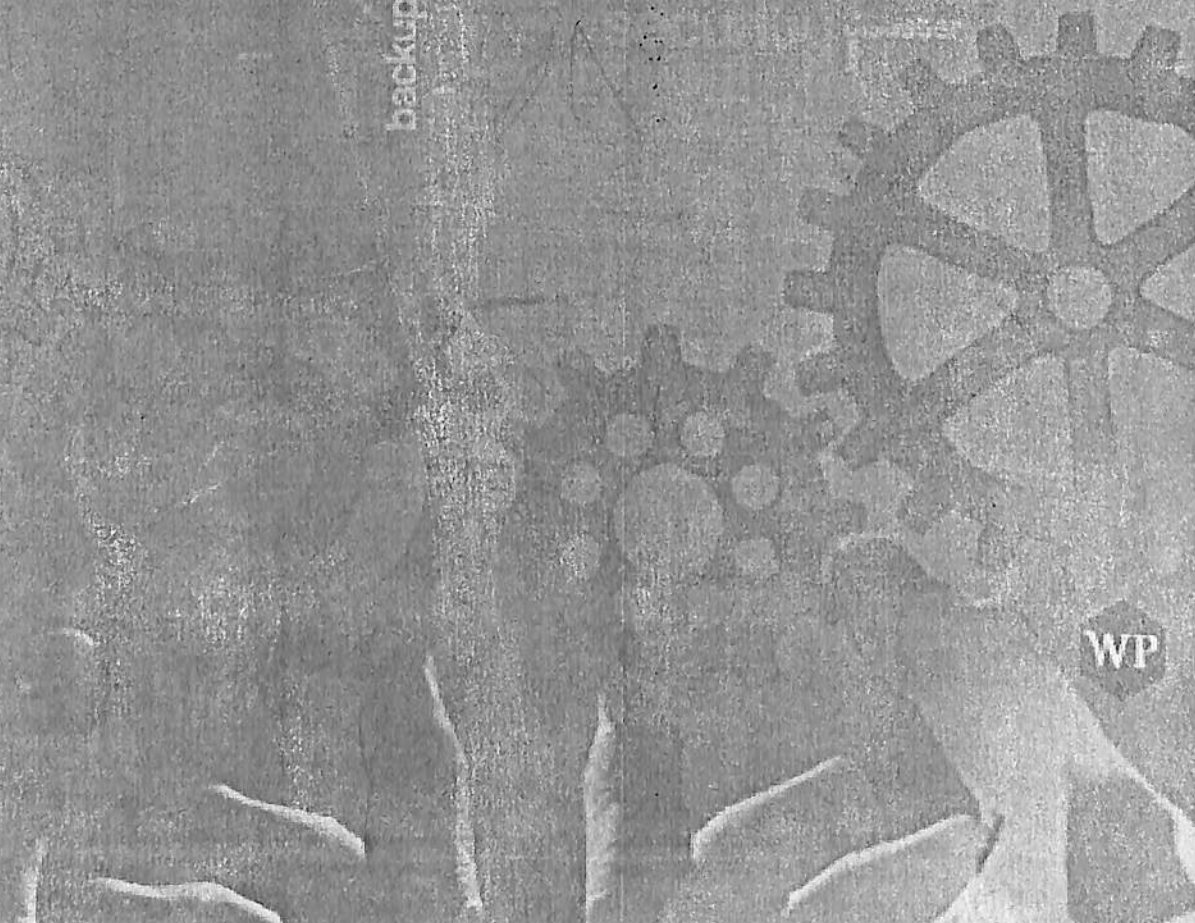


# Social Governance, Equity and Justice



Editors:-  
Dr. Mohammad Irfan  
Dr. Pooja Kansra

WP

# **Social Governance, Equity and Justice**

By

**Dr. Mohammad Irfan**

**Dr. Pooja Kansra**



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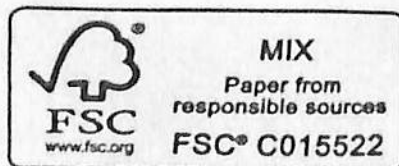
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# Sustainable Development Stress's towards Sustainability: Custodian Approach

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Our biggest challenge in this new century is to take an idea that seems abstract - sustainable development - and turn it into a reality for all the world's people. – Kofi Annan

## Abstract

In the 21<sup>st</sup> Century, worldwide sustainability stressed, as we are facing challenges of protecting and preserving environmental condition and maintaining ecological balance. Sustainable development is emerged for overall environmental sustainability. Growing economies leads to exploitation of natural resources and hampering ecology, endangering globe. Sustainable development encourages for sustainable use of natural resources in such a way, that it available for present and for coming generations who have equitable right. Environmental degradation and depletion of natural resources created threat for survival of life. While doing development in any sector we need to keep in view sustainability of environment and proper management, socio-economic constituents be considered by harmonious and balancing approach.

