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Dogmatic Assessment of Memorandum of EIA Draft 2020, Its Criticism and Contemplative Magnitude of Legal Interpretation with Sustainable Development

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ABSTRACT

The idea of 'sustainable development' emerges from both industrial development and environmental movement going on around 70s and 80s; the idea was that there should be balance between development and environmental protection. For the first time 'Doctrine of Sustainable development' was introduced in year 1972 at the Stockholm convention held in Sweden, it gives us 'Stockholm deceleration' (26 principles). Thereafter in 1981 'Brundtland commission' report was submitted where an effort was made to link economic development and environmental protection, based on this report issue was further discussed under agenda 21 of UN conference on environment and development held in June 1992 at Rio de Janeiro, Brazil. Some of the main principles of 'Doctrine of Sustainable Development' as described in 'Brundtland Commission; are:-(a) Inter generation equality; (b) The precautionary Principle; (c) Polluter Pays Principle. In India first case in which the apex court had applied the doctrine of 'sustainable development' was Vellore citizen welfare forum V. Union of India in this case Hon'ble Supreme Court held that- we are not hesitant to use these principles and the precautionary Principle and Polluter Pays Principle are integral part of Environmental Law in India.

Environment and development are the two side of the same coin, any one of these cannot be sacrificed for the healthy society. This paper deals with the same issue i.e. Growth versus sustainable development and how these two can be balanced, this paper also deals with the laws related to it with national and international perspective.

Keywords: Sustainable Development, Environmental doctrine, principles, Trusteeship, International Convention

I. INTRODUCTION

“Our biggest challenge in this new century is to take an idea that seems abstract-sustainable development-and turn it into the reality for all the world’s people.”

- Kofi Annan

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In view of today's modernized world, the term 'sustainability' took as persuasive defence in the Environment Jurisprudence persist along Development and Environment. Whereby Environmental Clearance would stand challenging ground against the Industries and economic projects. Hence, The Judiciary encloses so many restricted principles, doctrine, and theories to foster the economic growth along with environment thereto. Therefore, such proviso's are entrusted for this friction-less developing world, and we just carve out the potential stored in the world like Atomic Nucleus and natural resources embodied in it. Subsequently these stored Potential energies pompously used as form of natural resources prime facie. Furthermore, **Sustainability** appraised as ethnic and cognizable subjects in an attempt to form bridge amidst the moralistic engineering and science thereby. Ostensibly the formulation of balance holds environmental factors with the future preservative inventions, knowledge and technology.

The concept of the ecological balance was not known prior-on but enshrined in the goal of First convention known as "Stockholm Declaration". Thereafter, the forum of Worldwide nations devices to construed an Eco-sustainable system, or clean and healthy environment etc. The intent of legislature behind the concept embedded within the meaning of Environment or its protection and its preservation itself. Afterwards, the dilemma suggested with **Ex post facto Environmental Clearance**. The nascent development in principle of Environment jurisprudence would strike down the irreparable degradation. Herein we would be severely discussed about the present modulation in 'Environment Jurisprudence persist with sustainable development'. Hereafter question appraised in here as-

- (a) That the relation amid with doctrine and ecosystem, how to balance it.
- (b) That the present modulation in Environment Jurisprudence
- (c) Conflicting pillars with sustainable approach

II. EMERGENCE OF SUSTAINABILITY

The emergence of this concept entails in the year 1972, whereby conference held on Human Environment in Stockholm, which is prominently attended by 113 states, herein expert form different states stated that "**although in individual instances there were conflicts between environmental and economic priorities, they were intrinsically two side of the same coin**"³. The integrity of sustainable development analysed by slew of research paper. Evidently, it is imperative concept which puts in practise after Stockholm Declaration. This would empirically suggest that development 'may not cause without detriment' to environment

³ Vogler, 2007, p. 432

or irrevocable degrade in it. Though another outcome was proposed in **United Nations Environmental Program (UNEP)** that countries should coherently collaborate to encourage the environment and also conduces their people to participate in doing so to improvised with future generations.

