionary principle, in simple understanding means taking measures to protect the environment with the anticipation of uncertainty of scientific inventions which would eventually degrade the environment permanently. So to avoid this, the precaution being taken as earliest as possible before happening or causing such irreversible damage to the environment is what the principle in essence talks about. This principle is adopted and applied in the different fields of environmental protection. For instance, it was adopted for "...safeguarding the marine ecosystem of the North Sea by reduction polluting emissions of substances that are persistent toxic and liable to bio accumulate at source by the use of best available technology and other appropriate measures.

This applies especially when there is reason to assume that certain damage or harmful effects on the living resources of the sea are likely to be caused by such substances, even when there is no scientific evidence to prove a causal link between emissions and effects"[56]. In case of hazardous wastes, the precautionary principle would mean "...in preventing the release into the environment of substance which may cause harm to human or the environment waiting for scientific proof regarding such harm..."[57].

Similarly, the parties to the Helsinki Convention, agreed to be guided by " the precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between this substance, on the one hand, and the potential transboundary impact on the other hand"[58]. Concerning the protection of the quality and supply of freshwater resources, Chapter of 18 of Agenda 21, requires parties to implement various activities including, introduction of the precautionary approach in water-quality management, where appropriate, with the focus on pollution minimization and prevention through use of new technologies, product and process change, pollution reduction of source and effluent reuse, recycling and recovery, treatment and environmentally safe disposal[59]. The precautionary principle requires to take action assuming and anticipating the adverse consequences of the technological development without waiting for clear proof of its destruction. In *Vellore Citizens Welfare Forum V. Union of India*[60], the Hon'ble Supreme Court of India explained the precautionary principle in the context of municipal law as: Environment measures - by the State Government and the statutory

Authorities must anticipate, prevent' and attack the causes of environmental degradation. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental degradation. The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign. Furthermore, reiterating the Vellore case, the Hon'ble Supreme Court in *A. P. Pollution Control Board V. Prof. M. V. Naydu*[61] observed that, 'the principle of precaution involves the anticipation of environmental harm and taking measures to avoid it, or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, prosperity and economic interest, but also to protect environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger, but also by justified concern or risk potential'. In the instant case, the Supreme Court also stated that the precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment[62]. The precautionary principle is time and again reiterated by the Supreme Court in *M. C. Mehta V. Kamal Nath*[63], *Narmada Bachao Andolan V. Union of India*[64]. Today, the precautionary principle stands as a part of environmental law of India.

The Polluter Pays Principle.

The polluter pays principle simply means that, one who causes damage to the environment to pay the cost of damages by restoring it or compensating the damages. The earliest adoption of the polluter pays principle can be found in Council of the Organisation for Economic Cooperation and Development (OECD)[65] in May, 1972 on ' Guiding Principles Concerning the International Economic Aspects of Environmental Policies', where it incorporated that the polluter should bear the expenses of carrying out the measures to protect environment. The European Council also adopted in the year 1972 requiring member states of the community to apply the polluter pays principle. Where it required natural or legal persons governed by public or private law who are responsible for pollution must pay the costs of such measures as are necessary to eliminate that pollution or to reduce it so as to comply with the standards of equivalent measure laid down by the public authorities[66]. Thereafter, the principle was also included in Single European Act in 1986 and 1992 where European Community member states and European Free Trade Area member countries to abide by the principle that ' polluter should pay'.[67] Thus, in the year 1992, the polluter pays principle was adopted under Principle 16 of Rio Declaration during UNCED (Earth Summit), which 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". The principle basically speaks about the burden of the polluter to bear the cost of

damages caused to environment, therefore, only the polluter is going to compensate the damages. In Indian Council for Enviro-Legal Action V. Union Of India,[68]the Hon'ble Supreme Court of India held that, ' the polluter pays principle means that absolute liability of harm to the environment extends not only to compensate the victims of pollution, but also to the cost of restoring environmental degradation. Remediation of damaged environment is part of process of sustainable development'. The Supreme Court also observed that the polluter pays principle demand that the financial costs of preventing or remedying the damages caused by the polluter should lie with undertakings which caused the pollution or produced the good which caused the pollution, but not with the government, the burden of the cost which would otherwise to the taxpayers.[69]The principle was reiterated in Vellore case. The Supreme Court also reiterated the principle in Research Foundation for Science Technology and Natural Resources Policy V. Union of India[70]where it was held that, " The polluter pays principle basically means that the producer of goods of other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property; it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case" Thus, the polluter pays principle, which is one of the fundamental principles of sustainable development, is well settled sound principle recognized in

India. By which polluter are compelled to bear the cost for it has caused damage to natural environment.

