



*Hon'ble Mr. Justice Kurian Joseph

Environmental protection must for human rights

Excerpts from the chief guest address delivered by
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during the 19th World Congress on
Environment Management

The theme of the conference of "Managing Environment and Climate Change- Transitioning to a Sustainable Economy" is extremely relevant, especially in light of India's recent international obligations. The foundation of a sustainable economy lies in recognizing and achieving sustainable development. Thus, a sustainable economy can only be established if there is sustainable development. The concept of sustainable development was formally recognized by the World Commission on Environment and Development (Brundtland Commission) in 1987. The Commission aimed at uniting countries to work towards sustainable development. Sustainable development can be defined as development which meets the needs of current generations without compromising the ability of future generations to meet their own needs. Over the last 30 years, nations and organizations have discussed the concept in depth and have advocated the need to work towards it.

The Constitution of India and the Environment

India has a long history of coexistence between man and nature with people attaching a divine status to nature. It is indeed unfortunate that a nation which worships

nature is now dealing with climate change caused by the callous treatment of man towards the environment. In this context, Mahatma Gandhi's words are important- The world has enough for everyone's need, but not enough for everyone's greed.

The Constitution of India has provisions pertaining to environment protection. Article 48A of the Constitution provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Further, Article 51A(g) on Fundamental Duties provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

The Supreme Court of India has played an important role in preserving the environment. The Supreme Court has recognized the relationship between environment and Article 21. In *Virender Gaur and Ors v. State of Haryana and Ors* (1995) 2 SCC 577, the Supreme Court observed that:

"7. Article 48A in part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that "the state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51A(g) imposes "a fundamental duty" on 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". The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be

enjoyed. Any contra acts or actions would cause environmental pollution. Environmental ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the environment man-made and the natural environment."

The Supreme Court has also reiterated the concept of sustainable development and made it clear that development and ecology cannot be opposed to each other. In *Vellore Citizens Welfare Forum v. Union of India and others* (1996) 5 SCC 647 the Court, while tracing the origins of the concept of sustainable development, observed that:

"10. The traditional concept that development and ecology are opposed to each other, is no longer acceptable. "Sustainable Development" is the answer. In the international sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway Ms. G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. "Sustainable Development" as defined by the Brundtland Report means "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient features have yet to be finalised by the International Law jurists.

National Green Tribunal

The National Green Tribunal was established on 18th October 2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection. The

preamble of the Act, which provides an insight into its purpose, reads as follows:

An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

As per section 19 of The National Green Tribunal Act, 2010, the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. Section 20 provides that the Tribunal, while passing any order or decision or award, shall apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

India's international obligations and 'climate justice'

Climate change is inherently global in nature. The emissions of green house gases into the atmosphere from sources anywhere on the globe will affect our common atmosphere. That is why an effort is being made by world leaders to deal with this challenge collectively. Initiatives like the 2030 Agenda for Sustainable Development and the Paris Agreement are all steps in that direction.

The Paris Agreement unites countries into a common cause. That cause is to collectively combat the global problem of climate change. The Paris Agreement's aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise in this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change. India ratified the Paris Agreement on 2nd October 2016. Prime Minister Narendra Modi described this landmark agreement as the victory of "climate justice" and said "there were no winners or losers in the outcome." The Prime Minister also said that the deliberations showed collective wisdom of the world leaders to mitigate climate change. The Prime Minister had also earlier stated that "When we speak only of climate change, there is a perception of our desire to secure the comforts of our lifestyle. When we speak of climate justice, we demonstrate our sensitivity and resolve to secure the future of the poor from the perils of natural disasters."

The concept of climate justice is extremely important. Greenhouse gases cause climate changes that affect regions, nations, and communities around the world - but less privileged groups and regions are especially vulnerable to harm from the climate change. Those hit hardest by climate change are generally the least responsible for causing it, and have the least capacity to deal with it. The difficulty in climate change negotiations is that developing countries fear limits on their efforts to grow economically and meet the needs of their people, while developed countries refuse to curtail their emissions unless developing countries make similar sacrifices. We must recognize that various factors are important while discussing climate change and that it isn't solely an environment issue. Inequality is an integral part of the climate change and in adapting to climate change, all countries must support their most vulnerable communities.