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PRINCIPLE OF UTILITY AND SUSTAINABLE DEVELOPMENT AS A BASE OF HAPPINESS: AN INVESTIGATION

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Abstract

Law, development and happiness is important aspect of the good governance which is ultimate goal of every legal system. The Principle of Utility is promoting greatest happiness of greatest number and maximum pleasure and minimum pain. The principle is providing balance between majority & minority and gain to development through law. Sustainable development is such development in the Society which protects the environment as well as incorporates other aspect of the life. Development is basically an upward movement of the entire social legal system with socio-economic justice. The development process involves identifying the priorities of the society, identifying the change required by collaborative efforts of development practitioners like that legislators, bureaucrats, lawyers, social scientists etc. and locating the subject matter area where legal change shall be brought. Universal Declaration of Human Rights points out collective responsibilities of community of states to cooperate in removal of obstacles to development, elimination of violation of human rights, and promotion of respect for human rights as agenda of development. In this paper we consider the principle of Sustainable Development to become base of development and happiness in society. The relation of development with environment protection has been another matter with which the legal system has concerns. A concept meant to balance the competing interests of development and environmental protection, sustainable development becomes the standard for all subsequent UN efforts in both areas. Planned social change is the heart of this approach. There is an inspiring growth of law in India in this sphere. In present time we can see Sustainable Development principle in India for example, Swachh Bharat Abhiyan 2nd October 2014 and Bal Swachhta Abhiyan, 14th November 2014 started by the government of India.

INTRODUCTION:

Water is the basis of life; it is the gift of nature; it belongs to all living beings on earth. It is not a private property but a common resource for the sustenance of all. It is our fundamental obligation to prevent water scarcity and pollution and to preserve it for generations. Water is not a commodity. We should

resist all criminal attempts to marketise, privatize and corporatize water. Only through these means we can ensure the fundamental and inalienable right to water for the people all over the world¹.

In 1987 the World Commission on Environment and Development (WCED) issued its report, 'Our Common Future', in which for the first time, a United Nations body officially endorsed "Sustainable development". The commission defined it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"². Sustainable development recognized the right of all States to sustained growth as long as it did not diminish the living standards of future generations. Thus, while recognizing intergenerational equity as a fundamental principle, it encouraged continuing modernization in the less developed world. For the first time the United Nations accepted a "right to development", albeit within protective environmental parameters³.

Environmental, ecological, air, water pollution etc., amount to violation of Article 21. Hygienic environment is thus an integral fact of the right to healthy life as it is not possible to live with human dignity without a humane and healthy environment. There is, therefore, a constitutional imperative on the government not only to ensure and safeguard proper environment but also to take adequate measures to promote, protect and improve both the man-made and the natural environment⁴.

In the case of **T.N. Godavarman Thirumulpad v. Union of India**⁵, the Supreme Court has reiterated the public trust doctrine in relation to conservation of forest that means the government held them in trusteeship for the free and unimpeded use of the general public. The Supreme Court has emphasized that environment is not the property of any state but is a national asset and that it is the obligation of all to conserve the same and its proper utilisation must have regard to the principles of Sustainable development and intergenerational equity.

The researcher has submitted that sustainable development principle is goal of every government. Our legal system is incorporate and straggling for this principle. It is evidence of the good governance. In modern time we can say the principle of utility and sustainable development both very important for the society.

The Principle of Utility

According to Jeremy Bentham, nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects are fastened to their throne. They govern us in all we say in all we think every effort we can make to throw off our subjection will serve but to demonstrate and confirm it⁶. The Principle of Utility recognises this subjection, and assumes it for the foundation of that system the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it deal in sounds instead of sense in caprice instead of reason in darkness instead of light⁷.

The Principle of Utility is the foundation of the present work it will be proper therefore at outset to give an explicit and determinate account of what is meant by it. By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question or what is the same thing in other words, to promote or to oppose that happiness⁸. Further Jeremy Bentham says that, every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government. So we can say that principle of utility and sustainable development is contributing greatest happiness of the greatest number of people and secure pleasure of future generation.

The Principle of Utility should be sustained; that is, the utility of future generations is to be non-declining. The future should be at least as well off as the present in terms of its utility or happiness as experienced by itself. Utility here refers to average per capita utility of members of a generation⁹.

