



Principle of precaution for sustainable development

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I. INTRODUCTION

The World we all share is given to us in trust. Every choice we make regarding the earth, air and water around is should be made with the objective of preserving it for all future generations to come".

- August A. Bush III¹

In the aftermath of Independence, more emphasis was given on industrialization to bring a change in the life of the masses. During that period, Indian Economic was not in proper shape and thus emphasis was given on planned economic development, which paved the way to concentrate attention on Industrial planning. In this process, in order to achieve rapid economic growth the nature and the natural resources were greatly misused which resulted in their irreversible damage. This ultimately led to the grave danger of environment pollution thereby jeopardizing the quality of the life of the masses. This grave threat to the human race united the world community to sit together and think what necessary steps can be taken to arrest this danger. Certain emerging principles were evolved in search for achieving social justice and preserving fragile ecosystems. Among these

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www.mobile.brainyquote.com/lastvisitedon.8/6/14

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principles, the concept of "Sustainable Development" which focusses integration of developmental and environmental imperatives comes in forefront. The other principles namely "Precautionary Principle, the polluter pay principle, were evolved to give strength to the concept of environment and development.

A. SUSTAINABLE DEVELOPMENT

"The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life of future generations"²

The concept of 'Sustainable Development' has its roots in forest management in the 12th to 16th centuries.³ In 400BC, Aristotle had referred to a similar Greek concept in talking about household economics.

The first use of the term "Sustainable" in the contemporary general sense was by the CLUB OF ROME in 1972 in its classic report on the "LIMITS TO GROWTH" written by a group of scientists led by DENNIS and

² [www.satto-youth.net/downloads/toolbox_tool_download_file_899/quotes%](http://www.satto-youth.net/downloads/toolbox_tool_download_file_899/quotes%20for%20sustainable%20development.pdf)

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³ In a Ehnert, Sustainable human resource management. A concept and Exploratory Analysis from a paradox perspective springer: pg 35-36 {synthesis in line | date = April 2014}.



DONELLA MEADOWS of the Massachusetts Institute of Technology.

The World Commission on Environment and Development in its Report OUR COMMON FUTURE described Sustainable Development as "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. 4

The umbrella principle of Sustainable Development conceived in Stockholm declaration 1972 and crystallized in Rio Declaration contains within ambit, a derivable set of Principles, namely, Principles of conservation, Principle of Good Neighborliness Principle of cooperation, Principle of Integration, Polluter Pay Principle, Principle of Precaution, Common for differential responsibility, Principle of Intergenerational and Intergenerational equity and all encompassing principle of Right to Development.

The United Nations Conference on Human Environment took place at Stockholm from 15th to 16th June, 1972, which is being known as MAGNACARTA of our environment. Certain principles are embodied in the Stockholm declaration which gives impetus to the concept of sustainable development. Further, the "World Conservation Strategy" prepared in 1980 by the world conservation union (IUCN) with advice and assistance from the United Nations Environment Programme (UNEP) and World Wide Fund (WWF) added to the importance of the concept of Sustainable Development. The concept of Sustainable

Development was brought into usage by World Commission on Environment and development, otherwise known as BRUNDTLAND COMMISSION in its report OUR COMMON FUTURE brought out in 1987. The World witnessed another United Nations Conference at RIO DE JANEIRO in the year 1992 named as the UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT. Principle 13 of the Stockholm Declaration as well as Principle 14 of the Rio Declaration States about Sustainable Development. Besides the Rio-Declaration, the conference also adopted another important document i.e. "AGENDA-21" which is a comprehensive blue-print for action into twenty-first Century a non-binding statement on forest principles and two international conventions, namely, the 'climatic charge convention' and "Convention on Biological Diversity" in the year 1992, which stresses, a comprehensive and far-reaching programme for sustainable development. Then we also have the "Kyoto Protocol on Global Warming" which was held in the year 1997, called for mandatory cuts in the emission of green house gases mainly by industrialised nations which are supposed to be great contributors, to help and save the planet earth. To re-affirm the Commitment of sustainable development, the world leaders once again were united at Johannesburg, South Africa in 2002. The Delhi Ministerial Declaration on climate change and sustainable development was held on 28th October 2002 which includes recalling acknowledging pledging and recognizing the conclusions of world summit on Sustainable development.

⁴ Res 3201 & 3202 of the sixth special session of General assembly of the United States, Resol 35/56 of the 35th session of the General Assembly of UN.