Intergenerational Equity.

The concept of intergenerational equity being one of the fundamental principle of the sustainable development, basically talks about saving of environment for future generations. In other words, the present generation should not jeopardize the future generations, instead, it requires to ensure the future generations about their need of environment during their time. The concept is well reflected in the Stockholm Declaration under Principle 1 and 2. Principle 1 of the Declaration provides 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 generations...' and Principle 2 states, ' the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and generations through careful planning or management, as appropriate'. Likewise, the concept is also embodied in Rio Declaration, 1992, of which Principle 3 states, ' the right to development must be fulfilled so as to equitably meet developmental environmental needs of present and future generations'. Furthermore, in the words of M. D. Young, ' the present generation is required to ensure that the health, diversity and productivity of natural resources are maintained or enhanced for the benefit of future generation.'[71]According to E. Brown Weiss, there are three fundamental principles which form the basis of

intergenerational equity and hence are integral to sustainable development. First, the "conservation of options" principle requires each generation to conserve the diversity of the natural and cultural resource base in order to ensure that options are available to future generations for solving their problems and satisfying their needs. Second, the "conservation of quality" principle holds that each generation must maintain the quality of the earth such that it is passed on in no worse condition than in which it was received. Third, the "conservation of access" principle provides that each generation should give its members "equitable rights of access to the legacy of past generations and should conserve this access for future generations".[72]The Hon'ble Supreme Court, dealing the matter of felling of Khair trees for making Katha in the State of Himachal Pradesh in State of Himachal Pradesh V. Ganesh Wood Product[73]stated that 'intergenerational equity means the concern for the generations to come. The present generations has no right to impede the safety and well-being of the next generations or the generation sot to come together'. After all, the present generation has right to deplete all the existing forest and leave nothing for the next and future generationThe landmark decision of the Supreme Court of the Philippines, in Mors Oposa V. Secretary of the Department of Environment and Natural resources[74]where the plaintiffs were minor represented by their parents, soughting an order to discontinue, to existing and further timber licence agreements alleging that deforestation was causing environmental damage. In which the trial Court dismissed their complaint and thereby they filed an action before the Hon'ble Supreme Court of Philippines to set aside the dismissal order and to enforce their and their unborn successors'

Constitutional right to a balanced and healthful ecology guaranteed under the Philippines Constitution. The Supreme Court held that the case brought by the plaintiff constituted a class suit as they were representing present and future generations. Thus, the concept of intergenerational equity gives assurance to all future generations to enjoy their right of having sound environment and to meet their needs.

The Doctrine of Public Trust.

The doctrine of public trust is based on the idea that certain common resources such as air water and forest were held in trust by the state for the benefit of general public[75]. Its root can be traced to Roman law. So the state being the trustee of the trust property, natural resources is entrusted with the fiduciary duty to protect the same in the best interest and common benefit to the general public. So in the context of environment protection, the state owe a duty to maintain and check whether the environment and its natural resources are exploited in the manner which does not serve the larger interest of the citizens, present and future. Therefore, as far as doctrine of public interest is concerned, state shall execute its duty responsibly and intervene, if the nature of the case demands, so as to protect and prevent from exploitation for the interest of coming generations. A broader conception of the public trust holds that the earth's natural resources are held in trust by the present generation for future generations. [76]In *M. C. Mehta V. Kamal Nath*[77]the Hon'ble Supreme Court of India invoked the doctrine of public trust. Wherein the land was leased out to the Motel located at the river Beas in which the Bulldozers were used to divert the said river by creating a new channel thereby, disturbing the natural flow

<https://assignbuster.com/meaning-and-concept-of-sustainable-development-law-international-essay/>

of water in order to save the Motel from flooding. The Supreme Court observed that, ' our legal system based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all the natural resources which are by nature meant for public use and enjoyment, public at large is the beneficiary of the sea-shore, running water, airs, forest and ecologically fragile lands. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership'. Thereby, the Supreme Court quashed the lease and directed to compensate for the restoration of the environment and ecology of the area and also to undertake various remediation works. The doctrine of public trust was also reiterated in T. N Godavarman Thirumulpad v Union of India[78]Thus, it can be said that the doctrine of public trust conforms with the concept of sustainable development and can be employed to protect the environment from degradation and to entrust the state or the government from allotting the trusted natural resources like, air, forest, running water, sea-shore , etc. to convert into private ownership and letting it destroyed or damaged. Rather it entrust the state of the duty in the larger interest of the general public, both present and future generations.

