Introduction

Environment problems is a burning problems now a days, the need of its protection is global issue. Industrialisation, urbanisation, population explosion, poverty, over exploitation of resource, depletion of traditional resource of energy and raw material etc. are some of the factor which has contributed to environmental deterioration the world over.

It is the basic right of every human being to live in a healthy environment under article 21 of the constitution. The crying need of hour is the sustainable development.

The sustainable development is not a new concept. The doctrine had come to be known as early as in 1972 in the Stockholm declaration.

What is sustainable development?

Sustainable development has been defined in many ways, but the most frequently quoted definition is from Our Common Future, also known as the Brundtland Report.

"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.

All definitions of sustainable development require that we see the world as a system—a system that connects space; and a system that connects time. When you think of the world as a system over space, you grow to understand that air pollution from North America affects air quality in Asia, and that pesticides sprayed in Argentina could harm fish stocks off the coast of Australia. And when you think of the world as a system over time, you start to realize that the decisions our grandparents made about how to farm the land continue to affect agricultural practice today and the economic policies we endorse today will have an impact on urban poverty when our children are adults. We also understand that quality of life is a system, too. It's good to be physically healthy, but what if you are poor and don't have access to education? It's good to have a secure income, but what if the air in your part of the world is unclean? And it's good to have freedom of religious expression, but what if you can't feed your family? The concept of sustainable development is rooted in this sort of systems thinking. It helps us understand ourselves and our world.
The problems we face are complex and serious and we can't address them in the same way we created them. But we can address them. It's that basic optimism that motivates IISD's staff, associates and board to innovate for a healthy and meaningful future for this planet and its inhabitants.

Thus the goals of economic and social development must be defined in terms of sustainability in all countries whether developed or developing, marked oriented or centrally planned. Development involves a progressive transformation of economy and society at large. Sustainable Development does not imply absolute limits to growth and it is not a new name of environment protection. It is a new concept of economic growth. It is a process of change, in which economic and fiscal policies, trade and foreign policies, energy, agricultural and industrial policies all aim to induce development paths those are economically, socially and ecologically sustainable. The report emphasized that sustainable development cannot and will not be achieved in a world by poverty. It called for a new era of economic growth. Economic growth and development obviously involves changes in the physical ecosystem.

**Principle of sustainable development**

Some of the basic principles of 'Sustainable Development' as described in 'Brundtland report' are as follows:

1. Inter Generational Equity
2. Use and Conservation of natural resources
3. Environmental Protection
4. The Precautionary Principle
5. The Polluter Pays Principle
6. Obligation to assist and Co-operate
7. Eradication of poverty and
8. Financial assistance to the developing Countries

Some of them are discussed in the light of various case laws.

A. **Inter-Generational Equity:** The principle talks about the right of every generation to get benefit from the natural resources. Principle 3 of the Rio declaration states that:

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

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

B. **PRECAUTIONARY PRINCIPLE**

The main purpose of the Precautionary Principle is to ensure that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage. The words substance and activity imply substance and activities introduced as a result of human intervention. In the context of the municipal law, the precautionary principle means;-

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

2. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

3. The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

4. A.P. Pollution Control Board v/s Prof. M.V.Naydu (Retd.) & others is an example of precautionary Principle.

Uncertainty becomes a problem when scientific knowledge is institutionalized in policy making or used as a basis for decision-making by agencies and courts. Scientists may refine, modify or discard variables or models when more information is available; however, agencies and Courts must make choices based on existing scientific knowledge. In addition, agency decision making evidence is generally presented in a scientific form that cannot be easily tested. Therefore, inadequacies in the record due to uncertainty or insufficient knowledge may not be properly considered.

The 'uncertainty' of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992.