B. SUSTAINABLE DEVELOPMENT – INDIAN PERSPECTIVE

In Vellore Citizens Welfare Forum Vs. Union of India,⁵ the Supreme Court acknowledged the traditional concept that development and ecology are opposed to each other is no longer acceptable-sustainable development is the answer, and the same opinion was expressed in Essar Oil Ltd., Vs. Halar Utkarsh Samiti.⁶ Time and again the Indian Judiciary supported the concept of sustainable Development by recognizing this principle being a fundamental concept of Indian Law in the Plethora of cases like M.C.Mehta Vs. Union of India,⁷ Narmada Bachao Andolan Vs. Union of India,⁸ Biju Sehgal Vs. Union of India,⁹ Intellectuals forum Vs. State of Andhra Pradesh,¹⁰ Susheta Vs. State of Tamil Nadu,¹¹ and also in Indian Council for Enviro-Legal Action Vs. Union of India.¹²

C. PRECAUTIONARY PRINCIPLE

“Precaution is a systematic change that transforms the way we approach environmental regulation and decision making. This change is rooted in a paradigm shift away from risk/ benefit and cost / benefit decision – making that asks, ‘What level of harm is acceptable’ to a precaution approach. “How can we prevent harm.”

- Centre for Health, Environment and Justice¹³

Principle Precaution as a matter of objective principle contains a range of cautious attitude. In common language, this means, “better safe than Sorry”. Precautionary “thinking” has a much longer history. The Precautionary Principle, however, dates from 1970s and had its origin in the German word “VOR SORGEPRINZIP”, which is aimed at securing clean air. This bill was drafted in the year 1970 and the law was passed in the year 1974 and covered all potential sources of air pollution, noise, vibrations and similar processes.

Precautionary approach was also predominantly found in ancient Indian Philosophy. The first explicit recognition of precautionary approach in international law is found in several documents concerning the protection of Northern sea, which was discussed at a number of international conferences held at Bremen (1984) London (1987). The Hague (1990) and Esbjerg (1995).¹⁴ As between the Stockholm and Rio declaration, it is the Rio-declaration¹⁵ which have unequivocally enunciated the principle of. Precautionary approach Principle 15 of Rio-declaration¹⁶ maintains that in order to protect the environment, the precautionary approach shall be widely applied by the states. Agenda 21 which envisions different

⁵ (1996) 5 SCC p. 647

⁶ (2004) 2 SCC 392

⁷ (1997) 2 SCC 353

⁸ (2000) 10 SCC 664

⁹ (2001) 9 SCC 181

¹⁰ (2006) 3 SCC 549

¹¹ (2006) 3 SCC 543

¹² (1996) 5 SCC 281

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www.toxipedia.org/plugins/servlet/mobile#content/view/3881 last visited on 30/07/2014

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www.asser.nl/uploadeel_webroot/www/documents/dossiers/precautionaryprinciplepdf last visited on 9/6/14.

¹⁵ Agenda 21, Bio-diversity Convention, climate change Convention.

¹⁶ Sec Principle 15 of Rio-declaration.



action programs is primarily based on precautions approach which deals with atmosphere, oceans seas and living marine resources and also emphasizes the risks are clearly of critical and require firm application of precautionary principle climate convention requires the state parties to anticipate, prevent and minimize the causes of climate change and mitigates its adverse effects.¹⁷ The Bio-diversity convention pointed and out its ritual to anticipate, prevent and attack the causes of significant reduction or loss of biodiversity at sources.¹⁸

One of the most important expression of precautionary principle is in the Rio declaration (1992), which is also known as Agenda 21. The declaration stated. "In order to protect the environment, the precautionary approach shall be widely applied by the states according to their capabilities where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environment degradation.¹⁹

In the case of Vellore Citizens Welfare Forum Vs. Union of India,²⁰ Supreme Court held that the "Precautionary Principle" and the "Polluter pays principle" are salient features of Sustainable development. Citing the constitutional provisions of Article 21 which guarantees "Right to life and personal liberty" and Article 48A and 51A (g) which makes it obligatory on the part of the state as well as citizen to

protect environment and the corresponding legislations namely the water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986 and Court opined that in view of above stated constitutional and statutory provisions, holding that precautionary principle and polluter pay principle are part of the environmental law of the Country.²¹

Thus, Precautionary Principle underlies to adopt environment constrain in order to achieve sustainable development.

The precautionary principle was directly applied by SC for protecting Taj Mahal in the "Taj Trapezium Case"²² (M.C. Mehta Vs. Union of India) and it was also applied in AP Pollution Control Board Vs. M.V. Rayudu.²³

D. FREE TRADE AND ENVIRONMENT

In the year 1947, an international Conference was held at Hawana and a resolution was passed for the purpose of increasing and strengthening. World Trade activities and mutual relationship amongst various nations. As a result multi-lateral payment system was adopted. It was resolved by the participating nations to reduce export-import taxes as a result General Agreement on Tariffs and Trade came into existence on 1st January 1948. Later it became a permanent body with initial membership of 23 Countries which had reached to 139 by 2002. GAT is a multilateral voluntary body aimed at prescribing code of conduct and to act as

¹⁷ See Principle 3 of Climate Convention, 1992.

