

The Relationship Between Sustainable Development And Human Rights

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Introduction: The fact that there is ongoing and massive environmental degradation needs no introduction. Destabilisation of earth's climate system, destruction of flora and fauna and biodiversity are some of the problems which we are battling against. What is more worrisome is that the environmental crisis is not extraneous to the developmental crisis. Rapid Industrialisation, in the name of development has led to degradation of environment leading to drastic consequences. Thus, in the contemporary times, the legal framework, both domestic and international has noticed the redefinition of the notion of development. There has been a shift from the pure 'economistic' approach to a form of development which is people centric and environmentally affable. This has led to the development of the concept of sustainability, first formulated by the World Commission on Environment and Development, the Brundtland Report which defined the concept of sustainability as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." Needless to say, this concept of sustainable human development has become the prevailing yardstick both in terms of process and outcome. It is in this sense, human rights and sustainable development are interdependent and bolstering concepts. The integrated conception of sustainable development with human rights has gained more prominence in the recent times. The recent statement of EU's ambassador to Canada that any potential free-trade deal between the two sides is contingent on an agreement on security, human rights, and sustainable development has again brought to the forefront the indestructible relation between sustainable development and human rights. The respect for the human rights takes a centre stage in the debate pertaining to sustainable development as without recognition of the rights of humankind, sustainable future will always be a distant dream. More and more number of states have come to realise this and have started involving various non-state actors in the field of environmental policymaking. In India, the environmental governance which includes regulatory and institutional mechanisms have seen increased involvement of judiciary. The judiciary, apart from resolving conflicts, has also been playing a key role in developing the environmental jurisprudence in the country. Concomitantly, while doing this, the judiciary acts as a guard of people's rights too, thus monitoring the human rights aspects of sustainable development. This paper aims to examine the inextricable relationship between Human Rights and Sustainable Development. Part I inlays the International aspect and discusses the ever-growing web of treaties, declarations, conventions and covenants adopted in multistate fora. Part II deals with the national perspective towards this relationship and analyses the Indian judiciary's view. Part III deals with various tools which can be used to analyse the framework of this relationship in weighing scales.

I. International Perspective:

The theory and policy of international development and cooperation initially did not include the conceptual notion of Human rights linked to sustainable development. But lately, the need for linking economic contours of development to the notions of human rights has been felt. Various academicians have argued that "sustainable development" aims at harmonisation and reconciliation with a view to avoid "a state of normative anarchy" and thus require streamlining various streams of international law. A lot of international treaties, conventions, declarations and commitments have expressly or impliedly recognised the relationship between Human rights and sustainable development. Anton and Shelton write, "Most of such treaties are lawmaking in the sense that

many of the norms they contain are new but also in the sense that they can promote the development of customary international law that binds the state that are not party to a particular lawmaking treaty."

The Universal Declaration of Human Rights, 1948 is one of the first international documents to express the rights relating to development including right to take part in government; realization of all economic, social and cultural rights that are indispensable for his dignity and the free development of his personality; rest, including reasonable limitation of working hours and periodic holidays with pay; fair employment; adequate standard of living; enjoyment of scientific advancement; an international environment and order in which all rights can be realized. It has to be, however kept in mind that at the time of adoption of UDHR in 1949, the environmental consciousness was

barely existent and so no explicit mention of environmental rights per se can be found. It is our contention that notwithstanding any such explicit mention, the UDHR does play an important role in strengthening the interdependency of Human Rights and the idea of Sustainable development. The justiciable rights in the Universal Declaration are “now part of the customary law of nations and therefore binding on all states.”

Another major step was the review and appraisal of the first United Nations Development Decade (1961-1970). It criticised the development ideas for perceiving human beings merely as means of production.

Article 5 of The International Convention on Elimination of All forms of Racial Discrimination, 1965 reaffirms this belief and states that there should be no difference in the level of enjoyment of civil, political, economic, social and cultural rights based on race, color or ethnicity. These rights include right to equal treatment, right to security of person and protection against violence, political rights and other civil rights.

This was followed by the International Covenant on Economic, Social and Cultural Rights, 1966 which asserts the right to self determination in order to develop in social, economic and cultural fields. This covenant recognises the right to work and, adequate standard of living. By virtue of this covenant, the states are also obligated to improve methods of production, conservation and distribution and use available information to use natural resources more efficiently.