Constitutional Perspective.

As it is clear that the concept of sustainable development is an outcome of series of declarations and programmes at the international level under the auspices of UNO. These Declarations, Conventions and Programmes have little to do with India, if India is not an active participant. However, as India being member of the UNO, it has international obligation to respond and

implements the principles of international law in the country. So this international law cannot be implemented or treated as domestic law until and unless Parliament of India ratifies or passes it so, rather it has to be routed from the Union Parliament, for which the Constitution of India expresses to do so. In relation to this, it is noteworthy to mention Article 253 of the Constitution of India, which states, " notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreements or convention with any other country or countries or any decision made of any international conference, association or other body". It is clear from the said Article that Parliament is empowered to make laws in response to any international treaties, agreements and conventions with foreign nations. Furthermore, Entry 14 of Union List confers the Union Parliament exclusive power to make laws with respect to entering in to treaties and agreements with foreign countries and implementing of treaties and convention with foreign countries. Similarly Entry 10 of the Union List also provides with respect to ' foreign affairs, all matter which bring the Union into relation with any foreign country'. Likewise, Article 51 of the Constitution which deals with " promotion of international peace and security" under clause (c) states that " the state shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another". Thus, the Parliament exercised the power granted under Article 253 and 51 to give effect to the Stockholm Declaration, 1972 thereby it enacted viz. The Water (Prevention and Control of Pollution) Act, 1974, The Water (Prevention and Control of Pollution) Cess

Act, 1977, The Air (Prevention and Control of Pollution) Act, 1986 and The Environment (Protection) Act, 1986. Apart from this the Parliament has also passed the CFC Substance Rule, 2000 notified under The Environment (Protection) Act, 1986 to implement the Montreal Conference, 1987, Vienna Convention for the Protection of the Ozone Layer, 1985 and Kyoto Protocol. The Public Insurance Liability Act, 1991 and National Environment Tribunal Act, 1995 to give effect to the decision of UNCED held at Rio de Janeiro in 1992. Moreover, the Parliament also brought the 42nd Amendment in the Constitution of India in 1974. The factors leading to passing of the said enactments and Constitutional Amendment can be attributed to give effect and incorporate the principles from the series of Declaration and Convention at the international level. The 42nd Amendment of The Constitution incorporated two new Articles in the Constitution of India, viz. Article 48-A and Article 51-A (Fundamental Duties), which is relevant to environment. Article 48-A deals with ' Protection and Improvement of Environment and Safeguarding of Forests and Wildlife' reads as, " The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the Country". The other one is Article 51-A (g) which reads as, " It shall be the duty of every citizen of India to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". These two Constitutional provisions impose two-fold responsibilities, on the one hand, they give directive to the state for the protection and improvement of environment and on other hand they cast a duty on every citizen to help in the preservation for living creatures[79].

The other aspects of the Constitution is Article 21 which deals with '

protection of Life and Personal liberty' reads as " No person shall be deprived of his life or personal liberty except according to procedure established by law". The Article 21 has been interpreted expansively by the Judiciary which now covers wide range of fundamental rights under its ambit. The expression Life has been widened through various judicial pronouncements or by what it may be called ' Judicial Activism'. Therefore, the expression life ' assured in Article 21 of the Constitution does not connote mere animal existence of continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure'[80]. It encompasses within its fold- some of the finer facet of human civilization which makes life worth living[81]. In Hinch Lal Tiwari V. Kamla Devi[82]the Hon'ble Supreme Court declared that material resources of a community like forest, tanks, ponds, hillocks, mountains, etc. are nature's bounty. They maintain a delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality of life which is the essence of the guaranteed right under Article 21 of the Constitution. so, here, it can be said that the concept of sustainable development is implied within the sweep of Article 21 of the Constitution. In M. C. Mehta V. Kamal Nath[83], the Hon'ble Supreme Court observed that, " in order to afford protection to life, in order to protect ' environment' and in order to protect' air, water and soil' from pollution, this Court through its various judgment has given effect to the rights available to the citizens and other persons alike under Article 21 of the Constitution, and any disturbance of the basic environment elements, namely, air, water and soil, which are necessary for life would be hazardous to life within the

