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**| RIGHT TO DEVELOPMENT AND ENVIRONMENTAL PROTECTION IN INDIA |**

Dr T. Balaji

## INTRODUCTION

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The interpretation of life as articulated in Article 21<sup>1</sup> of the Indian Constitution has been expanded to encompass so much more than mere animal existence.<sup>2</sup> So much so, that it requires the existence of machinery for socio-economic development. The judicial pronouncements of the Supreme Court of India have expanded this right to include as a collateral right the right to a clean, unpolluted and healthy environment. Each judicial pronouncement pertaining to the environment while presented differently ultimately declared that there was a correlation between food, clothing, shelter and a decent environment.<sup>3</sup> Anything contrary to the above was to be construed as dangerous to life.<sup>4</sup> Thus, the courts have acknowledged unequivocally that in the absence of measures to preserve the environment which is nature's gift, life could not be holistically enjoyed. Internationally, Mrs. Indira Gandhi, the then Prime Minister of India while addressing the Stockholm Conference pointed out the causes of environmental degradation. Her assertions were such that inadequate development contributed greatly to persisting environmental problems. It was undertaken to create a better situation for citizens in developing countries.<sup>5</sup> And herein lies the context within which this paper will be developed. Since issues of the environment along with development are increasingly being analyzed within the framework offered by sustainability and sustainable development it becomes essential to assess India's active role in discharging its international obligations regarding environmental protection. India's economic growth has been guided by a key concern for balancing overall holistic development with sustainability and this paper intends to evaluate India's right to development juxtaposed with its continued commitment to protecting the environment.

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<sup>1</sup> Article 21 of the Constitution of India states:

“Protection of life and personal liberty- *No person shall be deprived of his life or personal liberty except according to procedure established by law*”.

<sup>2</sup> Consumer Education & Research Centre v. Union of India, AIR 1995 SC 922 (India).

<sup>3</sup> *Suo Motu v. The State of Rajasthan*, AIR 2005 Raj 82,83 (India).

<sup>4</sup> *M.C. Mehta v. Kamal Nath*, 219 SCC:2000 AIR (India).

<sup>5</sup> LASU-Law Environmental Blog, *Indira Gandhi's Speech at the Stockholm Conference in 1972*, (18 Jul 2012 11:02 PM), <http://lasulawsenvironmental.blogspot.com/2012/07/indira-gandhis-speech-at-stockholm.html>.

## RIGHT TO DEVELOPMENT

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Adopted by the United Nations General Assembly on 4 December 1986, the United Nations Declaration on the Right to Development proclaims profoundly that “every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”.<sup>6</sup> This right is also recognized in the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights and re-affirmed in several instruments including the 1992 Rio Declaration on Environment and Development, the 1993 Vienna Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document and the 2007 Declaration on the Rights of Indigenous Peoples.<sup>7</sup>

The importance of the United Nations Declaration on the Right to Development lies in the fact that it provides one of the few structured approaches to addressing development issues in a rights-based manner. Thus, while being a soft law instrument, the Declaration addresses the rights which international law expect States to co-operate and confer upon its citizens.<sup>8</sup> This international acknowledgment of the soft law right to development has been incorporated into municipal legislation in India. Right to development is also declared as a component of the right to life. As postulated by the Indian Supreme Court:

“In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth.....”<sup>9</sup>

Since India is an active participant in the successful Declaration and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the social, economic, cultural and civil rights of the people....”<sup>10</sup>

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<sup>6</sup> Article 1 (1) of UN Doc. A/RES/41/128, adopted on 4 December 1986.

<sup>7</sup> United Nations Human Rights Office of the High Commissioner, *The Right to Development at a Glance*, United Nations, (11:04 PM), [http://www.un.org/en/events/righttodevelopment/pdf/rtd\\_at\\_a\\_glance.pdf](http://www.un.org/en/events/righttodevelopment/pdf/rtd_at_a_glance.pdf)

<sup>8</sup> KARIN ARTS & ATABONGAWUNG TAMO, *The Right to Development in International Law: New Momentum Thirty Years Down the Line*, 63 Neth. Int Law Rev 221, 222 (2016).