**Keywords:** Environment, natural resources, protection, sustainable development, wildlife.

## Introduction

With evolution of mankind and technology we human has exploited mother nature and due to excess use of natural resources with are available on earth, need is felt for preservation and protection. Hence, concept of "sustainable development" evolved nationally and internationally through conventions, treaties, rules and regulations. Principle of sustainable development is important while dealing with natural resources that are available to humans from thousands of years. With misuse and mishandling to Mother Nature has brought environmental variation leading to ecological disasters. And while it is true that the concept grew out of thinking about the dangers of environmentally unsustainable practices such as the damage done to ozone layer by CFCs or the damage to soils and water supplies due to pesticides, sustainable development has also always included the social dimension<sup>i</sup>. Sustainable development principle emphasizes that natural resources should be used but keeping the view future generation. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs<sup>ii</sup>. It contains within it two key concepts:

1. concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and

2. the idea of limitations imposed by state of technology and social organization on the environment's ability to meet present and future needs<sup>iii</sup>.

The World Commission on Environment and Development (WCED) explored causes of environmental degradation, attempted to understand the interconnections between social equity, economic growth, environmental problems, and developed policy solutions that integrated all three areas<sup>iv</sup>. The Brundtland Report included chapters covering, among other topics within sustainable development, the role of the international economy, population and human resources, food security, species and ecosystems, energy, industry, and proposed legal principles for environmental protection<sup>v</sup>. The principle encompasses within its ambit that development should not only permit economic growth to society as whole, but while doing so, use of natural resources must be utilized for present but also must be available to future generation. Rio-Declaration on Environment and Development, passed during the Earth-Summit at 1992, to which also India is a party, adopts the notion of sustainable development. Principle 4 of the declaration states:

“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”<sup>vi</sup>.

It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation and therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a “reasonable person's” test<sup>vii</sup>. Some of salient principles of ‘Sustainable Development’ as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Co-operate, Eradication of Poverty and Financial Assistance to developing countries<sup>viii</sup>.

Natural resources are available and law governs them nationally and internationally for benefit of public. This ranges from environment and ecology including plants, flora and fauna, natural resources from mining, water, rivers, sea, etc and wildlife and animals which are part of nature that helps in balancing ecological system of earth. Sustainable development emphasize that societies can meet the unlimited human needs by potential resources but at same time equitable opportunities need to be taken care off. Overuse of natural resources has become detrimental to environment and ecological imbalance leading to climate change, distress, disasters etc. Through various conventions, domestic and international laws that are enacted for protection of natural resources and environment. Rational utilization and exploitation of natural resources, to meet the needs of social economic, culture and material life, and can meet the rational needs of the next generation<sup>ix</sup>. Settled agriculture, diversion of watercourses, extraction of minerals, the emission of heat and noxious gases into the atmosphere, commercial forests, and genetic manipulation are all examples of human intervention in natural systems during the course of development<sup>x</sup>.

Human intrusions and abuse with environment and natural resources has affected ecological system endangering earth. Today we can see through climatic and atmospheric

cycle changed, underground water depletions, soil erosions, infertility of soil due to excessive use of chemicals and fertilizers, deforestations at huge scale, pollutions, reduction in wildlife, impact on flora and fauna etc are result of excessive use of natural resources. The principle of sustainable development was laid down so that there could be sustainability while using natural resource for human good. Sustainability has various aspects that covers diverse perception of development of human growth. Sustainable development is increasingly becoming a goal to which numerous countries throughout world aspire and overall sustainability has been defined in many ways, and is often considered to have three distinct components: environmental sustainability, economic sustainability and social sustainability<sup>xi</sup>. While interpreting this concept the 'Doctrine of Public Trust' plays important role. In M.C. Mehta<sup>xii</sup>, the court quoted ancient Roman Empire developed this Public Trust and it was founded on the ideas that Government held certain common properties such as rivers, sea-shore, forests and air in trusteeship for the free and unimpeded use of the general public<sup>xiii</sup>. SC. court further emphasized that:

"Doctrine primarily rests on the principle that certain resources like air sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes"<sup>xiv</sup>.