Concept of Sustainable development

The definition of sustainable development used most often comes from the report of the **Brundtland Commission**, in which it was suggested that the phrase covered “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. However, different levels of societies have their own concept of sustainable development and the object that is to be achieved by it. For instance, for rich countries, sustainable development may mean steady reductions in wasteful levels of consumption of energy and other natural resources through improvements in efficiency, and through changes in life style, while in poorer countries, sustainable development would mean the commitment of resources toward continued improvement in living standards¹⁰.

Sustainable development could fall within all three **ethical approaches**. It might be regarded as a deontological principle in as much as it seems to imply that future generations have inherent rights which require us to postpone our enjoyment. Similarly in its concern for social justice Sustainable development is deontological in character. Its problem here is that it proclaims positive rights to environmental quality whereas law is generally more comfortable with the idea of negative rights not to be interfered with. Moreover Sustainable development does not give absolute rights to any particular assets to our descendents¹¹.

It does not therefore necessarily support a preservationist ethic. A Utilitarian approach would aim at maximising welfare including the supposed welfare of future generations but would not seek to meet the needs of any particular interest group. For example from a Utilitarian perspective the uncertainties of the future might persuade us that the maximum possible welfare lies in our exploiting the environment as much as possible. Utilitarianism also has a hard job justify sustainable development.

It is clear that in utilitarian theory the happiness of future persons is of no less concern, *per se*, than the happiness of those currently alive but future generations are at a particular disadvantage with utilitarianism because the value of future interest may be discounted, i.e. reduced because enjoyment is postponed. Thus the exploitation of non-renewable resources such as coal, perhaps even species, may be indicated on the grounds that the certain gains in welfare from the consumption of such resources now are to be preferred to the uncertainty of the future.¹²

The central action principle of sustainable development is integrated decision-making the incorporation of environmental, social, and economic considerations and goals into decisions Property law, particularly the law involving common-interest communities (known as homeowner associations in a residential context) can also be used to foster sustainability.¹³ On the other hand without discounting a utilitarian approach is faced with the likelihood that future people will outnumber us by many orders of magnitude making it necessary always to prefer their interests to our own. It has been suggested that the well-established conservationist notion of maximum sustainable yield gives better results than discounting¹⁴.

In the case of **M.C. Mehta v. Union of India**¹⁵, for the purpose of maintaining ecology balance the court has laid down that the principle of sustainable development comes within the concept of “balancing” whereas mining beyond the principle of sustainable development comes within the concept of “banning”. The meaning of banning is restriction upon misuse of natural resources, only use for reasonable development.

Narmada Bachao Andolan v. Union of India¹⁶ the Supreme Court has observed that, “Principle of Sustainable development means what type or extent of development can take place, which can be sustained by nature or ecology with or without mitigation”.

In June 1972, the First United Nation (International) Conference on Human Environment was held in Stockholm declared that: ‘to defend and improve the human environment for present and future generations has become an imperative goal for mankind.’ Therefore, it called upon Government and people of the world to exert common efforts for the preservation and improvement of the human environment. The then Prime Minister of India, Ms Indira Gandhi, was the first head of the State to address this Conference and voiced her concern about the eco-imbalance, environmental degradations and pollution problem. Till now India is one of the signatories of this Conference and to prevent environmental degradation, it has passed various statutes to improve and to protect the environment¹⁷.

From the beginning of the attendance in the Stockholm Conference in 1972, India has passed various major laws on environment, namely¹⁸:

1. Water (Prevention and Control of Pollution) Act, 1974,
2. Air (Prevention and Control of Pollution) Act, 1981,
3. Environment (Protection) Act, 1986,
4. National Environment Tribunal Act, 1995,
5. National Green Tribunal Act, 2010.

Declaration on Principles of International Law Relating to Sustainable Development, which provides a cumbersome, but relatively complete, statement:

The objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from, with due regard to the needs and interests of future generations¹⁹. Distilled to its essence, this declaration identifies five aims that one may take to form the core of the still-emerging sustainable development paradigm: integrated policy assessment, environmental sustainability, intergenerational equity, robust political participation, and intergenerational responsibility.²⁰

Other Goals of Sustainable Development

The Seventeen Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development adopted by world leaders in September 2015 at an historic UN Summit officially came into force. Over the next fifteen years, with these new Goals that universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind²¹.