This concept played catalytic role for promoting ‘sustainable agreement’ and also adopted the “Stockholm Declaration on the Human Environment” which apparently includes the need for planning of the integrated and coordination in the environmental protection. The dogmatically approach of the dynamic world justifies the developing source of any country thereon suggests to extract out management of drastic and hazardous activities. Discussing further let us takes a look on cognizance of matter and its background which would be discussed here.

Amicably, In the view of 18th century, Thomas Robert Malthus said that the “**population, when unchecked, increased in a geometrical ratio and subsistence for man in an arithmetical ratio**”⁴ OR commonly called Principle of Population. Such entitled with the concept of elicit relation with “misery, vice and moral restrain”. Perhaps later on, in 1983 the UN General Assembly created World Commission on Environment and Development so called **Brundtland Commission** which published as “Our Common Future”. Thereto in 1992, scientists alarmed with situation i.e. “**Human beings and the natural world are on a collision course**”⁵.

(A) Orientation of the Approach

The ramification of approach duly connotes the global issues likewise poverty, hunger and environmental degradation. This approach recognized by public hearing for projects of technology somehow damaging the planet oftenly. According to **Our Common future**, sustainable development is defined as development that “**meets the needs of the present without compromising the ability of future generations to meet their own needs**”⁶. The interpretation of word “without compromising” is used in often strike sense while recognizing developmental projects. In **2005 World Summit**, the goals were identified as Economic development, Social development and Environmental Protection. There are four main domains distinguished sustainability approaches which are **economic, ecological, political and cultural**. The three overlapping eclipses are not mutually exclusives and were

⁴ ROGERS, 2008,, P. 20

⁵ Stavins R, International Cooperation: Agreements & Instrument, World Scientists ‘Warning to Humanity (1992), In Climate Change 2014: Mitigation of Climate Change Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Chapter 13, Cambridge University Press

⁶ Supra note 7

be explained by the **3 D Sustainability Triangle**⁷.

Satisfaction of human needs and aspiration of peoples widely induces the requirement of various basic needs for competing with the better life and will improve by long term sustainability. Development tends to justify the dramatic balancing of ecosystem with materialistic value not fully specified for proper use. It was termed as ‘Triple Bottom Line’ where society depends on economy subsequently economy depends on global ecosystem⁸.

(B) Analysis of the Sustainable Science, Its Cognizance, and Its Quantity

However, the concept got its magnitude within the plenty of years as a ‘science of Environment Jurisprudence’, thereon finds its scope with philosophical governance hales around different field and promulgate the strategical solution amid within resources and the technology. This science called as **Sustainable Science**. Such science seeks to persuade profitable intervention that amounting to quantify prosperity and health in life as according to Article 21 of Indian Constitution. Though while guarding and preventing the environment bring a role of sustainable development. According to the words of **Daniel Botkin**, author and environmentalist have stated: “**we see a landscape that is always in flux, changing over many scales of time and space**⁹.”

This could be justified with view as the Man is a social animal and for maintaining own social status in society one should behave according to global perspective towards the individual. Human ECO- Sustainability can be achieved after attaining all sevens hierarchical modalities which are as follows Economy, Community, Occupational Group, Government, Environment, Culture, and Philosophy. And in this artificial world, we greatly rely on all nascent modalities which define uniqueness in particular country. For any prosperous countries nature or its resources need to be used in profitable manner. Furthermore, if such stored potential resources become exhaustive, hereinafter countries flow of development therewith degraded. This would affect our future demand and may degrade the certain monetary rates or values which dogmatically criticize our landscape composition also and affect the development in a Sustainable Quantity.

The gist of such matter provides in fruitful way:

- (1) It itself derive impetus from concept of sustainable development and environmental science.

⁷ Modeled on Dyllick and Hockerts, 2002, P. 135

⁸ Elkinton, 1999, p.73

⁹ Nature’s Economy : A History of Ecological Ideas, 2nd Edition Book

(2) It also cradles out evidence to provide quantitative data governing to guide sustainable governance.

