

## I. INTRODUCTION

The term “sustainable development” is defined as development to achieve the needs of present generation without compromising future generation’s needs, while we are misusing the resources in a very vital manner, which is not good for the present generation and as well as to the future generation. ‘Future Generations’ is mainly related to the environmental problems of resource consumption and pollution and their distribution over long time horizons.

Sustainable development is most commonly defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987). In short tautology, it means ‘development that is sustainable.’ Development can be defined as a collective process of change toward improvements in quality of life for human beings and their communities, and sustainability can be seen to refer to the need for development to be integrated, socially, economically and environmentally sound, oriented to the long-term, and hence, able to last.

The concept of sustainable development, in international law, requires accommodation, reconciliation and integration between economic growth, social justice (including human rights) and environmental protection objectives, towards participatory improvement in collective quality of life for the benefit of both present and future generations. The term ‘sustainable development law’ describes an emerging corpus of international legal principles and instruments which address the intersections between international economic, environmental and social law (including human rights law), towards development that can last for the benefit of present and future generations.

Sustainable development, at present time is a most concern phenomena. Globally every country including most developing country like India and China thinks very much about it because they realize that their future generation must be suffer to lack of resources which is obviously most central to survive. This phenomenon comes after Second World War. The concept of sustainable development is not related only future generation but also with the present generation. Firstly it is important to know the conceptual meanings of sustainable development. It is a way of thinking by which we can secure our present and future generation. The right to development means the right to improvement and advancement of economic, social, cultural and political conditions that can be improved the global quality of life. Improvement of global quality of life means the implementation of changes that ensure every person’s life of dignity and at same time citizens realize their human rights. These changes must include the eradication and alleviation of wide spread conditions of poverty, unemployment, and inequitable social conditions.

## II. BACKGROUND OF THE CONCEPT OF SUSTAINABLE DEVELOPMENT

The first use of the term ‘sustainable development’ appeared in a book in 1972 on the UN Conference on Human Environment (Dirk, 2012). In 1980, the IUCN, UNEP and WWF issued

the Report whose headline points to the goal of sustainable development: ‘World Conservation Strategy-Living Resource Conservation for Sustainable Development’.

The most prominent process towards the definition, scope and content of the concept development occurred within the United Nations. In effect, on the request of the United Nations General Assembly, the Governing Council of the United Nations Environmental Programme adopted the decision 11/3 during the 11th Session on the process of preparation of environmental perspective to the year 2000 and beyond (UNEP, 1983). The same year, in December, the UNGA adopted Resolution 38/161 on the abovementioned agenda (UNGA, 1983). In the last resolution, the UNGA decided on the creation of a special commission on the matter. In 1987, the World Commission on Environment issued its report entitled “Our Common Future”, commonly known as Brundtland Commission Report. The report is one of the seminal environmental documents of the 20th century. It shows the growing global awareness in the second half of the century of the enormous environmental problems facing the planet, and of a growing shift towards global environmental action.

### **III. CONCEPT OF SUSTAINABLE DEVELOPMENT**

In 1987 the World Commission on Environment and Development’s report called the [Brundtland Report](#) is by far the best and is now one of the most widely recognized definitions:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.

#### **A. Sustainable development in International Policy**

1. At the United Nations Conference on Environment and Development, in the 1992 Rio Declaration, States committed to “the further development of international law in the field of sustainable development” (Principle 27). In the 1992 Agenda 21 States elaborated that this involved the “further development of international law on sustainable development, giving special attention to the delicate balance between environmental and developmental concerns” (1.a).

In the 1997 Programme of Action for Further Implementation of Agenda 21, States further agreed that “it is necessary to continue the progressive development and, as and when appropriate, codification of international law related to sustainable development. Relevant bodies in which such tasks are being undertaken should cooperate and coordinate in this regard.” (para. 109).

2. The 2002 World Summit on Sustainable Development Johannesburg Declaration specifically commits to “assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels” (para. 5).