The SDGs build on the success of the Millennium Development Goals (MDGs) and aim to go further to end all forms of poverty. The new Goals are unique in that they call for action by all countries, poor, rich and middle-income to promote prosperity while protecting the planet. They recognize that ending poverty must go hand-in-hand with strategies that build economic growth and address a range of social needs

including education, health, social protection, and job opportunities, while tackling climate change and environmental protection²².

On Poverty, Zero Hanger, Good Health and well-being, Quality Education, Gender Equality, Clean Water and Sanitation, Affordable and clean energy, Decent work and Economic growth, Industry Innovation and Infrastructure, Reduced inequalities, Sustainable Cities and communities, Responsible consumption and production, Climate action, life below water, life on land, Peace Justice and Strong Institutions, Partnerships for the goal. On September 25th 2015, countries adopted a set of goal to end poverty, protect the planet, and ensure prosperity for all as part of a new sustainable development agenda. Each goal has specific target to be achieved over the next 15 years²³.

Concept of Animal Welfare part of Principle of Sustainable Development

There are also utilitarian approaches to animal welfare. Jeremy Bentham who was an ardent supporter of the campaign for animal rights concluded that the day may come when the rest of animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny.... a full-grown horse or dog is beyond comparison a more rational as well as more conversable than an infant of one day, or a week or even a month old. But suppose the case were otherwise, what would it avail? The question is not can they reason? But can they suffer? Nor can they talk? Why should the law refuse protection to any sensitive being? The time will come when humanity will extend its mantle over everything that breathes.²⁴

The concern with animal welfare on utilitarian grounds has been extended by Peter Singer did much to highlight the arguably cruel practices of factory farming. Singer argues that the exclusion of animals from moral consideration is 'speciesism' arbitrary discrimination on a par with discrimination on grounds of race or gender.²⁵ According to Singer a fundamental principle of moral theory is that all moral interests should be given equal consideration. All creatures with capacity to suffer have a moral interest at least an interest in not suffering. The conclusion is that at least serious animal suffering should not be allowed merely for human convenience.²⁶ The utilitarian approach is also vulnerable to the 'replaceability argument' which applies equally to humans and animals²⁷. There seems to be no utilitarian objection to killing creatures if we can do so painlessly and replacing them with equal or better substitutes. Ecological perspectives would also support this.

Jeremy Bentham took a different approach, suggesting that mistreatment of animals was akin to slavery and racial discrimination. "The day may come when the rest of the animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. A full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even month, old. But suppose the case were otherwise, what would it avail? The question is not, Can the reason? Nor, Can they talk? But, Can they suffer?"²⁸ "John Stuart Mill concurred, repeating the analogy to slavery"²⁹.

New Dimension of the Sustainable Development: The Government and Apex Court of India

The Apex Court of India recognizes the following some principle of sustainable development, which we may called that is a policy or a strategy for continued economic and social development without detriment to the environmental and natural resources of which continued activity and further development depends³⁰.

- Inter -General inquiry (Principle 3 of the Rio de Janerio Declaration)

- The Precautionary Principle (Principle 15 of the Rio de Janeiro Declaration)
- Polluter Pays Principle (Principle 16 of the Rio de Janeiro Declaration)

The precautionary principle

The precautionary principle establishes that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measure to prevent environmental degradation” (United Nations Conference on the Human Environment, 1992). Therefore, the proponent of an activity bears the burden of proving that this action will not cause significant harm. Explicitly stated in the Rio Declaration, the notion of common but differentiated responsibilities recognizes that each nation must play their part on the issue of sustainable development. This principle also acknowledges the different contributions to environmental degradation by developed and developing 3 nations, while appreciating the future development needs of these less developed countries (Brodhag & Taliere, 2006; Dernbach J. C., 1998; United Nations Conference on the Human Environment, 1992). Developed nations, therefore, bear greater responsibility in light of the resources they require and the pressures they exert on the environment³¹.

In the Grand Chamber decision of **Raffinerie Mediterranee**³², the Court interpreted the polluter pays principle under Directive 2004/35/EC, which outlined the environmental liability surrounding the prevention and remedying of environmental damage.