<sup>9</sup> Chameli Singh v State of Uttar Pradesh AIR 1996 SC 051 (India).

<sup>10</sup> Samatha v. State of Andhra Pradesh And Others, AIR 1997 SC 3297 (India).



While the established right to development is encouraged it is to be kept in mind that there is a corresponding obligation to the environment is also protected.<sup>11</sup>

## **LEGISLATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN INDIA**

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In *Intellectual Forum v State of A.P* the Court was required to deal with the question at the jurisprudential level as it related to the conflict between the competing interests of protecting the environment and social development. It reaffirmed the obligation of the State of India to protect the environment since it too was a party to the United Nations Conference on Human Environment, Stockholm, 1972.<sup>12</sup>

Thus, it was recognized that there was a responsibility bestowed upon the government to preserve and protect the environment. As such, this recognition of the need for constitutional, legislative and policy frameworks to preserve the environment has been acknowledged and actively pursued. Even before India's independence in 1947, several environmental legislations existed but the real impetus for bringing about a well-developed framework came only after 1972.<sup>13</sup> Under the influence of this Declaration, the National Council for Environmental Policy and Planning within the Department of Science and Technology was established in 1972. The Council later evolved into a full-fledged Ministry of Environment and Forests in 1985 which presently operates as the apex administrative body in the country for regulating and ensuring environmental protection.<sup>14</sup>

Notably, India's commitment to fulfilling its promise to employ an integrated approach to deal with environmental issues at the Stockholm Conference did not stop at the above and resulted in the Indian Parliament passing the 42<sup>nd</sup> Amendment to the Constitution in 1976<sup>15</sup> which incorporated specifically two articles<sup>16</sup> relating to the environment.<sup>17</sup> Competence was also conferred upon the Parliament to implement the decisions of the Conference by virtue of Article

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<sup>11</sup> Rural Litigation & Entitlement Kendra v. Union of India 1989 S.C.C. Supp. (1) 537 (India).

<sup>12</sup> (2006) 3 SCC 549 (India).

<sup>13</sup> Held in Stockholm, Sweden in 1972.

<sup>14</sup> *The Legal and Regulatory Framework for Environmental Protection in India*, Min of Environment & Forests, Government of India (Dec. 27, 2018, 20:33 PM), <http://www.envfor.nic.in/divisions/ic/wssd/doc2/ch2.html>.

<sup>15</sup> The Constitution (42<sup>nd</sup> Amendment) Act, 1976 received the assent of the President of India on 16-12-1976.

<sup>16</sup> Articles 48 A and 51A (g).

<sup>17</sup> S.C. SHASTRI, *Environmental Law: Fifth Edition* 55 (Lucknow, Eastern Book Company 2015).

253 of the Constitution.<sup>18</sup> Recourse was to be given to Article 32 or 226 of the Constitution for removal of pollution of water or air which may be detrimental to the quality of life and for acts which were in derogation of laws.<sup>19</sup>

In 1972, a comprehensive national law, the Wild Life (Protection) Act, was intended solely to protect wildlife. The Act was promulgated out of a long felt need to have central legislation dealing not only with hunting but also with the creation of protected areas and the control of trade in wildlife products.<sup>20</sup> The Wild Life (Protection) Amendment Act was amended in 2002 by Parliament to completely ban the possession of ivory whether by a trader or by a person and in 2006. The relevant Rules included were the Recognition of Zoo Rules 2009, the National Board for Wild Life Rules 2003, the Declaration of Wild Life Stock Rules 2003, the Wildlife (Specified Plant Stock Declaration) Central Rules 1995, the Wildlife (Specified Plants – Conditions for Possession by Licensee) Rules 1995, the Wildlife (Protection) Rules 1995, Recognition of Zoo Rules 1992, the Wildlife (Protection) Licensing (Additional Matters for Consideration) Rules 1983, the Wildlife (Stock Declaration) Central Rules 1973 and the Wildlife (Transaction and Taxidermy) Rules, 1973<sup>21</sup>