(3) It provides a tactical data to carve the growth of sustainable development.

Furthermore, the main objective of European Union's approach in relation to sustainable development is identical with OECD (2002). Though stands that decoupling of economic growth with the environment as per the resource used at a time which results in environmental degradation¹⁰. There is wide and distinctive difference between the absolute and relative decoupling. Beforehand it was assuming nullity of environment variable over positive growth rate of development or GDP which suddenly changed.¹¹ However, there is no implied restriction on present use of resources but **according to European commission**, there is absolute limits, even by institution such as the European Union that soil is a finite resource prevails under the pressurized plates. Perhaps there is limited number of resources that can be protected & secured for our future.¹²

III. PRESENT MODULATION OF THE ENVIRONMENTAL JURISPRUDENCE COUPLING WITH THE ECONOMIC ASSESSMENT AT THE 'COST OF NEW 2020 DRAFT'

Moreover, Let's take a conclusive meaning of EIA which propound as the process of estimating the environment impact by project likewise mine, dam industrial units or waste plant through a scientific means. EIA stands for Environmental Impact Assessment, as the title suggests it deals with evaluating and estimating the impacts of construction on the environment, it's very hard to balance environmental growth and economic development at the same time so government has to take a middle way to satisfy both environmentalists and industrialists to balance out economy as well as environment.

Though the government should check that how much damage that construction is causing to environment and how to control or minimise the damage. The draft has been constituted by the Ministry of Environment Forest and Climate Change it is the department of the government of India that takes care of planning promotion coordination and overseeing the implementation of India's environmental and forestry policies and programs. If 2020 draught is finalized it will replace the existing 2006 notification for the future projects.

¹⁰ European Union, 2002, p.11 ; European Council Environment, 2002, p.11

¹¹ OECD, 2002, P.11

¹² Points 22 & 28 of the preamble of the 6th Environmental program Action Programme

(A) The main four concern regarding the 2020 draft are**First concern post facto clearance**

The draft approves of 'post facto clearance' which intrinsically meant by government is that they are not going to hold back economy for the environment which means project can be awarded clearance without acquiring environmental clearance even if the construction is started or there in the planning phase. The main problem with this is the damages which this construction cause is irreversible or not revamped and the culprit main slip by simply paying a fine and causing permanent damage to environment.

Furthermore, the Supreme Court had ruled out that the "concept of an ex-post facto EC (environmental clearance) is in derogation of the fundamental principles of environmental jurisprudence", "detrimental to the environment, and could lead to irreparable degradation". For instance, likewise the Visakhapatnam gas leak was operating without any environmental clearance.

The second concern is regarding public hearing

The duly concern of EIA draft is that the procedure enshrined for submission or finishing of Report is beyond reasonableness, fair and just. According to this, "A minimum notice period of 20 days shall be provided to the public for finishing their report"¹³.

The time of public hearing is cut down from 30 days to 20 days. This will increase the scepticism towards the process and many of the people in rural areas are not even aware of these processes, hence by rushing these public hearings the credibility of functioning is questioned the reduced time is not enough for meaningful and fair public discussion, this reduction in time is also against the rule of natural justice that is Audi alteram partem.

The analyst had relied on the case of **Smt. Ritu Devi v. CIT**¹⁴, where the court held that the "assessee" has not been provided with a fair opportunity because only a single day was provided. Thus, after a notice is served, a reasonable amount of time should be given to the party to present the case and their relatable evidences.

The third concern regarding the EIA

This is regarding the relaxation of monitoring which is notify in year 2006, thereon the project has been submit their compliance report in every six months to the government, to ensure that they are following all the necessary precautions, or according to principle of precautionary to

¹³ Point 3.1, the notification of EIA draft 2020, Pg.47

¹⁴ (2004) 190 CTR Mad 354, 2004 271 ITR 466 Mad

preserve the environment however in 2020 draft this time frame is increase to 1 year. This may cause the risk of hazard in industries not following proper steps to minimize the environmental and may lead to more environmental misconduct or mischief.