There, the Italian court imposed penalties on the polluter parties that required remedial action beyond that established under the consultative process of the Directive. The remedial action was implemented “without that authority having carried out any assessment, before imposing those measures, of the costs and advantages of the changes contemplated from an economic, environmental or health point of view.” In addition, the Court issued preventive orders to parties whose lands were not polluted or had been decontaminated before the effective date of the Directive. These measures afforded a higher level of environmental protection than the one required by the Directive, a stretch, but not prohibited by a literal reading of Article 193 of the TFEU.

The Court further held that the polluter pays principle could be incorporated into even more protective national measures:

Articles 7 and 11(4) of Directive 2004/35, in conjunction with Annex II to the directive, must be interpreted as permitting the competent authority to alter substantially measures for remedying environmental damage which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have already been implemented or begun to be put into effect³³.

Afton Chemical Limited³⁴, the ECJ affirmed the level of judicial review to be applied to institutional actions relying on complex environmental issues while further clarifying the role of the precautionary principle under European legislation. Afton, a chemical company was seeking to invalidate the limits imposed by Directive 2009/30 to the additive MMT on grounds of the precautionary principle, pending a full assessment of its health and environmental impacts.

The Polluter Pays Principle

The polluter pays principle (PPP) asserts that the costs associated with pollution should be borne by the person or entity that causes these costs. The principle has two distinct rationales one based on economic theory, the other based on notions of justice³⁵. The economic interpretation of the polluter pays principle

is premised on welfare maximisation which in turn is underpinned by the philosophy of utilitarianism³⁶. Utilitarianism is not only contested as a basis for human ethics but also precluded from providing the conceptual foundation of wider biocentric and all ecocentric ethics³⁷.

Vellore Citizen Welfare Forum vs. Union of India³⁸, the Supreme observed that, the companies' are vital for countries development, but having regard to pollution the doctrine of 'sustainable development' must be adopted by them as the balancing concept and the 'precautionary principle' and the 'polluter pays principle' has also be accepted as the part of the law. Further the Apex court has said, the central government to constitute an authority to-

- a. Implement the precautionary and "Polluter Pays" approaches
- b. Identify the families who had suffered
- c. Assess compensation to be paid by polluters
- d. Monitored by a special bench "Green Bench".

In **M.C. Mehta vs. Kamal Nath**³⁹, the court held the natural resources such as air, sea, waters and the forests has such a great importance to the people as a whole that by leasing ecologically fragile land to Motel management, the State Government committed a serious breach of public trust.

An alternative justification for requiring individuals to pay for pollution damage or control is that such payment satisfies some notion of environmental justice. The concept of justice has received a very significant amount of scholarly attention but can very roughly be considered as the idea that individual's entities are to be given their deserts. This involves treating equal cases equally. Quite what any individual or entities deserts are is of course a highly contentious matter, as is the question of judging who is equal of whom. Perhaps a more helpful move is to consider justice as comprising retributive justice, distributive justice and corrective justice⁴⁰.

Sustainable Development base of Retributive Justice, Distributive Justice and Corrective Justice

Retributive justice concerns the imposition of a proper punishment on one who has committed a wrong in order to exact some measure of societal retribution. Quite why society is justified in doing this is much debated. Retributive justice is sometimes thought of as unethical or uncivilised and closely linked to revenge, but many judges and legislatures hold this to be a valid objective of at least criminal law⁴¹.

It is possible that the polluter pays principle, through the visible imposition of liability for pollution damage measures, exacts a measure of retributive justice. If this is so, then as suggested by the Cambridge Water Case⁴², fault is an important factor. Retributive justice may therefore clash with economic welfare⁴³.

Distributive justice concerns the correct distribution of social goods or bads. It is more directly connected to the problem of social inequity than the imposition of blame or punishment. In the case of **O' Reilly and Others v. Limerick Corporation and Others**⁴⁴, the court has held that, an obligation in distributive justice is placed on those administering the common stock of goods the common resource and the wealth held in common which has been raised by taxation, to distribute them and the common wealth fairly and to determine what is due to each individual⁴⁵.

The polluter pays principle contains elements of distributive justice because it asserts that, between humans, the resources used to compensate for environmental damage must be the polluter's own and not taken some common stock or other person.