The Water (Prevention and Control of Pollution) Act 1974 was enacted with the aim of altering the quality of water in India. While amendments in 1978 and 1988 sought to iron out ambiguities present it was not a stand-alone instrument. In addition to the above, there is in existence the Water (Prevention and Control of Pollution) Cess Act 1977 which was amended in 1992 and 2003, the Water (Prevention and Control of Pollution) Rules 1975, the Water (Prevention and Control of Pollution) Cess Rules 1978 and the Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules 1975 (Amended in 1976).<sup>22</sup>

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<sup>18</sup> Article 253:

...Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conferences, association or other body.

<sup>19</sup> M.P. JAIN, Indian Constitutional Law: Eighth Edition 11228 (Haryana, LexisNexis 2018).

<sup>20</sup> KAILASH THAKUR, Environmental Protection Law and Policy in India, 121 (New Delhi, Deep & Deep Publications Pvt. Ltd 2007).

<sup>21</sup> International Centre for Environment Audit and Sustainable Development, *Wildlife Protection*, ICED (1/6/2019 16:17 PM), [http://iced.cag.gov.in/?page\\_id=1058](http://iced.cag.gov.in/?page_id=1058).

<sup>22</sup> International Centre for Environment Audit and Sustainable Development, *Water Pollution*, ICED (1/6/2019 16:17 PM), [http://iced.cag.gov.in/?page\\_id=104](http://iced.cag.gov.in/?page_id=104).

Air pollution was addressed by the Air (Prevention and Control of Pollution) Act of 1981 (Amendment 1987). While the enforcement mechanisms of this Act were similar to that of the Water Act it was innovative in that it called for the abstention of noise pollution.<sup>23</sup> It included the Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983 and the Air (Prevention and Control of Pollution) Rules, 1982.

The Indian Parliament also enacted the Environment (Protection) Act and Rules of 1986 as a means of holding fast to its guarantee of a particular quality of life<sup>24</sup>. As declared by the Act, where the discharge of any environmental pollutant in excess of prescribed standard occurred or is apprehended to occur due to any accidental or other unforeseen act or event, the person responsible for such discharge shall be bound to prevent or mitigate the pollutant so caused as well as intimate the fact of such occurrence to the concerned authorities.

The main objective of the Indian Forest Act (1927) was to secure exclusive State control over forests to meet the demand for timber. Most of these untitled lands had traditionally belonged to the forest-dwelling communities. The Act facilitated three categories of forests and declared that no rights could be acquired in reserved forests except by succession or under a grant or government contract. Felling trees, grazing cattle, removing forest products, quarrying, fishing, and hunting were punishable acts. Rules implemented along with the Act were the Forest (Conservation) Rules, 2003 and Forest (Conservation) Rules 1981 (Amended in 1992).

Similarly, the Forest (Conservation) Act, 1980 (Amended in 1988) checked rapid deforestation due to forest lands being released by State governments for agriculture, industry and other development projects. Also, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 sought to recognize and vest the forest rights and occupation of forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.<sup>25</sup>

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<sup>23</sup> P. M. PRASAD, *Environment Protection: Role of Regulatory System in India*, Economic and Political Weekly 41, no. 13, 1278-288 (2006).

<sup>24</sup> BASANT LAL WADEHRA, *Public Interest Litigation: A Handbook, with Model PIL Formats 130* (Delhi, Universal Law Publishing Company 2009).

<sup>25</sup> International Centre for Environment Audit and Sustainable Development, *Forest Conservation*, ICED (1/6/2019 16:17 PM), [http://iced.cag.gov.in/?page\\_id=1061](http://iced.cag.gov.in/?page_id=1061).