¹⁸ Preamble to the Bio diversity Convention, 1992.

¹⁹ See Principle 15 of Rio declaration.

²⁰ A.I.R. 1996 SC 2721

²¹ Jaswal & Jaswal, "Environmental Law, (1st edn.) (1999) p. 95

²² A.I.R. 1997 SC 734

²³ A.I.R. 1999 SC 812



a platform for carrying out negotiations and consultations with a view to resolve Trade related problems.

GATT has close relation with the environment pollution and intended to protect the environment, Rapid depletion of natural resources due to unprecedented increase of the human activities is posing threats to future generations of the planet earth.

GATT Contemplated liberalization, industrialization and globalization and free trade worldwide. It is based on the principle that restrictions. On investment would withhold the development of trade and such restrictions to be removed. GATT helps the agricultural development and also maintains ecological balance. GATT also advises that member country should not adopt such environment measures which distort trading activities.

From 1948 to 1994 the GATT provided the rules for much world trade and presided over periods that saw some of the highest growth in international Commerce. It seemed well establish throughout 47 years, it was a provisional agreement and organization.

For a start, world trade has become for more complex and important than 40 years before, the world economy was underway, trade in services – not covered by GATT rules which is leading to MULTI – FIBRE Arrangement.

These and the other factors convinced GATT members that a new effort to reinforce and extend multi-lateral trading system should be attempted, that effort resulted in the Uruguay round, the Marrakesh Declaration and the creation of WTO on 1st January, 1999.

E. FREE TRADE Vs. PRECAUTIONARY PRINCIPLE

Environmental Protection and free trade inter relations have been one of the most disputed subjects during the last decade. Supporters of free trade maintain the opinion that abolishing trade restrictions and the global free trade regime strengthen the world economy and add or liberate resources, which can be used for environmental protection purpose.

Environmental activists claim free trade stimulate unsustainable use of natural resources and use of technologies harmful to the environment.

In addition, globally extending trade relation are instrumental in favor of expanding economic activities of big transnational companies into the developing countries, where environmental standards are lower, or do not exist at all, and where the “polluter pays” principle is not applied.

Under these circumstances, environmental activists call for establishment of certain corrective instruments in the frame work of WTO – these instruments should not aim at arbitrary obstruction of trade but introducing environmental considerations into trade regime.

Trade related environmental might occur in different shapes. Countries with high environment protection levels may attempt to apply restrictions on import of goods which do not correspond with the environmental standards in force, Countries with high environmental awareness right also subsidizes their exports to increase the competitive ability of their industries,



over burdened by environmental protection regulations.

The Precautionary principle has often been used in defense of trade regulations induced by environmental protection considerations. Different countries international organizations, and the international community have made efforts to find adequate means to protect human health and environment, even in the conditions of scientific uncertainty, for decades already. Precautionary principle introduces substantial changes into the traditional principles of risk assessment.

Opinions of WTO member states on the content and the legal status of the precautionary principle differ quite remarkably. US and EU interests have conflicted repeatedly in several health and environment risk management over the last few years. The fact that the United States has not officially not accepted the precautionary principle and has not recognized it a universal risk management tool whereas the experience of EU proves that the precautionary principle and principles of its application have occupied a central stance in the dispute on the interrelations of free trade and environment protection.

"THE HARMONES CASE"²⁴ is undoubtedly one of the most WTO case which is dealt with EC & US regarding the import of beef treated with growth promotions hormones. The second dispute under the status of precautionary principle in international law is in connection with SPS agreement.

Thus, number of issues came to the light of WTO regarding the aspect of precautionary principle but the WTO member states have different approaches towards it. EU and US have distinctly different approaches regarding precautionary principle. The reluctance of the US to apply precautionary principle in international trade relations derive in the first place from the economic interest of the US in the spheres of economy where new technologies are applied. General development of environmental policy in European Community, inclusion of precautionary principle into the treaty, and the favoring attitude of the European Court to the principle are the factors that ground logically favoring attitude of the European Community.

F. CONCLUSION

Precautionary Principle Plays a vital role in the Environmental Law. Due to the rapid industrialization, which ultimately hampers the environment at large is in need for the incorporation of precautionary principle along with Sustainable Development. Hence, this importance of precautionary principle, which ultimately helps the environment as well as Trade Laws.

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www.juridicainternational.eu/Public/pdf/ji2003-186.pdf last visited on 31.07.14