meaning of Article 21 of the Constitution" so, any activity which pollutes the environment and makes it unhealthy, hazardous to human health or health of flora and fauna, is violative of right to have ' living environment' implicitly guaranteed by Article 21 Of the Constitution[84], as right to have living environment is very important for the very existence of human livings. In T. Damodhar Rao V. S. O. Municipal Corpn. Hyderabad[85], it was observed that, " the slow poisoning by the polluted atmosphere caused by the environmental pollution and spoliation should also be regarded as amounting violation of Article 21 of the Constitution". In N. D. Jayal V. Union of India[86], it was declared that, ' right to environment is a fundamental right'. Here the right to sustainable development cannot be singled out, therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21 of the Constitution. In Subash Kumar V. State of Bihar[87], it was held that right of enjoyment of pollution-free water and air for full enjoyment of life is a part of right to life guaranteed under Article 21 of the Constitution. The Constitution of India also gives constitutional remedies for the enforcement of fundamental right of a citizen under Article 32 before the Supreme Court of India and 226 before the High Courts. Moreover with the relaxation of strict rule of Locus Standi the higher Courts entertains matter which concerns the larger interest of the society brought before it even without proper standing, which otherwise is barred to bring the same by the application of the rule of Locus Standi. This is done by way of Public Interest litigation or Social Interest Litigation. This in simple words means litigation in the interest of public before Supeme Court and High Courts under Article 32 and 226 of the Constitution respectively. One of the instances is in Rural

Litigation and Entitlement Kendra V. State of U. P.[88], where the Hon'ble Supreme Court of India accepted a letter written by the RLEK, Dehradun- a voluntary Organization to the court as a writ petition. This case was pronounced by the court as the ' first case of its kind in the Country involving issues relating to environment and ecological balance. Thus, the Constitution of India clearly embodies the Concept of sustainable development, by giving power to Union Parliament to make law relating to International treaties or Conventions, like that of Stockholm Declaration , Rio Declaration, etc. under Article 253 of the constitution encompassing the concept of sustainable development. Moreover, with the liberal interpretation of Article 21 of the Constitution and adherence to sustainable development is a ' sine qua non' for maintenance of symbiotic balance between right to development and development[89]. Furthermore, with the judicial dynamism, right to environment and right to enjoyment of pollution free water are treated as fundamental right within the meaning of Article 21 of the constitution. to further secure these rights, Supreme Court and High Courts are conferred with the power for the enforcement of such right under Article 32 and 226 of the Constitution.

Role of Judiciary.

The reach of the Judiciary today in enforcing and protecting the environment has attained a considerable momentum in India. Although, in India there are plethora of laws that governs the environment protection, but without the judicial interpretation and intervention, the enactments would only hold a place in a statute book irrespective of its stringent provision. Thus, to give true effect to these enactments and to the people both present and future of

their fundamental rights meaningfully, Judiciary come as a last hope. The concept of sustainable development which came as rescuer of the mother earth was acknowledged by the judiciaries across the world, and to this Indian Judiciary is no exception. In relation to this, Kaniaru, Kurukulasuriya and Okidi says , " the judiciary plays a critical role in the enhancement and interpretation of environmental law and the vindication of the public interest in healthy and secured environment. Judiciaries have and will most certainly continue to play a pivotal role both in the development and implementation of legislative and institution regime for sustainable development. a Judiciary, well informed on the contemporary developments in the field of international and the national imperatives of environmentally friendly development will be a major force in strengthening national efforts to realize the goals of environmentally-friendly development and, in particular, in vindicating the right of individuals substantively and in accessing the judicial process"[90]. The Indian Judiciary time and again in its various judgments referred various Declaration that took place in world from Stockholm Declaration, 1972 to Johannesburg Plan of Implementation, 2002 and subscribed the concept of sustainable development and its core principles like the polluters pays principle, the precautionary principle , the doctrine of public trust, and the intergenerational equity. I would say the Indian judiciary plays a pivotal role in enforcing and interpreting the concept genuinely. Klaus Toepfer,, the Executive Director of the UNEP passed message during UNEP Global Judges Programme that, " Success in tackling environmental degradation relies on the full participation of everyone in society. It is essential, therefore, to forge a global partnership among all relevant stakeholders for the protection of the