In fulfillment of its mandate under the Convention on Biological Diversity 1992 the Biological Diversity Act, 2002 and Rules 2004 were created. Additionally, the National Environmental Tribunal Act, 1995 sought to ensure the development of national law regarding liability and compensation for the victims of pollution and other environmental damages.<sup>26</sup> The National Environment Appellate Authority Act, 1997 was also passed but could not cut much ice resulting in a growing demand for legislation to deal with the environmental cases more efficiently and efficaciously. Ultimately, the Indian Parliament passed the National Green Tribunal Act, 2010 to handle all cases relating to environmental issues. It consisted of 38 sections divided into five chapters and three schedules.<sup>27</sup>

## SUSTAINABLE DEVELOPMENT

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This concept results from a combination of fragmented approaches to the notion of development. The relationship between the environment and development had, however, already been recognized much earlier. In the 1997 case concerning the *Gabcikovo-Nagymaros Project*, Vice President Weeramantry derived the concept of sustainable development from the practice of ancient civilizations and traditional legal systems in Asia, the Middle East, Africa, Europe, the Americas, the Pacific, and Australia which led him to conclude that sustainable development “is one of the most ancient of ideas in human heritage. Fortified by the rich insights that can be gained from millennia of human experience, it has an important part to play in the service of international law”.<sup>28</sup>

The first major and truly international initiative devoted to the status of world natural resources was the United Nations Scientific Conference on the Conservation and Utilization of Resources that was convened in 1949 on the initiative of President Truman by the Economic and Social Council (ECOSOC), in order to address “the need for continuous development and widespread application of the techniques of resource conservation and utilization”.<sup>29</sup> Experts observed that the renewal capacity of the lands, forests and inland waters of substantial areas had

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<sup>26</sup> S.C. SHASTRI, *Environmental Law: Fifth Edition* 474 (Lucknow, Eastern Book Company 2015).

<sup>27</sup> S.C. SHASTRI, *Environmental Law: Fifth Edition* 199 (Lucknow, Eastern Book Company 2015).

<sup>28</sup> ICJ Reports 1997, pp. 110-111.

<sup>29</sup>The Conference which was convened at Lake Success, New York, from 17 August to 6 September 1949, was the first occasion on which the United Nations brought together a large representative group of scientists.

been impaired for years to come by errors in their use made years earlier. However, most experts concluded that it was possible “through the less wasteful use of resources, the fuller application of existing techniques and the exploitation of new scientific developments, to support a far greater population than exists today, at a much higher level of living”. The Conference thus underscored the relationship between environment and development.<sup>30</sup>

However, it was the Brundtland Commission Report in 1987 which placed the concept of “sustainable development” on the international agenda. It was chaired by then Prime Minister of Norway (Gro Harlem Brundtland), thus earning the name the “Brundtland Commission”. It originated when the World Commission on Environment and Development which was initiated by the General Assembly of the United Nations in 1982, issued its report, *Our Common Future*, published in 1987. As Brundtland argued:

“[t]he environment does not exist as a sphere separate from human actions, ambitions, and needs, and attempts to defend it in isolation from human concerns have given the very word “environment” a connotation of naivety in some political circles. The word “development” has also been narrowed by some into a very limited focus, along the lines of “what poor nations should do to become richer,” and this, again is automatically dismissed by many in the international arena as being a concern of specialists, of those involved in questions of “development assistance”. But the “environment” is where we live, and “development” is what we all do in attempting to improve our lot within that abode. The two are inseparable.<sup>31</sup>

Thus, “sustainable development” was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>32</sup> In India adherence to this principle was imperative for the maintenance of the symbiotic balance between these rights.<sup>33</sup> In this regard, the Courts have continually sought to perform a balancing act between the vital interests of the vast majority of citizens against its international obligation to

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<sup>30</sup>NICO SCHRIJVER, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* 38 (Leiden, Martinus Nijhoff Publishing, 2008).

<sup>31</sup> World Commission on Environment and Development (WCED), *Our Common Future* 8 (New York, Oxford University Press, 1987).