In Vellore Citizens' Welfare Forum vs. Union of India and Others [1996 (5) SCC 647], a three Judge Bench of this Court referred to these changes, to the 'precautionary principle' and the new concept of 'burden of proof' in environmental matters. Kuldip Singh, J. after referring to the principles evolved in various international Conferences and to the concept of 'Sustainable Development', stated that the Precautionary Principle, the Polluter-Pays Principle and the special concept of Onus of Proof have now emerged and govern the law in our country too, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. The learned Judge declared that these principles have now become part of our law. The relevant observations in the Vellore Case in this behalf read as follows: implement the 'Precautionary Principle' and the 'Polluter Pays Principle'.' The learned Judges also observed that the new concept which places the Burden of Proof on the Developer or Industrialist, who is proposing to alter the status quo, has also become part of our environmental law. The Vellore judgment has referred to these principles briefly but, in our view, it is necessary to explain their meaning in more detail, so that Courts and tribunals or environmental authorities can properly apply the said principles in the matters which come before them. The Precautionary Principle replaces the Assimilative Capacity Principle: A basic shift in the approach to environmental protection occurred initially between 1972 and 1982. Earlier the Concept was based on the 'assimilative capacity' rule as revealed from Principle 6 of the Stockholm Declaration of the U.N.Conference on Human Environment, 1972. The said principle assumed that science could provide policy-makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such
harm. precautionary principle and the burden of proof in environmental cases as laid down by the Apex Court which is the law of the land was not considered by the learned Additional Sessions Judge at all and therefore the learned Sessions Judge wrongly set aside the order of the Sub Divisional Magistrate. Learned counsel argued that even though petitioner did not adduce oral evidence after the conditional order was passed, the Sub Divisional Magistrate before making the conditional order absolute had called for the reports from the Revenue Inspector as well as the Environmental Engineer to find out whether the contentions raised reason why the learned Additional Sessions Judge set aside the order and remitted the case back to the Sub Divisional Magistrate for appropriate order after following the procedure provided under the Code. If that be so, the order of the learned Additional Sessions Judge remitting the case back to the Sub Divisional Magistrate is perfectly correct and warrants no interference. The argument of the learned counsel for the petitioner is that the learned Additional Sessions Judge has wrongly cast the burden on the petitioner as against the law laid down by the Apex Court. True the Precautionary Principle and the Polluter Pays Principle envisaged by the Apex Court in Vellore Citizens Welfare Forum's case, and later held to be the law in A.P. Pollution Control Board case, was omitted to be taken note of by the learned Additional Sessions Judge. The Apex Court in Vellore Citizens Welfare Forum's case propounded the principle as follows:--

We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means: (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation. (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. (iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign. It was then held:-- The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. The Apex Court finally held:-- In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country. The law has been further widened and emphasized in A.P. Pollution Control Board v. Prof. M.V. Nayudu. The Apex Court held:-- It is to be noticed that while the inadequacies of science have led to the "precautionary principle", the said "precautionary principle" in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, -- is placed on those

The Precautionary Principle suggests that where there is an identifiable risk of serious or irreversible harm, including 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. So also the required standard is the risk of harm to the environment or to human health. It has to be decided in public interest and that too according to a "reasonable persons" test.

This Court, in Vellore Citizens Welfare Forum v. Union of India, [1996] 5 SCC 647, acknowledged that the traditional
concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. Some of the salient principles of "Sustainable Development" as culled out from Brundtland Report and other international documents are Inter-Generational Equity. This Court observed that "the Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development."

B. Polluter pays principle

"The polluter pays principle states that whoever is responsible for damage to the environment should bear the costs associated with it." Few people could disagree with what seems at first glance to be such a straightforward proposition. Indeed, properly construed, this is not only a sound principle for dealing with those who pollute but is an extension of one of the most basic principles of fairness and justice: people should be held responsible for their actions. Those who cause damage or harm to other people should "pay" for that damage. This appeal to our sense of justice is why the "polluter pays principle" (PPP) has come to resonate so strongly with both policy makers and the public.

As a general rule, sound economic analysis of pollution and environmental problems must also be based on the principle of responsibility. Forcing polluters to bear the costs of their activities is good economics too; it not only advances fairness and justice, but also enhances economic efficiency. In other words, with appropriate policies based on a PPP, we should not have to give up the economic efficiency of a free market system based on private property in order to obtain environmental protection, nor vice versa. But as with most such general principles, the devil is in the details. In this case, the details relate to three basic questions that any application of the PPP must answer. First, how do we define pollution and therefore a polluter? Second, how much should the polluter pay, once he is identified? Third, to whom should the payment be made? The answers to these questions are at the heart of whether any application of the PPP will be either just or economically efficient. A correctly construed polluter pays principle would penalize those who injure other people by harming their persons, or by degrading their property. Too often, however, the PPP is misdefined and misused to suppress private economic activity that benefits the parties directly involved and does no specific damage to other people,

The ‘polluter pays’ principle is an environmental policy principle which requires that the costs of pollution be borne by those who cause it. The ‘polluter pays’ principle is normally implemented through two different policy approaches: command-and-control and market-based. Command-and-control approaches include performance and technology standards, such as environmental regulations in the production of a given polluting technology. Market-based instruments include pollution or ecotaxes, tradable pollution permits and product labeling.