The Johannesburg Plan of Implementation mandated the UN Commission on Sustainable Development to “(e) Take into account significant legal developments in the field of sustainable development, with due regard to the role of relevant intergovernmental bodies in promoting the implementation of Agenda 21 relating to international legal instruments and mechanisms.” (para 148 at e)

#### **IV. LAWS REGARDING SUSTAINABLE DEVELOPMENT OF PAKISTAN**

1. Provincial Sustainable Development Fund (Procedure) Rules, 2001
2. Provincial Sustainable Development Fund (Utilization) Rules, 2003

#### **V. INTERNATIONAL TREATIES AND PRINCIPLES OF SUSTAINABLE DEVELOPMENT**

There are a number of examples of international treaties that include principles of sustainable development. These include:

1. **World Heritage Convention (1972)** – which refers to natural and cultural heritage being preserved for the benefit of mankind.
2. **Ramsar Convention (1973)** – directed at the wise use of wetlands.
3. **Vienna Convention for the Protection of the Ozone Layer (1985) and Montreal Protocol on Substances that Deplete the Ozone Layer (1987) (Montreal Protocol)** – which requires precautionary measures to be adopted to prevent ozone depleting substances damaging the ozone layer.
4. **United Nations Framework Convention on Climate Change (1992) (UNFCCC) and its Kyoto Protocol (1997)** – has as two of its key principles, the precautionary principle and the principle of intergenerational equity.
5. **Convention on Biological Diversity (1992)** – as noted above, the basis of this convention is to conserve biodiversity. In addition, the Convention is guided by the precautionary principle and the principle of intergenerational equity.

6. **Convention on the Non-Navigational Use of Watercourses (1991)** – which has as its objective the sustainable use of water resources and seeks to give effect to principles which include the precautionary principle and also the principles of inter- and intra-generational equity.

In each treaty, the sustainable development objective is worded slightly differently, and also operationalized differently.

## **VI. LEGAL ELEMENTS OF THE CONCEPT OF SUSTAINABLE DEVELOPMENT**

Four recurring elements appear to comprise the legal elements of the concept of Sustainable development, as reflected in International agreements:

1. The need to preserve natural resources for the benefit of future generations (**the principle of intergenerational equity**).
2. The aim of exploiting natural resources in a manner which is “sustainable”, or “prudent”, or “rational”, or “wise” or “appropriate” (**the principle of sustainable use**).
3. The “equitable “use of natural resources, which implies that use by one state must take account of the needs of other states (**the principle of equitable use, or intergenerational equity**).
4. The need to ensure that environmental considerations are integrated into economic and other development plans, programmes and projects, and that development needs are taken into account in applying environmental objectives (**the principle of integration**).

## **VII. PRINCIPLES (TWELVE TABLETS) FOR SUSTAINABLE SOCIETY**

1. **The FIRST principle** of public environmental order establishes the obligatory nature of this control system aimed at the evident general good not only of the present generation but those to come: sustainable development must not be abandoned to market forces but must be a responsibility of the state.
2. **The SECOND principle** of sustainability requires all public policies to be harmonized and prohibits any further reduction or degradation of natural, cultural and social capital, because even what has been left after ruthless development may well not be enough for survival.

3. **The THIRD principle** demands respect of the carrying capacity both of man-made systems and of ecosystems, to prevent the construction of still-born, hypertrophic man-made systems which drag ecosystems down towards their destruction.
4. **The FOURTH principle** demands correction of that error where this is still possible, i.e. the restoration of disturbed ecosystems so that the reduction of natural capital will be averted.
5. **The FIFTH principle** enjoins the protection of biodiversity in order to preserve the stability (equilibrium) of ecosystems.
6. **The SIXTH principle**, that of common natural heritage, strives to secure for the sake of all the vital nucleus of natural capital, i.e. untamed nature where it exists and the ultimate reserve of life.
7. **The SEVENTH principle** demands restrained development in fragile ecosystems.
8. **The EIGHTH principle**, of spatial planning, calls for the overall planning of balance between man-made systems and ecosystems, so as to control and maintain their stability and to improve the quality of the former.
9. **The NINTH principle** that of cultural heritage is interested in the stable continuation of manmade systems and the qualitative (spiritual) character of development.
10. **The TENTH principle**, which of sustainable urban environment, strives to reverse the advancing decay of modern cities, and to restore quality of life therein.
11. **The ELEVENTH principle** that of the aesthetic value of nature, also serves qualitative development and the satisfaction of man's aesthetic needs.
12. **The TWELTH (and last) principle** establishes a sound system of values and environmental awareness in people, as the real guarantee of the entire control system.

