**Green Auditing and the Environmental Sustainability**

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**ABSTRACT**

*‘The two issues of this Country are the issues of Human Rights and Environment. Healthy environment is also a Human Right’*

Justice A.M. Ahmad

The world community, probably fearing that the present generation is living beyond its environmental means and realising the immediate need for a concerted effort to preserve and enhance the human environment, urged people to use their environment wisely, shape their activities in a more prudent way and called upon states, *(i)* not to isolate environmental protection from their developmental process; *(ii)* to monitor biological diversity; and *(Hi)* to control greenhouse gases.

Almost all the international instruments on the human environment in vogue and the global environmental policy reflected therein, accordingly, stress the need to preserve the environment for the benefit of present as well as future generations and to pass it on to the latter.

The Stockholm Declaration, *inter alia,* stressing, the need to defend and improve the environment for present and future generations as ‘an imperative goal for mankind’, called upon governments as well as people of the whole world to safeguard through careful planning and appropriate management the natural ecosystem and exert common efforts for preservation and improvement of human environment for the benefit of all people and their posterity. The United Nations General Assembly also called upon man to use natural resources in a manner that ensures the preservation of ecosystem for the benefit of present and future generation.

*One o*f the most surprising point about human right is while environmental regulations may always be amended or repealed human rights by and large remains inviolable. This aspect gives a smooth angle for viewing environmental justice from a human right perspective.

In order to address the issue of environment protection we first have to see the difficulties, which can arise in the process of implementing the right to environment. The process of development inevitably involves exploitation of natural resources and consequently makes an impact on the ecology and environment. The growth of economy in all its sphere, in general, and in industrial efforts, in particular, necessarily leads to tapping of the natural wealth which, in turn, more often than not, gives rise to not mere economic issues but issues concerning environmental security not only at the local or the regional level but, more importantly, at the global level.

**Introduction**

We are living in an era of momentous global ecological changes and challenges as in the name of the development mankind is disturbing the delicate poise, which the Nature has designed for it. Historically, the humans have revealed frequently a remarkable capability to survive within the restricted wealth of the Earth. As Gandhi Ji’s famous pronouncement emphasied, “Earth provides enough to satisfy everyone’s need has become the prime predicament of humanity. Though the environment pollution is not new and it was recognized as a problem in the Ancient Hindu Scriptures as well as at the time of Plato some 2500 years ago.[[2]](#footnote-2)

The principles and rules, which have evolved in the process of preventing the alarming prospects of ecocide, are called international environmental law. The San Franciso[[3]](#footnote-3) and Bretton Woods[[4]](#footnote-4) Conferences launched history’s most prolific period of international institution and law building.[[5]](#footnote-5) The establishment of both UNEP and CSD followed two landmarks global conferences convened by the General Assembly. The international efforts to protect the environment date back to at least 1870 when Switzerland tried to establish a regional agreement to protect the nesting sites of the migratory birds. But the move to institutionalize the law did not get a serious momentum until 1970’s. Since then over 200 standards have been adopted covering environmental subjects of shared concern such as endangered species, ozone depletion, climate change etc. More than two thirds of these standards, including both the soft and the hard law, have been adopted since the UN Conference on the Human Environment held at Stockholm in 1972. The Rio de Janeiro Conference in 1992 i.e. The Earth Summit 1, along with Earth Summit Plus Five held at New York in 1997, and Earth Summit Plus Ten on Sustainable Development held at Johannesburg in 2002, has added new dimensions and pace to international law making. For convenience sake these standards could be divided into two categories viz. General and Special standards.

**General International Environment Law**

The General international law has taken up the challenges related to threats to global commons, trans-boundary spillovers and disparity in financial and technical capacity etc. The global commons include biological diversity, ozone layer and the climate change etc. As the activities of all states could be affected by threats to these resources, therefore the international law has tried to establish the strategic responses based on exchange of information and common goals. Similarly the pollutants can spill over boundaries and have impact on the environmental and economic interests of other countries. As all the states seek to move towards a higher level of protection of environment, international law through institutions like World Bank, IMF, UNDP and UNIDO etc. can provide financial, intellectual and technological resources. Following are some of the important documents of general international environmental law:

**Declaration of the Permanent Sovereignty Over Natural Resources-1962**

This declaration recognizes the permanent sovereignty of the states over their natural resources. It also identifies the need for international cooperation in the field of economic development. However, it reminds the states that such sovereignty should be exercised only for national development and well being of people.