The idea that taxation can be used to correct or internalize externalities was first introduced by A.C. Pigou in 1920 and has been generally accepted by economists as an efficient means to remedy inefficiencies in the allocation of resources, but it is understood that other social considerations such as equity, rights, political considerations and enforcement costs may tip the balance towards a preference for other policy instruments...
Despite being less cost-effective, Pigou suggested that abatement should be pursued up to the point where the marginal cost of further abatement (reflected in the emissions fee) is just equal to the marginal benefit from reducing pollution. This ‘optimal pollution’ tax is widely referred to as the ‘Pigouvian rate’.

Most of the sophisticated theoretical developments of the ‘polluter pays’ principle that have been carried out in the neoclassical economics literature have relied on strong assumptions about the workings of the economy including competitive markets, profit-maximizing firms, rational consumers, and, in mathematical terms, ‘well-behaved’ preferences and technologies for production. Thus, it should be remembered that relaxing one of these assumptions can alter the conclusions reached and thus that results must always be evaluated and interpreted with great care. Moreover, an ‘optimal level’ of pollution is often meaningless from an ecological point of view. It is indeed usually difficult for ecologists to establish a clear pollution threshold not to be exceeded. Many local small- and medium-sized firms cannot internalize environmental costs in their products or finance cleaner technologies, and governments often lack the power to force (e.g. extractive) industries to internalize environmental costs. In sum, however, ecotaxes usually fit well into the ecological economics framework. Environmental taxes are tools for achieving two different kinds of government goals: the provision of public services and goods and the protection of environmental quality. The joint pursuit of both goals using taxation can thus enable government to justify doing more of both.

India is a developing country there has been environmental degradation due to many factors i.e Industrialisation, urbanisation, population explosion, poverty, over exploitation of resource, depletion of traditional resource of energy and raw material etc. Since man creator and moulder of his environment, his conduct can be regulated by instrument of law. Thus it can be seen in India, there has been a regular development of the law regarding protection of the environment. India enacted various laws time to time regarding the protection of environment at the same time judiciary play important role not only help in protecting environment but also promoting sustainable development.

Quarrying, Mining, Stone crushing, Tree felling and Sustainable Development

Case Laws

R.L&E.Kendra,Dehradun V. State of U.P (Popularly known as Doon Valley Case: The supreme court directed to totally stop the operation of mining in certain area on the ground of environment protection.

Kinkri Devi V. State :The High court of Himachal Pradesh Relied on Doon Valley Case and pointed out that if a just balance is not struck between development and environment by proper tapping of natural resources, there will be violation of article 14,21,48-A and 51-A(g) of the constitution. It is further observed by court that tapping has to be done with care so that ecology and environment may not be affected in any serious way.
Ishwar Singh V. State of Haryana: The High Court issued the directions for closing down the stone crushing business of those which were not situated within the identified zone.

T.N Godavarman Thirumulkpad V. Union of India (popularly known as forest Conservation case): The Supreme court issued interim directions that all the ongoing activities within any forest in any state throughout the country, without the permission of the central government must be stopped forthwith.

**Industrial Development and Sustainable Development**

M.C Mehta V. Union of India : It was held that pending consideration of the issue of relocation or shifting of the plant to some other place, the plant should be allowed to be restarted subject to certain stringent conditions and the provisions of the water Act 1974 and Air Act 1981 should be strictly observe.

M.C Mehta V. Union of India (popularly known as Tj Mahal Case): The Supreme Court issued following direction:

1. Licensed brick kilns within 20 kms. Radial distance of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary to be closed.

2. District Magistrate and Superintendent Police concerned to close all unlicensed brick kilns in said area.

3. No new Licensed to be issued for establishment of brick kilns in said area.

V.Lakshmipathy V. State: The Karnataka High Court in public interest litigation directed the Municipal Corporation to stop the industries set up in the residential area.

**Urbanisations and Sustainable Development**

M.L.Sud V. Union of India : The supreme court issued the necessary directions to the concerned authorities for maintaining the city.

Ajay Singh Rawat V. Union of India: The Supreme Court issued certain direction regarding the preventive and remedial measures to be taken on war footing so that Nainital may regain its unsoiled beauty and attract tourists.

Dr.B.L.Wadehra V. Union of India: Court held that the authorities’ concerned (municipal corporation of Delhi and New Delhi Municipal Council in this case) have a mandatory duty to collect and dispose of
the garbage/water generated from various sources in the city.