Sustainable development was brought with certain goals wherein all are benefited rather favouring particular section, private parties or organisation. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffuse public interests need protection against tightly organized groups with clear and immediate goals<sup>xv</sup>. Consequently, there can be no private ownership of natural resources, and any involvement by private sector is limited to exploration, prospecting and exploitation of these resources for specified time periods, as authorized agents of the state and are also subject to clear legal "public interest" obligations<sup>xvi</sup>. In Association For Environment held that, "State is the trustee of all natural resources which are by nature meant for public use and enjoyment whereby public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands and therefore, State as a trustee is under a legal duty to protect the natural resources"<sup>xvii</sup>. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest and therefore, Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans<sup>xviii</sup>. One of important principle dealing with sustainable development is 'Principle of Inter-generational Equity'. It states that every generation holds Earth in common with members of present generation and with other generations, past and future<sup>xix</sup>. And articulates a concept of fairness among generations in the use and conservation of the environment and its natural resources<sup>xx</sup>. The concepts of social equity and intergenerational



equity directly impact sustainability of decisions impacting human well-being as they alter the distribution of well-being across space and time<sup>xxi</sup>. At the same time, present generation is a custodian of these resources for future generations, obliged to conserve this legacy so that future generations may also enjoy these same rights and in this way, intergenerational equity extends the scope of social justice through time<sup>xxii</sup>.

Apart from rights of life guaranteed under various provisions of law, all human have basic human rights that has become center of life across globe under agreements, conventions and laws paramount for human survival. Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources<sup>xxiii</sup>. There are conflict always, as human needs which are ever increasing that affect natural resources due to over exploitation threaten the human and non-human survival altogether because of ecological imbalance. Competition for scarce resources creates conflicts, whereas conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments<sup>xxiv</sup>. Reaffirming that man must acquire knowledge to maintain and enhance his ability to use natural resources in manner which ensures preservation of species and ecosystems for benefit of present and future generations, and need for appropriate measures, at the national and international, individual and collective, and private and public levels, to protect nature and promote international co-operation in this field<sup>xxv</sup>.

### **Sustainable development approach in various fragment**

#### **Environment**

Environment (Protection) Act (EPA), objective is to provide protection and development of environment as a whole. It empowers Central Government to establish authorities under section 3(3) charged with mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country<sup>xxvi</sup>. Environmental concerns are resolved invoking EPA, in various cases dealing with environment protection and preservation wherein authorities can take necessary steps against wrongdoer and held liable. EPA was invoke in various landmark cases in India wherein courts have laid down the liability on wrongdoer based on principle of strict liability, absolute liability and polluter pay principle. Strict liability was used earlier by courts, but after Bhopal Leak gas disaster court invoke absolute liability of wrongdoer. In case of Indian Council for Enviro-Legal<sup>xxvii</sup>, court applied the principle of Polluter pays and observed thus:

“The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle, it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the



pollution incident to the taxpayer. The 'polluter pays' principle was promoted by the Organisation for Economic Co-operation and Development [OECD] during the 1970s when there was great public interest in environmental issues. During this time, there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past or potentially polluting activities have never been satisfactory agreed<sup>xxviii</sup>.

Over a period, person who had damage the environment through his action is also held liable to pay damages caused because of his act. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology<sup>xxix</sup>. Indian constitution also provide legal mechanism which are binding and comes under the duty wherein under Article 48-A State has been casted with responsibility to make endeavors to protect and improve the environment and to safeguard the forest and wildlife of the country<sup>xxx</sup>. India is signatory to various international treaties, agreements and conventions and is committed itself for sustainable development and growth. This legal framework indicates that sustainable development must remain at the heart of any development policy implemented by the state and it is essential to strike the right balance between environmental conservation and protection on one hand, and the right to development on the other, while articulating the doctrine of sustainable development<sup>xxxi</sup>.

Further Article 51A (g) emphasizes on the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures<sup>xxxii</sup>. When deciding if a proposed action should be approved and under what conditions, the Minister has broad discretion to consider any relevant information on the impacts of the proposed action but must take into account: the principles of ecologically sustainable development, including the precautionary principle, as well as the balancing of economic, social and environmental considerations; the results of the assessment of the impacts of the proposed action; and community and stakeholder comments, among others<sup>xxxiii</sup>. Conservation and maintenance of biological diversity, sustainable utilization of natural resources, and stabilization of the terrain; improvement of natural resources and fulfilling socio-economic and livelihood needs of the people have to be taken into account while preparing the Landscape plan<sup>xxxiv</sup>.

Environmental protection and monitoring is not restricted to the spheres of urban or industrial pollution of water, air and land but also extends to the spheres of urban or resources and it follows that the assessment of limits of exploitation of various natural resources and monitoring the total environmental situation are essential steps for a conservation and eco-restoration strategy<sup>xxxv</sup>. In *Glanrock Estate (P) Ltd.*, the court observed that, "the present generation is answerable to the next generation by giving to the next generation a good environment and we are answerable to the next generation<sup>xxxvi</sup>. If

deforestation takes place rampantly then inter-generational equity would stand violated, therefore, doctrine of sustainable development also forms part of Article 21<sup>xxxvii</sup>.