Corrective justice⁴⁶ requires one who causes harm to make amends by correcting or equalising the harm caused. Assuming that, some degree of distributive justice exists between human and between humans and nature then corrective justice requires that the polluter shall pay for the maintenance of that balance. Whether corrective justice will actually prevail depends, to an extent on the degree of freedom that exists to expend payment made. In the case of preventative measures the payment is necessarily used for the benefit of the environment and as such correction is automatically achieved⁴⁷.

The general rule in English law is that the recipient of damages in tort or contract is free to use them as he chooses, consequently there is no certainty that, in the event of the polluter being made to pay, corrective justice will be done between polluted and environment and Compensation also part of corrective justice.

M.C.Mehta v. Union of India⁴⁸, the Supreme Court has observed that, the ‘polluter pays’ principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Challenges before India deal with Sustainable Development

The researcher has honestly submitted that, various challenges facing India to promote of Sustainable development for example population, individuals lived below poverty line, illiteracy, unemployment etc. In 2010, one third of the world’s 1.2 billion extreme poor lived in India alone. China, despite much progress in poverty reduction, ranked second, and was home to about 13 per cent of the global extreme poor. Nigeria (9 per cent), Bangladesh (5 per cent) and the Democratic Republic of the Congo (5 per cent) followed. Nearly two thirds of the extreme poor lived in those five countries in 2010⁴⁹. The India has facing various problems related to Sustainable Development. For example, corruption in every field, unemployment, selfish attitude of people, criminalization in politics, non-effective legal mechanism, misuse of natural resources, lack of modern technology, lack of awareness etc. Air pollution, poor management of waste, growing water scarcity, falling groundwater tables, water pollution, preservation and quality of forests, biodiversity loss, and land/soil degradation are some of the major environmental issues India faces today. India's population growth adds pressure to environmental issues and its resources⁵⁰.

During the lead-up to the U.N. World Summit on Sustainable Development, which was held in Johannesburg, South Africa in 2002, two points of consensus emerged among delegates and observers:

First, “that progress in implementing sustainable development had been extremely disappointing since the 1992 Earth Summit, with poverty deepening and environmental degradation worsening,” and second, that little if any formal multilateral action was likely to be achieved or even agreed to in principle at Johannesburg, despite the overwhelming sense that necessary progress had been lacking. The reason for the second of these grim assessments had to do with the perceived obstructionist position of the United States, which had forced negotiators to abandon more ambitious goals for the Summit and to instead embrace what became known as “Type II deliverables”, essentially uncoordinated, voluntary projects and agreements among individual nations, private corporations, NGOs, and other actors that in some fashion were thought to contribute to the pursuit of sustainable development⁵¹.

But Political theorist Barber Benjamin rightly says that “the instruments of democracy.., have been weakened by three decades of market fundamentalism, privatization ideology and resentment of government”⁵². The researcher has submitted that principle of sustainable development is an international principle that is becomes spirit of progress of society. Sustainable development also base of happiness of future generation as well as protector of natural resources. Sustainable development continues to elude

environmental lawyers who operate in a command-and-control regulatory system that already affords effective legal protection to the victims of environmental harms⁵³.

CONCLUSION:

The principle of Sustainable development and principle of utility is significant in national as well as International level. Which is become base of justice, rule of law⁵⁴, right to life and personal liberty⁵⁵, right to clean environment⁵⁶, Right to Health⁵⁷ etc. the government policies also depend upon this principle. Sustainable development principle also symbol of balance between developments with protection of natural resources. That is kept various objects which are basic structure of society and development of enactment and promise of the political parties, Swachh Bharat Abhiyan, Clean Ganga project, protect mountain and Himalayas etc. So we can say sustainable development is very wide concept and considered by legislator, administrator and judiciary in present time.

Our democratic setups also incorporated and adopt sustainable development and Constitutional Scheme is mention many provision related with sustainable development. Today, sustainable development becomes the mantra of all activities of politics, development and law of the country. Principle of utility is promote happiness and avoid pain, sustainable development also keep it. Happiness is main target of human being and sustainable development principle is having goal, happiness or greatest happiness of the greatest number of future generation.

Development + Protection of Environment = Sustainable Development

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