**Right of Tribals /Adivasis and Ecological stability**

Banwasi Sewa Ashram V. State of U.P : The Supreme court in this case gave detail directions for safeguarding and protection the interest of the adivasis. The court permitted the acquisition of land only after NTPC agreed to certain facilities to the ousted forest dwellers. The court also ordered rehabilitation measure for the evictees and revisional compensation for crops and land was directed to be paid to them.

Apart from that there are so many other cases relating to this point where judiciary in India has played a very pivotal role in environment protection and applied the principle of sustainable development. Most of the cases come to the court through “Public Interest Litigation”.

In Rural Litigation and Entitlement Kendra V. State of U.P. : The Supreme Court has attempted to balance the needs of enviro protection with the needs of development which can alone usher an era of socio-eco justice all round happiness, progress and welfare.

MI Builders V. Radheshyam : The supreme Court held that while economics development should not be allowed to take place at cost of ecology, both development and environment must go in hand. In fact there should not be development at the cost of environment and refined the complicated idea.

In Ganga Pollution case (Municipalities) case, justice Venkatramiah while referring to his own order in the tanneries case, used foreign precedent to accord standing to Mr. Mehta who filed this case before the apex court. The court took support from common law and emphasized the duty of Municipal Corporation to remove nuisance. The court substantiated its arguments by citing an English case which was decided way back in 1953.

In Calcutta Tanneries case, again apex court used Indian precedents, especially cases related to water Pollution and shifting of industries decided by it. In brief, it may be said that the apex court relied heavily on the cases decided by it while deciding the cases pertaining to pollution of river Ganga.

In Bichhri Village case, Sri M.C. Mehta, learned counsel of the petitioner invited the attention of the apex court towards the Constitutional Bench decision in Oleum Gas Leak case and other decision of the apex court to determine the liability of polluting industries. Mr. Mehta also drew the attention of the Court to quite a few foreign decisions' as well.

Sri K.N. Bhat, counsel of polluting industries argued that rule of absolute liability as evolved in Mehta case was not accepted in England or other commonwealth countries and the rule evolved by the House of Lords in Rylands v. Fletcher, was the correct rule to be applied in the matter.

The apex court rejected the contentions of the respondent and pointed out that in view of decision in the Oleum Gas Leak case, this contention was untenable, for the said decision expressly
referred to the rule in Rylands but refused to apply it by saying that it was not suited to the conditions in India. The court also cited the majority judgment delivered by Venkatachaliah, in Union Carbide case to reject the concurring opinion of Justice Rangnath Mishra in Carbide case, cited by the Mr. Bhat, counsel of the respondent. The court emphasized the fact that three Judge Bench had not expressed any opinion on the principle of absolute liability. In Vellore Citizens Welfare Forum case, the Supreme Court conceded the fact that constitutional and statutory provisions protected a person’s right to fresh air, clean water and pollution free environment but the source of the right was the inalienable common law right of clean environment. In the instant case, the court had not cited any specific case law in support of its argument but categorically declared its preference for British common law in following words:

Our legal system having been founded on the British Common Law, the right of a person to pollution free environment is a part of the basic jurisprudence of the land.

In M.V. Nayudu case, I, the apex court through Jagannadha Rao, J took cognizance of Indian and foreign precedents. The Court recognized the fact that in the environment field, the uncertainty of scientific opinion has created serious problems for the courts. In regard to different goals of science and law in the ascertainment of truth the Supreme Court cited the decision of the U.S. Supreme Court in following words:

There is important difference between the quest for truth in the court room and the quest of truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly.

It also cited the precedent of New Zealand to emphasize that the risk of harm to the environment or to human health was to be decided in public interest, according to a ‘reasonable persons’ test.

Apart from foreign precedents, the apex court used Indian precedents which strongly recommended for the Constitution of a specialized body having a judge of the rank of a High Court judge or a Supreme Court judge, sitting or retired and a scientist or group of scientists of high ranking and experience so as to help a proper and fair adjudication of disputes relating to the environment and pollution.

In M.V. Nayudu case II, Jagannadha Rao, J, quoted the decision of the European Court at Starsbourg, decision of the Philippine Supreme Court, decision of the Constitutional Court of Columbia, decision of the Supreme Court of South Africa to illustrate the right to healthy environment as a fundamental human right. So far the Indian precedent was concerned the apex court recalled its earlier judgment and orders in M.V. Nayudu I case. Thus, Jagannadha Rao, J, enriched the quality of the judgment by using precedents from various countries as raw materials for producing judgment in the instant case.