<sup>32</sup> World Commission on Environment and Development (WCED), *Our Common Future* 27 (New York, Oxford University Press, 1987).

<sup>33</sup> BASANT LAL WADEHRA, *Public Interest Litigation: A Handbook, with Model PIL Formats* 130 (Delhi, Universal Law Publishing Company 2009).

protect the environment. This is exemplified in a series of judicial pronouncements. For instance, the Supreme Court held that since the Convention on Biological Diversity has been acceded to by India, the government should in the absence of compelling reasons, keep in view its international obligations.<sup>34</sup>

In *M.C Mehta v Union of India*, the Supreme Court directed that heavy, medium or light-goods vehicles conforming to Euro II norms or not using low sulfur or low benzene fuel and plying on interstate routes were not to be allowed to pass through Delhi.<sup>35</sup> In another case, as a means of protecting the rapidly deteriorating quality of air, the Supreme Court had directed that the entire fleet of public transport buses be run on CNG and not diesel.<sup>36</sup>

Additionally, in *Karnataka Industrial Areas Development v Sri. C. Kenchappa* the Court referred to several international conventions and conferences to bring out the true scope of the concept of sustainable development. It expressed the view that a delicate balance between industrialization and ecology has to be maintained, and while development of industry is essential for the growth of the economy, at the same time the environment and ecosystem were also required to be protected.<sup>37</sup> As such, India has sought to enhance the value of a thing or process through human intervention while effectively protecting its environment.

## **POLICIES AND MEASURES FOR ENVIRONMENTAL PROTECTION IN SWITZERLAND**

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Although it has been postulated that environmental output data are notoriously spotty, unreliable, and uneven, it provides a means by which some sort of general consensus may be attained regarding the performance of countries. The guiding principles of India's development process have been sustained economic growth and environmental protection. Therefore, every stride taken to achieve development has been guided by low carbon dialogue.<sup>38</sup> Nonetheless, the environmental performance of other countries has surpassed that of India. Switzerland leads the

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<sup>34</sup> T.N. Godavaram Thirumalpad v UOI (2002) 100 SCC 606 (India).

<sup>35</sup> M.C Mehta v UOI (2003) 10 SCC 561 (India).

<sup>36</sup> M.C. Mehta v UOI (2002) 4 SCC 378 (India).

<sup>37</sup> (2006) 6 SCC 371 (India).

<sup>38</sup> Ministry of Environment, Forest and Climate Change, India First Biennial Update Report to the United Nations Framework Convention on Climate Change, Gov of India, Dec. 2015, at. 136.

world in the 2018 Environmental Performance Index with a score of 87.42 in overall environmental performance. Switzerland's top ranking reflects strong performance across most issues, especially climate, energy, air, and water pollution and sanitation. While Switzerland's biodiversity and habitat score are placed 62nd in the world. At the bottom of 2018, Environmental Protection Index rankings are countries like Nepal (31.44), the Democratic Republic of the Congo (30.41), Bangladesh (29.56), and Burundi (27.43). Factors leading to the above results have been described as the need for sustainable measures, cleaner air, protection of biological diversity and the reduction of greenhouse gas emissions.<sup>39</sup> India currently stands at the bottom of the Global Environment Performance Index (EPI) in 2018. It has been assigned the 177<sup>th</sup> position from its 141<sup>st</sup> position out of 180 countries in 2016.<sup>40</sup>

## **POLICIES AND MEASURES FOR ENVIRONMENTAL PROTECTION IN INDIA**

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The problem of the environment in India is plagued by a number of issues foremost of which words like air, water, soil, wildlife, slums, sewage, and a burgeoning population are uttered constantly. The idea of a healthy environment presents a prolific problem to a nation struggling to grow self sufficiently while adequately managing its international environmental obligations.<sup>41</sup> Rectification of the above may be attained by suitable policies employed by the State. In this regard, it is essential to assess the policies implement by India to address the issues of environment and analyze its effectiveness.