The 4th issue is Suo Moto acceptance of violation

Seemingly, there are only two ways to deal with project flouted the environment names are¹⁵-

First is - Suo Moto declaration of violation: that entails as "a- Suo moto application of the project proponent". Hence suggested that the violators would accept the violation by themselves to government and self-report them.

The second as (1) by the Government Authority ACC to draft; (2) By gov authority; (3) Appraisal committee; (4) Regularly authority. The problem appraised herein there is no scope of publicly means to complain about the violation. Only the gov and the violators can report the violation.

The 5th issue is 'strategic' Immunity

Any project regarding the concern of national defence or security can't be put up for the public hearing and the details dealing with that project was not made public. As it is sine qua non for the national security but in this new draft extra word is added i.e 'strategic consideration'¹⁶, that "all project concerning national defense and 'security' or involving other strategic considerations as determined by central government.....further, no information relating to such projects shall be placed in public domain" which means once the project is regarded as strategic then public cannot gather any information regarding to that project.

new construction projects upto 1,50,000 square metres instead of the existing 20,000 square metres to not meet details to training by the expert committee not too they need my studies and public consultation not this way the construction industry will be one such beneficiary between the lines based on which they operate is huge and if the government decides to make that construction industry as strategic then it will not fall under public scrutiny

Issue number 6 no public consultation in border areas

The draft also suggests no public consultation within 'Border area' which means area falling within hundred-kilometre aerial distance from the line of acute control within bordering countries of India¹⁷ all the projects which came within terra of border area shall fall into "all

¹⁵ Point 22, the notification of EIA draft 2020, Page no 29

¹⁶ Point 7, the notification of EIA draft 2020, page no 9,

¹⁷ Point 6, the notification of EIA draft 2020, page no 3

linear project under item 31 and 38 in border areas"¹⁸ which means there is no consideration of public has to be taken for the area falling within hundred kilometres from the bordering countries of India which is more than 40% of the north east which is seven sisters which contributes most in Indian ecology.

In view of matter regarding safety and hazards through any medium, though the court had taken cognizance over a large-scale pollution got adversely affecting the safety and health of 'the people living in the area'¹⁹. Accordingly such statement 'the people living in area' when affected shall be entitled to maintain for PIL ensuring for enjoyment of pollution free water and air which is interim part of "Rights to live" under article 21 of Indian constitution.²⁰

(B) Contemplative Magnitude via Courts Interpretation

In the conference of Rio declaration, herein induces Environmental issues which can manifestly handled by all citizens, and their contributions for informing about hazardous activities. At the national level, state shall facilitates awareness and information, and in duty to provide effective redressal or remedy for it²¹. It is also noted that most of the humble cases are plead as a PIL under Article 32 & Article 226 of the Constitution. As in the context of the matter, Polluter pays principle were first coined explicitly in case of **Indian Council for Enviro-Legal Action v. Union of India**.²² Furthermore, in Supreme Court case²³, it was held that the 'precautionary principle' and the 'polluter pays principle' are the part of Environmental jurisprudence which ultimately forms the law of the land.

The court declared that this principle not only restricted to its compensation but also to Replenishment which shall be part of sustainable development hitherto.²⁴ There is also statutory mandate to protect the environment as given in the Article 48-A²⁵ & 51-A (g)²⁶. This principle became fruitful for the part of the customary International law and hence deemed as a basic jurisprudence of land.²⁷

Though in **Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar**

¹⁸ Point 2f, the notification of EIA draft 2020, page 19

¹⁹ Rural litigation and Entitlement Kendra v State of U.P, (1985) 2 SCC 431

²⁰ Subhas Kumar v State of Bihar, AIR 1991 SC 420

²¹ Principle 10 of the Rio Declaration (1992)

²² (1996) 2 JT (SC) 196

²³ Vellore Citizen Welfare Forum vs. Union of India, AIR 1996 SC 2715, 2721

²⁴ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715, 2721

²⁵ Article 48-A defines as "The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

²⁶ Article 51-A stated that "All the citizens of India shall have a duty to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures".