### **Natural Resources**

Mines are natural resources, which are being exploited at cost of environment and illegal mining activities have become a menace in India. Different kinds of mining activity should be carried-out on sustainable basis, clearance, and approval from concerned authorities after assessing. The rule is clear for allocation of mining activities until and unless there is prior environmental clearance given by authority, mining has to be conducted as per set norms. Any activity done contrary to norms will be considered illegal per se. Stockholm Declaration principle number two provides that the natural resources of the earth including air, water, land, flora and fauna should be protected and the fourth principle of Stockholm Declaration reminds us about our responsibility to safeguard and wisely manage the heritage of wildlife and its habitat<sup>xxxviii</sup>. It is responsibility of State to protect and preserve natural resources with sustainable development applying appropriate standards for utilizing and exploitation of resources. Sustainability concept objective is that, while exploiting natural resources prudence and rationales must be used striking balance of present and future. Equitable use of natural resources by States has to take -care for tacking need of other States and people. The United Nations Millennium Report and International Panel on Climate Change (IPCC) Reports both indicate that 60 per cent of earth's ecosystems are experiencing terminal loss and the loss of these natural resources, whether of the Amazon forest, of sea life, elephants and tigers, rivers and lakes, glaciers or aquifers below the ground is strongly impacting human life<sup>xxxix</sup>. The major priorities and functions of UNEP is to monitor, assess, and report regularly on changes in the state of the environment and natural resources (through its Earth Watch programme) and to develop criteria and indicators for environmental quality standards and guidelines for the sustainable use and management of natural resources<sup>xl</sup>. Natural resources have been shrinking given our patterns of consumption, wasteful life-style (WBCSD, 2010; HM Government, 2013) and climate changes along with inadequate governance and policy responses necessary to manage the balance hindering sustainability<sup>xli</sup>. Climate change forces communities in developing countries to adapt to the extreme and unpredictable weather and the present process of national-level planning for a adaptation by developed and developing countries provides the first guide to its potential sustainability<sup>xlii</sup>. It need urgent attention to restore them for sustainable future applying holistic approach rather compartmentalizing them in different segments. Reaping the benefits of green transitions will require significant changes in human and organizational behavior, as well as a host of innovative supportive policies to reduce human vulnerability and manage natural resources<sup>xliii</sup>. Development and sustainability has to go hand in hand harmoniously striking a balance of holistic approach.

### **Wildlife**

Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity<sup>xliv</sup>. Article 21, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21<sup>xlv</sup>. Wildlife balances the wheel of ecology and economic development is also important for

growth but it should not be at the cost of hampering the wildlife. The shortage of wildlife resources will cause endangerment and extinction of wild animals and plants<sup>xlvi</sup>. There are a large number of studies reporting the presence of marine debris from coastal areas, sea floor, and oceanic gyres and the effects of marine debris on the wild life are well documented, and the results are disturbing<sup>xlvii</sup>. Apex Court thought of balancing development vis-a-vis protection of wildlife ecology and environment in view of the principle of sustainable development<sup>xlviii</sup>. Ministry of Environment and Forest had aimed identify, recognize and build the capacities of dynamic youth and women towards wildlife conservation, sustainable use of biological resources, combating illegal trade in wildlife, mitigating human wildlife conflict and biodiversity governance<sup>xlix</sup>. However, far we plan but we need to take stringent stand to curb the conflict of wildlife preservation for balancing the ecological balance.

### Conclusion

In the present climate, when we have already loss over half our natural resources, it is evident that principles like 'polluter pays', 'precautionary principle' or 'sustainable development' do not work anymore- we are well past and point of precaution - and must be changed to stop further damage to resources that cannot be created by man<sup>1</sup>. As per UN Agenda 2030 for sustainable development it has emphasized on "We are determined to ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature"<sup>li</sup>. However we makes different policies and agenda's put forth that we need to achieve but we lack due to unpredictable circumstances or failure in implementing the goals sets. Even though we have regulatory bodies to but due to loopholes in implementation and regulation on prior approval without proper assessment of consequences leads to failure affecting loss and damage to environment that becomes sometimes irreparable. Human only want to exploit nature but we fail to take initiative to preserve and protect. Government do take up projects and programme for sustainable development but those are no sufficient. Every individual has to contribute for sustainability of overall ecology by preserving natural resources, planting trees, using resources rationally and wisely.

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