It may be noted that a particular trend was also visible at the apex court. Some judges solely relied on Indian precedents in general and decisions of apex court in particular as a raw material for decision making. In S. Jagannath case, Kuldip Singh J, relied on Indian precedents and used the decisions of the apex court as raw materials for decision making. It is interesting to note that Justice Kuldip Singh used his own judgment of an earlier case as a raw material to produce judgment in the instant case. Does it not create a doubt or suspicion in the mind of litigant that the concerned judge has foreclosed its mind? Will it not reflect that
the justice delivered has not been on merit but on pre-conceived notion of a particular judge?

It may be noted that some judges like Kuldip Singh of the Supreme Court relied more on Indian precedents than foreign precedents. This inclination towards Indian precedents was also visible in Bittu Sehgal case and Calcutta Tanners case.

It may not be out of place to say that similar judicial trend was maintained in Gopi Aqua Farms case, even after the composition of the Bench had been changed. The apex court clarified its earlier judgment by saying that it was a judgment in rem, and binding on all irrespective of the fact that the affected person or group was a party or not to the proceedings.

In Delhi Water Supply and Sewage Disposal Undertaking case, Sri K.K. Venugopal appeared before the court as the counsel of the petitioner at the instance of the apex court as the intricate questions of the law were found to be involved.

The learned counsel took pains to bring to court's notice some decisions of the American Courts, that drinking was the most beneficial use of the water and this need was so paramount that it could not be made subservient to any other use of water, like irrigation. So the right to use for domestic purpose would prevail over other needs. In the instance case, apex court relied on the submission of the counsel of the petitioner and opined that it found plausibility in the contentions and was inclined to unfold new jurisprudential arena.

It may be noted that aforesaid observation of the apex court revealed the fact that the court wanted to give due weightage to foreign precedents where Indian law was ambiguous.

Understanding the dilemma faced by environmental litigants, the Supreme Court in Kamal Nath case ruled that the common law doctrine of 'public trust' was a part of the Indian legal system.

It also held that this doctrine imposed a definite obligation upon the government to preserve the existing natural resources as they were. The court also referred to its earlier decisions of Vellore Citizens Welfare Forum and Indian Council for Enviro Legal Action to fix the liability of polluters for the harm caused to the neighboring villagers as a result of its activities around the river and for the restitution of the ecology of the area. In the instant case, the apex court reviewed a number of decisions of U.S.A. courts, particularly the judgments of the Supreme Court of California in Monolake case. It also cited the most celebrated case in American public trust law which was called as loadstar. The decision in the instant case signified that in case of resources held by the Government for public use such as parks, water fronts etc the courts would look upon any Government conduct that converted those resources to public use.

6. CONCLUSIONS AND SUGGESTIONS

As mentioned above, various efforts have been made by all civilized countries towards protection of the earth right from 1972 till now, but absenteeism of few civilized countries from few conferences and summits shows that they ate not serious to contribute toward the ultimate aim and the following suggestions are being made by us to strengthen the concept of the so called Sustainable Development.

1. Since major contributions in pollution belongs to Industries in our country, hence these Industries should be classified in to three
categories, namely a) less pollutive, b) medium pollutive, c) high pollutive and accordingly in the same way necessary control be exercised over these industries while granting consents by respective state Pollution control boards.

2. Even after making law about Green Courts in our country, the same is not being implemented by respective governments fully which should be enforced.

3. Wherever the Green Courts are functional, necessary help of Environmental Engineers be provided, so as to enable Judicial Authorities to arrive at a proper decisions.

4. Our Judiciary could shift 250 Industries for the protection of Taj Mahal, than why similar steps should not be taken in respect of Ganga which is still pollutive in all the respective states from where it is passing.

5. Natural Resources are part of Public Trust and belonging to public at large and by virtue of PIL certain Natural Resources have been protected and certain activities like mining etc. have been banned by Supreme Court but still violation is going on and the example is of Aravali Hills which need immediate attention of Authorities.

6. Right to get pure drinking water and air are part of right to life under article 21 of the Constitution of India but non of these are available to us and our lives are going to be shorter than our elders hence this right should supersede any other right.

7. Last but not least about ozone layer blanket, which is in upper atmosphere is already under threat, as reported by various global scientists ,which need immediate protection with common interest of aware countries otherwise the whole human race is going to be extinct in few decades.

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