²⁷ Justice Kuldeep Singh, Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715

Pradesh²⁸ also called **Doon valley case** disputes over the mining in the hill areas. The court held that curtain sum is to be paid for protection of people's right delves in healthy Environment or in minimal disturbance to ecological balance. Likewise, protection laid down in **Tarun Bhagat Singh vs. Union of India case**²⁹ held that it was unwise to favour environment without giving the priorities to development. As a conclusion environment and development are the two side of the same coin.

IV. ASSESSMENT OF NOTIFICATION GAZETTE WITH PRINCIPLES

(A) Do the EIA Draft 2020 explicitly approves the principle of polluter pays?

World hampered the environment through a malicious treatment and discharge of the industrial act, the unhygienic condition appraise off. This persuade problem for biotic and abiotic life, or its components in the environment. Meanwhile, the polluter was decided to pay bearable cost of pollution, after taking consideration of public interest without hampering the trade and commerce.³⁰

During the past 50 years, India prompts towards sustainable goals and counters many draft. During the magnitude of Draft 2020 was criticised on the ground that its abduct the voice of communities who would be impacted from the Environment. This attempt is called as “**Pro-industries**” and “**anti-people**” draft. The notification was bringing by vested power of central Government under the Environment Protection Act 1986 to “**protect and improve the quality of the environment**”. The draft had been calling off on its rational and standardization of the process. This draft had in consideration to bring transparency, expedient or introducing adroit scrutiny mean. It entrusts us with prior **Environment clearance (EC)** as approved by expert committee and other is **Environment permission (EC)** without expert view. This exempted the 40 difficult projects from its perspective.

According to World Commission Report, the ‘Environmental costs’ of ‘Economic activity’ can be internalize-paid by industrialist himself³¹. They might have to give such money so as to meet the security purposes, its victim and property damages. As the notification of 2020 draft conflict around the Polluter Pays Principle. The principle directs the cost for the public harm subsist with public consultation but the draft exempted B2 projects from the public consultation and their view which bring opaqueness in the procedure. Ostensibly, this draft contravenes by exempting the project or narrow the concept of process. Moreover, it is

²⁸ 1985 AIR 652, 1985 SCR (3) 169

²⁹ 1993 SCR (3) 21

³⁰ Principle 16 of the Rio Declaration (1992)

³¹ Our Common Future, p. 220-221 (1987)

justified against the concept of famous Supreme Court case of M.C *Mehta vs. Union of India*³².

The Apex Court held that ‘we have to evolve new principle and lays down new norms, which would adequately deal with the problems which arise in a highly industrialised economy³³.’ Firstly, recommendation sought as per magnitude of ‘Hazardous or inherently dangerous activities’.

This principle of sustainable development were efficacious used in many ways as in the **Vellore Citizens Welfare Forum Case**³⁴ which is the landmark judgment in history of principle for the environmental law and should be applied strictly. Whereas the other contention confers in case **T.N. Godavarman Thirumalpad vs. UOI**³⁵ the court said there should be balance between sustainable development and environment called the **doctrine of proportionality**. It was concluded in the main case of **A.P Pollution Control Board vs. M.V Nayadu**³⁶ held that when the degree of potential risk is so high than this principle comes into play.

Herein the notification of 2020 isn’t corresponding with above direction of cases. As such exempted the ex post facto clearance with authority before the investment in the projects. Public hearing for the projects was not took into consideration. The projects like B2 which harms the environment excessively were need not to get clearance before investment. And they either nor answerable to public hearing but only to Central or State board.

(B) Do the EIA Draft 2020 explicitly approves the Precautionary Principle?