## **VIII. DEVELOPMENT IN INTERNATIONAL TREATIES**

To date only the **2002 Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific** provides a definition for 'sustainable development'.

At article 3(1)(a), the parties adopted the following statement:

“...[S]ustainable development means the process of progressive change in the quality of life of human beings, which places them as the centre and primary subjects of development, by means of economic growth with social equity and transformation of production methods and consumption patterns, sustained by the ecological balance and life support systems of the region. This process implies respect for regional, national and

local ethnic and cultural diversity, and full public participation, peaceful coexistence in harmony with nature, without prejudice to and ensuring the quality of life of future generations.”

**The 1994 Marrakesh Agreement Establishing the World Trade Organization recognizes sustainable development among its objectives.**

**This confirmed in the 2001 Doha Declaration declares:** “We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement.”

**And several Reports of the WTO Panel and Appellate Body directly address the concept of sustainable development in world trade law. In particular, WTO Appellate Body found, in the US – Shrimp Case, 1998 that:**

“[t]his concept has been generally accepted as integrating economic and social development and environmental protection.” Further, the WTO Panel found, at note 202 in the US – Shrimp Case, Recourse to Article 21.5 by Malaysia, 2001 that “the concept is elaborated... so as to put in place development that is sustainable... that ‘meets the needs of the present generation without compromising the ability of future generations to meet their own needs’.”

Specific legal instruments regarding sustainable development in developing countries

Several legal instruments dealing with the environment set out specific provisions for developing countries to attain sustainable development. The Convention on Biodiversity contains several provisions on sustainable use of resources. These provisions set out different obligations depending on the aim. For example, article 10 on the sustainable use of components of biological diversity assigns each contracting party to integrate consideration of the conservation and sustainable use of biological resources into national decision-making and to adopt measures thereof. Under provisions on financial resources, article 20 of the convention states that the extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology, and will take fully into account the fact economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

**The Convention on Desertification (1994)** notes that: “the high concentration of developing countries, notably the least developed countries, among those experiencing serious drought and/or desertification, and the particularly tragic consequences of these phenomena in Africa .....Noting also that desertification is caused by complex interactions among physical, biological, political, social, cultural and economic factors” (Preamble).

Under its Regional Implementation Annex for Africa (RIAA), the convention makes provision for a Strategic planning framework for sustainable development where “National action programmes shall be a central and integral part of a broader process of formulating national

policies for the sustainable development of affected African country Parties” (UNCCD,RAA, art.6).

The convention on desertification contains also a provision of financial mechanisms (art.21) from which the Conference of the Parties shall promote the availability of financial mechanisms and shall encourage such mechanisms to seek to maximize the availability of funding for affected developing country Parties, particularly those in Africa, to implement the Convention.

The convention on Climate Change contains exactly the same provision that aims at providing financial support to developing countries in order for them to fulfill their commitments (art.4 .7)  
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**The African Convention on the Conservation of Nature and Natural Resources provides** for sustainable development: “parties to the convention shall ensure that in the formulation of all development plans, full consideration is given to ecological, as well as to economic, cultural and social factors in order to promote sustainable development” (art.XIV.1 .b); then, measures such as impact assessment have to be organized prior to any activity likely to impact the environment (art.XIV.2.b).