The National Conservation Strategy and Policy Statement on Environment and Development 1992 is the point of departure for this analysis. Its ambits were general and created guidelines that would help to weave environmental considerations into the fabric of national life and development. It also viewed development policies from environmental perspectives and the

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<sup>39</sup>Environmental Performance Index, *Results: Country Performance*, EPI (2018, 20:55 PM), <https://epi.envirocenter.yale.edu/2018/report/category/hlt>.

<sup>40</sup> PTI, *India Ranks 177 out of 180 in Environmental Performance Index*, the Hindu (Jan. 24, 2018 2:20 AM), <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece>.

<sup>41</sup> KAILASH THAKUR, *Environmental Protection Law and Policy in India*, 100 (New Delhi, Deep & Deep Publications Pvt. Ltd 2007).

support policies and systems required.<sup>42</sup> The above was followed by the Policy Statement for Abatement of Pollution adopted in 1992 which emphasized pollution prevention in place of the conventional end-of-the-pipe treatment. The use of technology was viewed as the key element for pollution prevention.<sup>43</sup>

Nevertheless, it was the National Environment Policy (NEP) 2006, which promoted sustainable development along with respect for ecological constraints and the imperatives of social justice. The National Action Plan on Climate Change (NAPCC) provided a sharper focus on required interventions. Currently, NAPCC is implemented through eight National Missions, outlining priorities for mitigation and adaptation to combat climate change. Many other national strategies and policies supplement the above efforts. The Energy Conservation Act has been enacted to encourage efficient use of energy and its conservation. The National Policy for Farmers focuses on sustainable development of agriculture. The National Electricity Policy (NEP) underscores the focus on universalizing access to electricity and promoting renewable sources of energy, as does the Integrated Energy Policy (IEP).<sup>44</sup>

The perceived deficiencies in the aforementioned policies is simply that notwithstanding the structural attempts by the government to ensure sustainable development India currently stands at the bottom of the Global Environment Performance Index (EPI) in 2018. It has been assigned the 177<sup>th</sup> position from its 141<sup>st</sup> position out of 180 countries in 2016.<sup>45</sup>

## CONCLUSION

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Undoubtedly, the international architecture for environmental protection is a grand one supported by many pillars. While scientific and technological advancements have had positive economic impacts, it has induced a series of environmental concerns which may be detrimental if

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<sup>42</sup> International Centre for Environment Audit and Sustainable Development, *National Conservation Strategy 1992*, ICED (1/6/2019 16:17 PM), [http://iced.cag.gov.in/?page\\_id=1030](http://iced.cag.gov.in/?page_id=1030).

<sup>43</sup> International Centre for Environment Audit and Sustainable Development, *Policy Statement 1992*, ICED (1/6/2019 16:17 PM), [http://iced.cag.gov.in/?page\\_id=1034](http://iced.cag.gov.in/?page_id=1034).

<sup>44</sup> Ministry of Environment, Forest and Climate Change, *India's Intended Nationally Determined Contribution: Working Towards Climate Justice, Ministry of Environment Forest and Climate Change* (2:14 AM), <http://www.moef.gov.in/sites/default/files/INDIA%20INDC%20TO%20UNFCCC.pdf>.

<sup>45</sup> PTI, *India Ranks 177 out of 180 in Environmental Performance Index*, the Hindu (Jan. 24, 2018 2:20 AM), <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece>.



they remain unchecked. The obligation placed upon the government to maintain a balance between development and environmental protection is to be achieved by employing sustainable mechanisms for development. Construed simply this type of development envisaged should “enhance the value of a thing or process through human intervention while effectively protecting the environment”. The foregoing paper has established that there is in existence adequate legislative mechanisms to support the international stance taken by India regarding its international environmental obligations. However, commitment alone will not improve its present position as is seen. Therefore, its approach must not employ social attempts to further strengthen the legislative mechanisms present. Pollution is perpetrated by its citizens and an educational movement is necessary if its commitment to