Certain principle was emerged out in the decades of the years as precautionary term. Our Indian constitution also given in the explicit term as Right to Wholesome environment as a fundamental right protected under Article 21 of the Constitution of India. However, this doctrine had come to be known in early 1072 in Stockholm declaration and statement that “a solemn responsibility to protect and improve the environment for present and future generation.”³⁷

The above statement about the responsibility lies each individual to preserve the wildlife and environment which somehow affects the life. We all have a right to access free and clean

³² AIR 1986 SC 1086

³³ Bhagwati, CJ, Supra note 17

³⁴ (1996) 5 SCC 647

³⁵ MANU/SC/0028/2014

³⁶ (2001) 2 SCC 62

³⁷ Report of the Brundtland G. (1987) World Commission on Environment and development: Our Common Future

Environment for which we bind by the mandatum to take appropriate responsibility. Hence Supreme Court upheld that “concept of an Ex post facto EC is in derogation of Fundamental principle of environmental jurisprudence”³⁸ thereafter. The loses cost on Environment is irreparable and cannot not justifies by compensation but to replenish the degradation caused. The polluter had collectively knowledge about the degradation caused so respectively have to took coping measures. The 2020 draft without checking the Environmental clearance in project or without getting valid consent for project, such would not be approved. The NGT held the direction in the case that District Collectors may not confer any validation to project without full-filing the steps given in 1994 EIA by the notification such as screening, scoping, public hearing and decision being fulfilled. (supra above)

(C) Inter-Generational Equity, Common interest or social equity with EIA Draft 2020

Different economist and Environmentalist relying on social equity concept that addressed Eco-system or Eco-efficient in more prominent way and contribute absolutely threshold in maintaining the sustain balance between ecological and social factors. Perhaps, they are facing congruent level of intensity and reversibility process which resemble to concept of Save Minimum Standard (SMS)³⁹ and MINIMAX Principle has to be applied. However this concept discloses the arguments of socio-effectiveness and ecological equity. Hence it provides solution for such disparities that includes the actual distributional disparities among the natural capital use and future generation for which they considered the “**Ecological Equity**”.

This draft breach the doctrine of social equity and public trust doctrine that this will provide the asylum situation to large industries and projects. As such notification exempt the projects where government determined projects as strategic consideration from the striker of Public hearing. Here the notification had conferred the power over the central authority to categorize between strategic elimination from the public consultation. And such would also distract with multiple conventions and fabrics of relation with Environment jurisprudence.

In the case⁴⁰ it was held by the Gujarat high court that curtain minimal 30 days public hearing should be given for each projects to consider the interest of public. Such draft contradict with the direction proposed under this case about the period. This suggest that it detriment with the concept of Public Trust, Equity and Principle of Natural Justice.

³⁸ Alembic Pharmaceuticals Ltd. V.Rohit Prajapati & Ors.

³⁹ Ciriacy- Wantrup, 1952, pp. 251-267; Bishop 1978; Crowards, 1996

⁴⁰ Centre for Social Justice v. Union of India

(D) Several cases inference

In this notable case, the NGT cannot override the absolute jurisdiction of courts or power to judicial review. The grant of the Ex-post clearance would not keep aside by mere NGT dissent. The analyst taken relevance of **Goa Foundation v Union of India**⁴¹.

The legitimacy of the Environment clearance by ex post facto effect over the public hearing has upheld by the Court in **Lafarge Umiam Mining Pvt Ltd v Union of India**⁴².

In the case **Electrotherm Ltd v Patel**⁴³, the Court took the account of the instant and significant expansion in industry and held not to close the industry.

Tamil Nadu Pollution Control Board v Sterlite Industries (I) Ltd⁴⁴ (“Sterlite”) the two bench Court adjudicate the administrative function of National green Tribunal 2010. And held that the NGT cannot strike down rules or regulations made under the Environment Protection Act 1986.

According to **Justice R F Nariman**, the jurisdiction of NGT has “no power” as to review under Article 226 of the Indian Constitution of India.