**Stockholm Declaration 1972**

This declaration resulted from Stockholm Conference on Human Environment in 1972. This Conference marked a watershed in international relations as it placed the issue of the protection of biosphere on the official agenda. The major contributions of this conference were:

Concept of Sustainable Development

This term was used at the first time in Cocoyoc Declaration on Environment and Development in the early 1970’s. But it gained the real inputs during this Conference. The main thrust of this concept is integration of development and environmental imperatives.

**Common Agenda**

The Conference called upon the Governments and the people to exert common efforts for the preservation and improvement of human environment for the benefit of all the people and for their posterity. For this purpose, it adopted 26 principles as the common agenda of the mankind for the preservation of the environment.

**United Nations Environment Programme**

Before Stockholm Confernece, several specialized and related agencies of UN system were dealing with environment. However, this Conference created a specialized environmental programme as well as UNEP as a focal environmental agency in the UN system. Since then UNEP has been acting as UN’s conscience keeper in the filed of the greening process.

**The World Charter for Nature-1982**

General Assembly adopted this Charter with a view to raise awareness that mankind is a part of nature and life depends on uninterrupted functioning of natural system. The state parties were called to protect and preserve nature assimilating the principles of this Charter in their laws and practices.

**Burndtland Commission-1983**

On the recommendations of the UNEP, the World Commission on Environment and Development was set up by the General Assembly in the year 1983. The influential report of this commission entitled ‘Our Common Future’ brought the concept of sustainable development into widespread use. This gave a comprehensive definition to the term sustainable development in the following words:

“Sustainable development is the development that meets the need of the present without compromising the ability of the future generations to meet their own needs.”

**The Montreal Protocol on Substances that Deplete the Ozone Layer-1987**

The main objective of this protocol is the purging of ozone-depletion substances at a identical pace regardless of the development status of the country.

**Hague Declaration on Environment -1989**

This Declaration acknowledged that haphazard human activities on the earth are posing a threat to earth’s atmosphere as well as the basic human right to life. This situation calls for crucial, pressing and international solution to this problem. Likewise effective decision-making and enforcement machinery is must.

**Earth Summit 1992**

This was the largest UN Convention ever held, as 150 Governments participated in it. This Summit inspired and guided by Brundtland Commission report placed the humanity on the path of sustainable development. Some of the important accomplishments of this summit lie in the following documents:

UN Declaration on Environment and Development: It Contains 27 principles defining the rights and responsibilities of the states in this area.

**Agenda 21**: It is a comprehensive blue print for worldwide action in 21st Century to effect shift to sustainable development.

**Sustainable Development**

Thus it appears that since 1972 the axiom of the international law has been sustainable development, which has achieved diverse magnitudes in the terms of economic expansion, development and environmental safety. Some of the features of sustainable development are:

**Inter-generation Equity**

The innermost premise of this concept is that each generation has a right to get legacy of bio-diversity from the past generations. Moreover, the present generation is under an obligation to preserve such inheritance as well as the renewable resources, such as forests, water and soil, for future generations.

**Preservation and Upgrading of Natural Resources**

The resources must be conserved and enhanced to meet the necessities of sprouting people. Thus, present cohort should be reticent in their exploitation of natural resources. This idea has achieved wide spread international endorsement since the Maltese Proposal at General Assembly of 1967. This proposal stressed that the natural resources, such as sea bed, are not the outgrowth of the labour of present generations only. Hence, these should be exploited with adequate consideration of the rights of the future generations.

**Protection of Environment:**

Without adequate environmental protection, the development is weekend and without development resources will be scarce for needed investments and environmental protection will collapse.

**Precautionary Principle**

It is based on the theory that it is better to err on the side of prudence and prevent environmental harm, which may indeed become irretrievable. The environmental protection should not only aim at protecting health, property and economic interests but also protect the environment for its own sake. The precautionary duties must not only be activated by the suspicion of tangible danger but also by justified concern or risk potential.[[6]](#footnote-6) According to Supreme Court of India, this principle means that:

* The govt. must anticipate, prevent and attack the causes of environment degradation.
* The measures to deal with the threats of serious damage should not be deferred in the name of lack of scientific proof of linking that particular substance or activity, introduced as a result of human intervention, to environmental degradation.
* The burden of proof is on the developer to show that his action is environmentally benign.[[7]](#footnote-7)

**Assimilative Capacity Principle**

However, in the Stockholm conference the spotlight was on Assimilative Capacity Principle. This principle presumed that relevant technical expertise would be available at the time of environmental harm prediction and sufficient time would be available to avoid harm. Nevertheless, by the time of World Charter for Nature, 1982, the stress revolved to the precautionary principle. This principle was reaffirmed in Rio Declaration 1992.