The idea of a Universal Declaration on the Protection and betterment of the Environment goes back to the Intergovernmental conference of Experts on the scientific basis for Rational use and conservation of Resources of Biosphere convened in 1968.

This led to convening of the first major conference on International Environmental issues which was the United Nations Conference in Human Environment in Stockholm, June 1972. The Stockholm Conference marked a turning point in the development of international environmental politics. The conference saw adoption of not only a basic declaration but also a detailed resolution on institutional and financial arrangements. An ambitious action plan containing 109 recommendations was prepared.

Aimed against the alarming developments which had

taken place in International Law since 1957 and in the situation of indigenous and tribal people in all regions of the world, the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries was passed. This convention asserted that indigenous people have a right to define their own priorities and take control of their own lives. Their right to participate and contribute to national and regional development plans affecting them was recognised.

The most widely discussed Rio Declaration was passed in 1992, famously known as Rio Declaration on Environment and Development, 1992. This declaration proclaimed that the human beings are at the centre for concerns for sustainable development. The broad contours on which the Rio Declaration rests were first identified at the United Nations Conference on the Human Environment (1972).

Along with the Rio Declaration, the Agenda 21 and Forest Principles were also born and the Convention on Biological Diversity, Framework Convention on Climate Change (UNFCCC), and United Nations Convention to Combat Desertification were also opened for signatures. In 1993, the Commission on Sustainable development (CSD) was instituted to follow-up on the implementation of Agenda 21. Shortly after the adoption of the Rio Declaration, a group of independent legal experts sought to review the legal and policy practise of the states at that time and concluded that

“the concept of sustainable development is now established in international law, even if its meaning and effects are uncertain. It is a legal term which refers to processes, principles and objectives, as well as to a large body of international agreements on environmental, economic and civil and political rights”.

In 2002, another follow up conference, the World Summit on Sustainable development (WSSD) was organised in Johannesburg where the Johannesburg Plan of Implementation (JPOI) was agreed on. Moreover, CSD was tasked with the implementation of the idea of sustainable development.

The Right or a human right to environment has been contemplated in Article 24 of the African Charter on Human and Peoples' Rights (1981) and in Article 11 of the Additional Protocol to the American Convention

on Human Rights in the area of Economic, Social and Cultural Rights (1988). It appears in a more limited form in Article 24 of the Convention on the Rights of the Child (1989) and in an even more indirect form in various articles of the ILO Convention Concerning Indigenous Peoples in Independent Countries (1989). It is submitted that in absence of more specific internationally-agreed legal principles, the ILA New Delhi Declaration can be reconnoitred which is based on seven core principles:

- 1) The duty of States to ensure sustainable use of natural resources;
- 2) The principle of equity and the eradication of poverty;
- 3) The principle of common but differentiated responsibilities;
- 4) The principle of the precautionary approach to human health, natural resources and ecosystems;
- 5) The principle of participation and access to information and justice;
- 6) The principle of good governance; and
- 7) The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives.

II. Indian Perspective:

Sustainable development in India encompasses a variety of development schemes in social, cleantech (clean energy, clean water and sustainable agriculture) and human resources segments, having caught the attention of both Central and State governments and also public and private sectors. Like many other parts of the world the concern for environmental protection and sustainable development emerged in India in 1970's and assumed public appeal in subsequent appeal. The emergence of a number of environmental struggles such as the Chipko movement to stop commercialisation of forest resources, protest against illegal mining activities in Orissa, the campaign in Urban India to control air and water pollution etc. The advocates of these movements have continuously claimed that such indiscriminate use of natural resources has lead to a shortage of some of the very basic and important natural resources such as water, coal etc which is clearly in violation of the basic rights such as right to life. This clearly reflects the growing awareness among the people of our country regarding the hazardous effect on the environment due to

unsustainable industrialization and the need to adopt more sustainable and cleaner methods of industrialization.