environment based on the affirmation of the human values set out in the United Nations Millennium Declaration: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. The judiciary plays a key role in weaving these values into the fabric of our societies. The judiciary is also a crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between environmental, social and developmental consideration through its judgments and declarations"[91]. The Judiciary of India proliferated its activism on the protection of environment by accepting the Public Interest Litigation. The Supreme Court of India gave a liberal view on principle of Locus Standi and allowed public spirited person to file a petition before Supreme Court under Article 32 and High Courts under Article 226 of the Constitution of India. Which otherwise the Court would reject the petition on the ground of lacking standing. The Supreme Court accepted the PIL cases in Hussainara Khatoon V. State of Bihar[92], and it was followed by many other cases. However, it was invoked mainly in the field of human rights, until lately in environmental matters. So the relaxation of Locus Standi also made way to give environmental justice to the citizens and in turn protecting the environment embodying the concept of sustainable development. In Rural Litigation and Entitlement, Kendra, Dehradun V. State of U. P.[93], where there was illegal and unauthorized mining was taking place in the Musoorie Hills and thereby damaging the local environment leading to environmental disturbance. The Supreme Court laying importance of environment observed that, " this is the first case of its kind in the Country involving issues relation to the environment and ecological imbalance and the question arising for

considerations are of grave significance not only to the people residing in Mussoorie Hills range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country. It brings sharp focus the conflict between development and conservation and serves to emphasize the need for receiving the two in the larger interest of the Country". The apex Court asked to halt the mining work. this reflects the role of Indian Judiciary on environmental concern. It embodied the intergenerational equity. In Indian Council for Enviro-Legal Action V. Union of India and Ors[94], the writ petition was filed by a environmentalist organization bringing the woes of people living in the vicinity of chemical plant in India, in particular to Bichhri village in Udaipur District of Rajasthan by way of Social Interest Litigation. Where the Court after referring the Oleum Gas Leak Case[95], regarding the ' absolute liability' of the entrepreneur undertaking hazardous activities. Then Court held that to defray the remedial measures as now come to be accepted universally as a sound principle. The Court further stated that the polluter pays principle demand that the financial costs of preventing or remedying damage caused by pollution should lie with undertakings which cause pollution or produced the good which cause the pollution and held that the responsibility for repairing the damage is that of offending industry and directed to close down the industries. In Vellore Citizens Welfare Forum V. Union of India and Ors[96], the petition in the nature of public interest was filed by Vellore Citizens Forum under Article 32 of the Constitution of India against the pollution which is being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The Court

observed that, " it is no doubt correct that the leather industry in India has become a major foreign exchange earner and present ...it has no right to destroy the ecology, degrade the environment and poses as a health hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry". " The Traditional Concept that development and ecology are opposed to each other, is no longer acceptable ' sustainable development' is the answer". The Supreme Court held that, " Sustainable Development as a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient feature have yet to be finalised by the International Law Jurists... the Precautionary Principle and the Polluter Pays principle are essential features of Sustainable Development, and the Court further held that, the precautionary principle and the polluter pays principle are part of the environmental law of the Country and right of a person to pollution free environment part of the basic jurisprudence. Thus, the Court directed to close all tanneries. The another interesting case on PIL regarding environment is that of M. C. MehtaV. Kamal Nath and Ors.[97], where the Supreme Court took the notice of the News item appearing in the ' Indian Express' dated February 25, 1996 under the caption-" Kamal Nath dares the Mighty Beas to keep his dream afloat'. The Hon'ble Court after going to background of doctrine of public trust, articles on doctrine and many foreign Judgments held that, " the state is the trustees of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashores, running water, airs, forests and ecologically fragile lands. The state as a trustee is under a

legal duty to protect the natural resources. These resources meant for public use cannot be converted in to private ownership". Hence, the Supreme Court adopted one of the fundamental principle of sustainable development i. e. doctrine of public trust in India. Thus, the Indian Judiciary, particularly with reference to Hon'ble Supreme Court of India, has played a pivotal role in implementing the concept of sustainable development in India, including its core principles viz., intergenerational equity, the polluter pays principle, the precautionary principle and doctrine of public trust in protecting the environment. In India, sustainable development is generally perceived as rooted in the firm realization on the part of the Judiciary that the bounties of nature liable to be tapped for purposes of present needs for development and growth, have to be protected at the same time against permanent damage for the sake of posterity[98].

Conclusion.