**U-turn in Burden of Proof**

The adoption of the precautionary principle led to reversal of burden of proof in environmental cases. Instead of compelling the persons opposing a particular project, to shoulder the burden of proving its detrimental impacts on the environment, it has shifted the burden of proof, as to the absence of injurious effects of the action proposed, to those intending to disturb the status quo.[[8]](#footnote-8)

**International Negotiations**

Climate changed emerged on the political agenda in the mid-1980s with the increasing scientific evidence of human interference in the global climate system and with growing public concern about the environment. Because climate change is such a complex and challenging issue, policy makers need and objective source of information about the causes of climate change, its potential environmental and socio-economic impacts, and possible response options.

Recognizing this, the World Meterological Organization (WM O) and the United Nations Environment Programme (UNEP) established the Intergovernmental Panel on Climate Change (IPCC) in 1988. The Panel’s role is to assess on a comprehensive, objective, open and transparent basis the best available scientific, technical and socio-economic information on climate change from around the world. In the first report in 1990, IPCC concluded that the growing accumulation of human made green house gases in the atmosphere would “enhance the green-house effect, resulting in an additional warming of the Earth’s surface” by the next century, unless measures were adopted to limit emissions. The UN general assembly responded to this by launching negotiations to formulate an International treaty on global climate protection, which resulted in completion of the United Nations Framework Convention on Climate Change (UNFCCC) in May 1992.[[9]](#footnote-9)

The convention was opened for signature at the Earth Summit in Rio de Janerio in June 1992, when it was signed by 154 states and European Community. It entered into force on March 21, 1994. India signed UNFCCC on 10th June 1992 and ratified that in 1993.[[10]](#footnote-10) The convention established the Conference of Parties (COP) as its supreme body. During COP3 meeting in Kyoto, Japan, the Parties agreed to a legally binding set of obligations for 38 industrialized countries and 11 countries in Central and Eastern Europe, to return their emission of GHGs to an average of approximately 5.2% below their 1990 levels over the commitment period 2008-2012. This is called Kyoto Protocol to the convention. The Protocol entered into force on 16th February, 2005 and targets six main greenhouse gases: carbon dioxide (CO2), methane (CH4), nitrous oxide (N20), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF6).

Article 12 of the Kyoto Protocol provides for the clean Development Mechanism (CDM), which enables developing countries to participate in joint greenhouse gas (GHG) mitigation projects. Under this Protocol, Annex I countries (developed countries and economies in transition) are required to reduce GHG emissions to below their 1990 levels.

The CDM enables these countries to meet their reduction commitments in a flexible and cost-effective manner. It allows public or private sector entities in Annex I countries to invest in GHG mitigation projects in developing countries. In return the investing parties receive credits or certified emission reductions (CERs) which they can use to meet their targets under the Kyoto Protocol.

While investors profit from the CDM projects by obtaining reductions at costs lower than in their own countries, the gains to the developing country host parties are the form of finance, technology and sustainable development benefits.

The basic rules for the functioning of the CDM were agreed on at the seventh Conference of Parties (COP-7) to the UNFCCC held in Marrakesh, Morocco in October-November 2001.

Deemed as the “Kyoto Surprise”, CDM is the only link between the Developed and developing countries under Kyoto Protocol.[[11]](#footnote-11) Its workability will help ensure the effectiveness of the Kyoto Protocol and of developing countries, willingness to participate in a future global emissions regime. Since emissions from developing countries will eventually surpass those from the Annex I countries, developing countries full participation in such a regime is crucial.

**India’s Initiatives**

1. **India and UNFCCC**

India signed the United Nations Framework Convention on Climate Change on 10 June 1992 and ratified on 1 November 1992. India has undertaken numerous response measures that are contributing to the objectives of the United Nations Framework Convention on Climate Change. They are- increasing significantly the capacity of renewable energy installations, improving the air quality in major cities and enhancing afforestation, thus putting economic development on a climate-friendly path.