The first major step taken by Indian Judiciary was in 1978 when it finally breathed substantive life into Article 21 requiring not only that procedures be authorized by law but also be right, just and fair. It ensured that Supreme Court is neither bound by doctrine of literal meaning or original intent and instead the text can be interpreted taking into account the circumstances and considering the greater good of society. This was further supplemented by the declaration of the environment as the basic fundamental or human right under Article 21 of constitution of India (No person shall be deprived of his/her life or personal liberty except according to procedure established by law) and also declaring that the injuries caused to the workers and others even by necessary industries are part of social cost of development and should not be borne by the victims. All this along with other constitutional provisions such as Article 13(Power of the Supreme Court to judicially review legislation against fundamental rights), Article 32/226(Supreme court/High court, original jurisdiction for the enforcement of fundamental rights) and Article 136(Another route for judicial review) has provided a space for fundamental rights to live in a healthy environment in the constitution that would otherwise not have merited sufficient attention.

The Honourable Supreme Court of India has also declared that "where a wrong against a community is done, the principle of *locus standi* will not always be a pre-requisite to draw the attention of judiciary against public body for their failure in discharging constitutional duties. *Locus Standi* has a larger ambit in current legal semantics than the accepted, individualist jurisprudence of old." Resultantly a number of cases on environmental issues have been filed by parties who are not directly affected by the issue concerned but who have an access to relevant information and legal expertise to convince courts about the environmental issues and to make an attempt to ensure a healthy environment for citizens.

One of the major outcomes of such type of litigation is the Polluter Pays Principle (PPP) which literally means 'If you make a mess, it's your duty to clean it up'. The judiciary in India held the Polluter Pays

Principle in the case Indian Council for Enviro Legal Action v Union of India &ors where the court observed that *"We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country"*. The court ruled that *"Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by this activity irrespective of the fact whether he took reasonable care while carrying on this activity."* Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle or strict liability. The "Polluter Pays Principle" as interpreted by the court means that absolute liability for damage to the environment extends not only to compensate the victims of pollution but additionally the cost of restoring the environmental degradation. 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 cost of reversing the damaged ecology. In addition to that in Vellore Citizens Case the Supreme Court held that the "precautionary principle" and "Polluter pays Principle" are part of environmental law of our country. Even otherwise once these principles are accepted as part of Customary International Law there would be no difficulty in accepting them as part of domestic law as it is almost an accepted proposition that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be deemed to have been incorporated in the domestic law and followed by courts.

Also there have been cases where the court initiated the legal action suo-moto. In M.C Mehta v. Kamal Nath, the Supreme Court took notice of the news item appearing in the Indian Express dated 25/2/1996 where the main allegation in the news item was that the course of the river was being diverted to save the motel from future floods. The court asked the Motel to pay compensation by way of cost for the restitution of the environment and ecology of the area and declared that the 'Public Trust Doctrine' is a part of law of the land. The outcome of judicial decisions in several general and environmental cases in particular reveal that the court has entered into areas that traditionally were ought to be the concern of executive and legislature

which more specifically can be called as judicial activism. In M.C Mehta v. Union of India the Supreme Court explained how despite the enactment of Environmental Protection Act, 1986 there has been a considerable decline in the quality of environment. Therefore, arose the need of judicial intervention to ensure an attempt for protection of human rights by ensuring a better quality of life and an attempt to check government unlawfulness, thus said to have transformed Supreme Court of India into 'Supreme Court of People'. Many of the recent changes in law and policy relating to environmental protection also owes to judicial decisions like setting up of national environmental Court(s) (National Green Tribunal) and four more at regional level, environment impact assessment notification of 1994 issued by Ministry of Environment and forest to evaluate the socio economic, cultural, environmental aspects of every project before giving clearance etc. Also recently Jayanthi Natarajan addressing the 20th Annual Convention of the National Law School of India University(NLSIU) called for greater efforts to ensure that environmental management is integrated into policy development at all levels.

III. Tools Used In The Process Of Assessment

There are a variety of tools through which human rights standards and norms can be applied to the process of assessment to examine the existing human rights mechanism in society. This section discusses some of such tools and processes.

The first step in such assessment involves identification of the national and international human rights framework. This helps in identifying the benchmark against which the assessment is to be gauged. For this purpose, RMAP's Human Rights Checklist; Moser and Norton's Rights Regime Analysis or AHRC's Situational Analysis are used. Some other methodologies include: UN's *Rights Based Causality Analysis using LFA's Problem Tree, Responsibility Analysis, Human Rights Based Actor Analysis*, UN's *Role Pattern and Capacity Gap Analysis*, ILO's *12 Key Areas of Participatory Gender Audit*, Gaventa's *Power Cube*, Moser and Norton's *Channels of Contestation Matrix* and *Human Rights Based Risk Analysis*.