## **IX. SUSTAINABLE DEVELOPMENT IN DEVELOPING COUNTRIES**

### **I. Sustainable development and national constitutional provisions**

As earlier stated, since the WCED report on environment and development was published in 1987, an increasing number of countries have included basic principles of environmental protection/sustainable development into their national constitutions. In fact, there are over 60 countries across the world now with constitutional provisions guaranteeing right to a healthy environment or sustainable development,<sup>8</sup> including some African countries and some component states of the United States of America. Surely, this reflects the importance attached to environmental issues since the constitution of a country or part of a country 'constitutes the first and primary level in its hierarchy of judicial norms'.<sup>9</sup> In some cases such constitutional provisions are declaratory of the state's duty to pursue environmentally sound development, sustainable use of natural resources and/or the maintenance of safe and healthful environment for the citizens of the state, whereas in others the constitution provides for the individual's right to a clean and healthy environment and his/her duty to protect and conserve the environment and natural resources.<sup>10</sup> In a few cases, these two approaches are combined.<sup>11</sup> In any case, the various approaches all aim at one thing: the attainment of sustainable development.

In the African Continent, the present constitutions of Mali, the Democratic Republic of Congo, the Federal Republic of Nigeria, and the Republic of South Africa provide good examples. In the case of Mali, s. 15 of its 1992 Constitution provides:

'Every person has a right to a healthy environment. The protection and defence of the environment and the promotion of the quality of life are a duty for all and for the State.'

Similarly, s. 46 of the 1992 Constitution of Congo provides as follows:

'Every citizen shall have the right to a satisfactory



and sustainable healthy environment, and shall have the duty to defend it. The State shall supervise the protection and the conservation of the environment.'

Furthermore, s. 20 of the present (1999) Constitution of Nigeria provides that 'the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'.<sup>12</sup> In the same vein, Art. 24 of the post-Apartheid Constitution of the Republic of South Africa (which came into force on 27 April 1994) stipulates that everyone has the right to:

- '(a) have an environment that is not harmful to his or her health or well-being;
- (b) an environment protected for the benefit of present and future generations, through reasonable legislative and other measures that –
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.'

The same trend can also be found in the constitutions of many Asian countries, for example, India, Vanuatu and China. The 1949 Constitution of India (as amended up to 1975) contains the following provisions:

'The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.'

'It shall be the duty of every citizen of India: ...  
(g) to protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures ...'<sup>13</sup>

Article 7(d) of the 1980 Constitution of Vanuatu states that every person has the following fundamental duties to himself and his descendants and to others: to protect Vanuatu and to safeguard its national wealth, resources and environment in the interests of the present and future generations. Lastly, Art. 9 of the 1982 Constitution of China stipulates that 'the State shall protect and improve the living environment, and prevent and remedy pollution and other public hazards'. Furthermore, Art. 26 of the

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Constitution provides for the rational use of natural resources and the protection of rare animals and plants.<sup>14</sup>

## **X. PRINCIPLES OF SUSTAINABLE DEVELOPMENT IN AUSTRALIA'S NATIONAL ENVIRONMENTAL LAWS**

In Australia, Commonwealth and State and Territory governments, in response to the Rio Declaration, have adopted the National Conservation Strategy for Australia and the Intergovernmental Agreement on the Environment (IGAE). The IGE sets out the four key principles of ecological sustainable development – the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity, and improved valuation, pricing and incentive mechanisms. It is recognized that the principles should inform policy making and program implementation.

Principles of ecologically sustainable development have been given expression in a number of environmental treaties and in domestic environmental laws throughout Australia. Some of the

key issues facing Australia at present include climate change; water management; biodiversity and species conservation; and land and natural resource management.

## **XI. JUDICIAL DECISIONS ON SUSTAINABLE DEVELOPMENT**

### **A. In Pakistan**

The Pakistani judiciary has also adopted the approach of applying the principles of environmental law to promote sustainable development. For example, in the Pakistani case of **Shehla Zia v. Water Development Authority (WAPAD), (1994) SC 693 at 710**, the Court applied the precautionary principle to balance the safety and welfare of the citizens and the importance of commerce and industry, thus promoting sustainable development.

In this case, a group of Pakistani citizens from Islamabad brought an action to prevent the Municipal Water and Power Development Authority from constructing a grid station in their neighborhood, contending that the high voltage transmitted by the station would create a health hazard. The court, deciding in favour of the plaintiffs, held that, "The precautionary principle is to first consider the welfare and safety of human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety."