(E) International and National outlook *pari passu* towards Environment Jurisprudence

With the outrage of time slum of instances broke out that ashamed the humanity against the environment. Hence such discloses the ample of convention aftermath having keen interest in environmental sustainability. Generally the ESPOO convention in International jurisprudence considered the Public hearing, participation and other modalities of environment with respect to International level. Thereafter while considering the laid concept of procedure hitherto, it should be precise and just as said by Justice Dalbeer Bhandari said in case⁴⁵. Herein the highlighted procedure must be followed with exemplary means in the conduct of EIA notification. In this draft most uncertain significance which usually construct is matter of Public consultation or their rights which impetuously emphasize over the member of public as laid after the Aarhus Convention. This concept was spasmodically gets its assent in Convention on Access to Information, with the same effect of public participation in Decision- Making and Access to Justice in Environment Matters. Few instance of question invoked herein are-

⁴¹ (2005) 11 SCC 559

⁴² (2011) 7 SCC 338

⁴³ (2016) 9 SCC 300

⁴⁴ 2019 SCC Online SC 221 / Civil Appeal nos 4763-4764 of 2013

⁴⁵ Costa Rica v. Nicaragua

1. Do increase in population or their development prompt over the social ecosystem?
2. Do the private nursing house will consider as replicate for the parks?

In the recent case of **Lal Bahadur v State of U.P**⁴⁶, the writ petition was filed for Quashing of the order issue by the Allahabad court. The fresh master plan was challenged the constitutionality of master plan of 2021 ie. Converting green belt area into residential made on order of Lucknow Development Authority.

Factum of case aforementioned challenged the notification of master plan approved on 31.03.2005 coherently with the section Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 herein. Meanwhile, a very aspect which the petitioner appraised is that the injury could not be submitted or held as confer in Section 5A of the act, though as it provides consonance to Article 300A.

Though the petitioner argued that it was in violation of the constitutional mandate of Section 11 of U.P. Urban Planning and Development Act, 1973. furthermore it was contended that as the area assigned to the green belt/open areas could not be compromised in relation with the development of colonial area. The exercise of action was malice in law. Thus the exercise of power was unreasonable, arbitrary, without public consultation and colourable in nature. While it was unconstitutional within the dilemma of Article 48A and 51Ag. The procedure of law while making the order was taken with reasonable doubt. Therefore the order needs to be challenged.

The scope and importance of these open parks were justified in case⁴⁷, herein court held that these spaces are ‘gift to people from themselves’. This statement suggests that these places work as protector of residence from the growing ill effects of urbanisation. It is done for the benefits of public at large for, free ventilation, fresh air etc. Even more this not only safeguard the state health in good faith but also preserve the quality of life.

The common law of United states also upheld the statutory view that ‘it is within public interest to avoid the unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant’⁴⁸. This is amounts to debacle the nature scenic beauti. The concept of Ecosystem is universally recognized and state posed with duty to protect them. Hence these conversion in name of development is UNCONSTITUTIONAL.

Notwithstanding to above open areas but also in tribal areas, the balance would be considered

⁴⁶ AIR 2018 SC 220

⁴⁷ Bangalore Medical Trust v. B.S. Muddappa & Ors. (1991) 4 SCC 54

⁴⁸ Agins vs. City of Tiburon [447 us 255 (1980)]

between the tribesmen and their livelihood. Hence the court said, that every possible step or events shall be take for protecting the fragile ecosystem of forest open land. Therefore, comply with the regulation of Public Trust based on the system of Roman laws.⁴⁹

According to Professor Sax, this doctrine of Public Trust invoked along with few of restriction laid upon the Government. Firstly, The property ‘subject to the trust’ must not be used for a public purpose, but it must be held available for use by the general public; Secondly, estate or subject to trust cannot be sold; Third and last property may be maintained for particular types of uses.

Taking in reference of case, **Subhash Kumar V. State of Bihar**, supra above, the court observed that a petition is maintainable under the Article 32 of Indian constitution, and people were entitled to redressal. These people may be who are affected or group of social workers, or may be journalist also but these petition should not be used to full-fill enmity or grudges. Hereinafter as mentioned in Article 32, which is designed for the enforcement of fundamental rights and it is procedural or and legal duty to enforce it. These PIL contemplate legal proceedings for vindication on the behalf of poor, weaker section, or those ignorance to law thereto.