Rights-based Municipal Assessment and Planning Project (RMAP) was a pilot project that carried out human rights abuses assessments and development

planning of selected municipalities in Bosnia and Herzegovina. For this purpose, RMAP developed a series of 15 human rights checklists and 11 Domestic Legal Framework Checklists which served as guides to international human rights standards and domestic standards. These included- cross cutting rights; freedom of movement; residence-displacement; public administration; civil society; administration of justice; trafficking and migration; the right to work; the right to education; social protection; the right to health; the right to housing; freedom of religion; culture; the right to environment; and enforced disappearances and missing persons.

The use of Human Rights Checklists catalyses the process of identification of problems and rights affected and crystallises them with a focus on vulnerable groups. Therefore, the human rights based approach is brought to the development assessment from the earliest stage.

Another widely used tool is Moser and Norton's Rights Regimes Analysis wherein sustainable livelihood approach is applied to development. It includes an analysis of vertical power relations and establishments that form people's sustenance capabilities and an examination of the operation of frames of power and authority and also the influence these have on the resource capabilities of persons living in poverty. Since the international human rights framework is built on principles of equality and inclusion, this analysis provides a "normative reference point for comparison with different national and local level legal systems." Moser and Norton classified rights regimes into International Human Rights law, Regional Law, Constitutional Law, Statutory Law, Customary Law and living law.

The Australia Human Rights Council's Situational Analysis which suggests a participatory approach, thus including the level of commitment to international human rights standards; the local legislative framework; and the administrative framework is also a valuable tool to articulate the human rights approach to development assistance.

Another approach is the Rights Based Causality Analysis using LFA's Problem Tree developed by UN Action 2 Inter Agency Task Force and the UN Systems Staff College. It can be summarised as follows: 1. All programs of development co-operation, policies and

technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

For the purpose of analysing how a development intervention will affect people's lives and environment and indentifying potentially overlooked groups, the UNDP/CSOPP recommends the actor analysis. "...by identifying such groups, planners may identify hitherto unforeseen potential conflicts that may arise to a particular activity, or conversely, certain potential coalitions of support." It identifies who claimholders are, who duty-bearers are and who other actors are. After collecting this information, the information is analysed with a view to appreciate the dynamics of such inter-group interaction and its ramifications on development planning.

UN also recommends Role Pattern and Capacity Gap Analysis. This analysis helps in identifying whose rights are affected, who is responsible for the unfulfilled rights, who the rights holders are and whether mechanisms of delivery and accountability exist. It also identifies who the duty bearers are and what are their obligations. UN also voices an apprehension that "role pattern analysis should be guided by rights and obligations established in international human instruments and by the more specific roles and standards define din national laws, procedures and policies."

This approach link the problems of development to the human rights challenges and identifies the core issues and the extent to which the rights can be realized and obligations can be complied with. Being participatory, accountable and non-discriminatory, these approaches help in critically appraising the effects of power on the problem and present both positive and negative dimensions of the problem.

IV. Conclusion:

The relation between sustainable development and human rights is unravelled. Thus in the present legal framework, both national (mainly through the supervisory role played by the judiciary and some steps taken by the government like setting up of National Green Tribunals, Bringing in constitutional Amendments, Civil Nuclear Liability Bill etc) and international (through international treaties, declarations and commitments), there has been a shift from a pure 'economistic' approach to a more productive approach by factoring in human capital and account for public expenditure on education and health. Also more and more states have started including non-state actors too in the field of environmental policymaking thus clearly emphasizing the need of a collective effort.

In the recent times many tools have been developed through which human rights standards and norms can be applied to the process of assessment to examine the existing human rights mechanism in society. Being participatory, accountable and non-discriminatory, these approaches help in critically appraising the effects of power on the problem and present both positive and negative dimensions of the problem.

When looking at sustainable development from a human rights perspective, it is essential to acknowledge, that in order for a society to continue advancing basic needs of individuals such as education, health and personal economic growth must be respected and realized which will lead to proper utilisation of resources.