### **B. In India**

India provides the most practical example of how the judiciary can promote sustainable development through a broad interpretation of existing human right norms guaranteed under the constitution as seen in a litany of cases.

#### **1. Deo Singh Tomer v. State of Bihar, (1988) AIR S.C 1782**

The Supreme Court of India held that the right to life includes the right to live in dignity. Therefore a person's right to adequate housing was deemed intrinsic to his right to life.

#### **2. Mohini Jain v. State of Karnataka, (1992) Air S.C 1964**

The Supreme Court of India held that the right to education is essential to the right to life, which is a compendious expression to all those rights that the court must enforce because they are basic to the dignified enjoyment of life. In the absence of explicit legal rights to sustainable development, Indian courts have also adopted the approach of applying the principles of environmental law to promote sustainable development.

### **3. Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647**

The Supreme Court of India, in granting a restraining injunction against a leather factory that was polluting the environment of several communities in the State of Tamilnadu, noted that, although the industry generates foreign exchange and provides employment, it had no right to degrade the environment and pose a health hazard.

### **4. Calcutta v. State of West Bangel, (1993) AIR Cal.**

The plaintiff filed a petition to prevent the encroachment of wetlands in Calcutta. The Court observed that there should be a proper balance between the protection of the environment and the development process. The Court went ahead to state that, “the present day society has a responsibility towards posterity for proper growth and development so as to allow posterity to breath normally, live in a clean environment and have further development.”

### **5. Narmada Bachao Andolan v Union of India, AIR 2000 SC 3751**

A case concerning the construction of a dam, a majority of the Supreme Court of India defined sustainable development to mean “what type or extent of development can take place which can be sustained by nature / ecology with or without mitigation”.

## **C. In South Africa**

### **Government of the Republic of South Africa v. Grootboom, (2001) 1 CHR 261; 2000 (1) SA 46 (CC) (S. Afr.)**

The Constitutional Court of South Africa expansively interpreted the constitution to hold that the right of access to adequate housing cannot be in isolation of the right to human dignity and other socio-economic rights. The Court also held that the state must take positive action to address the needs of those living in extreme conditions of poverty, homelessness, or intolerable housing. According to the court:

The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.

## **XII. AT INTERNATIONAL LEVEL CASE LAWS HELD AT SUSTAINABLE DEVELOPMENT**

### **A. *Hungary v Slovakia*, 37 ILM 162 (1997)**

The majority of the International Court of Justice referred to the concept of sustainable development. However, Vice-President Weeramantry in a separate opinion, held it to be not only a mere concept, but a principle with normative value. In an illuminating analysis, Vice President Weeramantry reviewed the principle of sustainable development in international law, referring to the need to draw upon the world's diversity of cultures in harmonizing development and environmental protection. These traditional principles can assist in the development of modern environmental law.

In the recent decisions of international courts and tribunals, the concept of sustainable development facilitates the reconciliation and integration of other norms concerning socio-economic development and protection of the environment.

### **B. *Gabcikovo – Nagymaros Case 1997 at the International Court of Justice***

“Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”

### **C. The Permanent Court of Arbitration reaffirmed this reasoning in its *Arbitral Award for the Arbitration Regarding the Iron Rhine ("Ijzeren Rijn") Railway (Belgium v. Netherlands) (May 24, 2005)*.**

In this case, The Netherlands, which had created nature reserves along the path of the historic ‘Iron Rhine’ railway line, sought to prevent its reactivation. Belgium argued that the upgrading of the Iron Rhine Railway was part of a shift from road to rail transportation, assisting in the reduction of greenhouse gases, in order to contribute to sustainable development. The Tribunal balanced environmental protection against socioeconomic development, finding that the application of environmental measures by the Netherlands could not amount to a denial of Belgium’s transit right, nor could these measures render the exercise of such a right unreasonably difficult. In its reasoning, the Tribunal refers to the “notion[ ]... of sustainable development”, and at para. 59, states that: “environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment, there is a duty to prevent, or at least mitigate such

harm. ... This duty, in the opinion of the Tribunal, has now become a principle of general international law. This principle applies not only in autonomous activities but also in activities undertaken in implementation of specific treaties between the Parties.”

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