The court had taken the consideration of case, as in **Bandhua Mukti Morcha v. Union of India**⁵⁰; **Sachindanand Pandey v. State of W.B.**⁵¹; **Ramsharan Autyanuprasi v. Union of India**⁵² and **Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.**⁵³.

In the aforesaid **Vellore case**, supra above, the obligation to protection or safeguard the environment is the legal duties enshrined according to Article 48A, Article 51A (g) and Article 21 of constitution. The court shall not taken the traditional view that both Environment and Development are opposed to each other. “Sustainable Development” is the answer. Though the article ‘Caring for the Earth’ itself induces the concept of sustainable living. Meanwhile in Rio, Earth summit has taken place and approved the consensus of principles, which are ‘Statement on Forestry’, ‘declaration of principles on environmental policy’ and ‘development initiatives and Agenda 21’, and were in purview of areas like poverty, population and pollution. Later on it became the part of Customary International Law.

The Provisional and statutory act protect the natural habitat, fresh air , water and would be part

⁴⁹ Animal and Environment Legal Defence Fund v. Union of India & Ors. (1997) 3 SCC 549

⁵⁰ (1984) 2 SCR 67

⁵¹ (1987) 2 SCC 295

⁵² (1989) Supp SCC 251

⁵³ (1990) 4 SCC 449

of inalienable Common law entity. Furthermore, if one involve in easy practise of legal trade, yet it had to be performed in remote areas, or likely to knowingly set to induce the neighbour rights or premises, for the rule is, *sic utere "tuo, ut alienum non laedas;"* this therefore is an actionable nuisance. Thereon might be part of Gospel morality.⁵⁴

Within the light of this view, if nuisance is created in immediate effect or shall to the extend, it is duty to protect and control it further. In the M.C Mehta (Kamal nath case), it was held that it distortion was utter on basic environment, air, water and soil which is pro nessesitas then Polluter Pays Principle invoke there. Seemingly, it is interim part of Article 21, ie. Right to life and liberty read with Article 48A & 51A in order to protect Flora and Fauna of state.

V. NOTABLE CONCLUSION

The provisional and statutory adjudicate about that, the state government should take adequate measure to protect flora and fauna of state shall enumerate in its duty to fulfill. The above mentioning of cases, rules, and judiciary *opinium* shall be binding, reasonable and fairly discharge of symmetry amidst Ecosystem and Development. Hence apex court justify the concept of ‘Public Trust doctrine’, ‘Polluter Pays Principle’ and Morality as interim part of Indian Constitution. Henceforth, the Environment jurisprudence also entails the notification of EIA, 1994 and stipulation the expansion or modernisation of an activity or setting up of a new project. Likewise listed in Schedule – I, that these projects “shall not be undertaken in any part of India unless it has been accorded environmental clearance”. this enshrined obligation of word “Environmental Clearance”, the environment detriment under the absence of it. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment.

In the plethora of judgement undertaken in decades, the apex court in India remarkably developed the view of an innovative basic of jurisprudence. The person under gospel morality is responsible or having absolutely liable to pay for hazard caused. These responsibility elucidate (a) For material discomfort, and personnel loses to individual; (b) To pay the cost of restoring the damaged environment; (c) Would be punished under the Environment protection act 1986 and related laws⁵⁵

This researcher reached to conclusive answerable of the questions that can development and the environment may prosperously equivalently.

⁵⁴ Blackstone's, “of nuisance”, commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Chapter XIII

⁵⁵ Section 15 of Environment (protection) Act 1986,

And would found that both cannot go together and will no longer tenable. Development is the hasty outcome of the pollution so what the principle of ‘polluter pays principle’ and ‘precautionary principle’ became the basic features of the ‘sustainable development’. It indicates that we have to worry about the protection and preservation of the natural wealth by adopting sustainable measures. Prompting the development by ravaging the nature in the domain of estoppels, and would have to take stand against the illegal industrialisation.