Under the framework Convention, all parties are obliged to develop and publish a national inventory of Greenhouse Gases (GHG) not controlled by the Montreal Protocol.[[12]](#footnote-12)

There is a difference in fulfillment of this requirement between Annex countries and non-Annex 1 countries.[[13]](#footnote-13) The former are required to report annual inventories, while the latter are required to report for the year 1994, or alternatively fro 1990 fro initial national communications and for the year 2000 in the second national communications.

1. **India and Kyoto Protocol**

By acceding to the Kyoto protocol on 26th August 2002, “India has sent a good signal by taking the lead in the region and showing that multilateral approach is better than unilateral”

Right now India is emerging as one of the major beneficiaries of clean technology. India has necessary institutional and regulatory mechanism for implementation of CDM projects and has large potential for CDM-related project activities in the areas of energy, coal, industry, renewable, transport and municipal solid waste.

**Conclusion and Suggestions**

In fact environmental protection is a big challenge, which has been taken by the world community, through general and special standards, both at the national as well as international levels. However, as indicated by GEO-3[[14]](#footnote-14) instead of being solved the problem in increasing day by day. It appears that the present approach of the world community to solve the problem is superficial. It does not offer a permanent solution due to certain inherent drawbacks such as: the function of international law is to promote harmonious and creative world order.[[15]](#footnote-15) It means the international environmental law has established only standards of behavior, which differ widely in their nature, scope and implementation in different geographical and political regions. Deficiencies in the design and implementation of environmental laws constitute a major hurdle to environmental protection and sound natural resource management.[[16]](#footnote-16)

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1. Indore institute of law [↑](#footnote-ref-1)
2. Cf. Hambro E, “The Human Environment-Stockholm and After,” Year Book on world Affairs, 20 (1974) [↑](#footnote-ref-2)
3. On 25 June 1946, UN conference on International organization unanimously adopted the Charter of UN. [↑](#footnote-ref-3)
4. In July 1944, the UN Monetary and Financial Corporation held at Bretton Woods, New Hemisphere adopted the IMF and World Bank agreements. [↑](#footnote-ref-4)
5. Jacob Werksman, “*Greening International Institutions*,” Earthscan Publications Ltd, London, 1996. [↑](#footnote-ref-5)
6. *AP Pollution Board v. Prof. MV Nayudu* (1999) 2 SCC 718 at 733-34. [↑](#footnote-ref-6)
7. Cf Vellore Citizen’s Welfare Forum v Union of India (1995) 5 SCC 647 at 658 [↑](#footnote-ref-7)
8. Cf. James M Olso, Shifting the Burden of Proof, 20 Environmental Law at 898 (1990) quoted in AP Pollution Control Board Case (1992) 2 SCC at 734-35. [↑](#footnote-ref-8)
9. The Convention on Climate Change sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. It recognizes that the climate system is a shared resource whose stability can be affected by industrial and other emissions of carbon dioxide and other greenhouse gases. The Convention enjoys near universal membership, with 189 countries having ratified it. The Convention entered into force on 21 March 1994. [↑](#footnote-ref-9)
10. India signed the UNFCCC on 10 June 1992 and ratified it on 1 November 1993. Under the UNFCCC, developing countries such as India do not have binding GHG mitigation commitments in recognition of their small contribution to the greenhouse problem as well as low financial and technical capacities. The Ministry of Environment and Forests is the nodal agency for climate change issues in India. <http://envfro.nic.in/cc/> India\_unfcc.htm, visited on 20 October 2009. [↑](#footnote-ref-10)
11. Stellina Jolly and Varun Bajaj, “Clean Development Mechanism; Inter National Legal Systems Response to Global Warming”, Conference Papers, Thirty-Sixth Annual Conference, The Indian Society of International Law, 24-25 march 2007, pp. 223-244, p.227 [↑](#footnote-ref-11)
12. Articles 4(1) and 12(1) of the Conventions provides for the parties to develop and publish a national inventory of GHG emissions and removal by sinks of all greenhouse gases not controlled by the Montreal Protocol. [↑](#footnote-ref-12)
13. Annex I Parties include the industrialized countries that were members of the OECD (Organisation for Economic Co-Operation and Development) in 1992, plus countries with economies in transition (the EIT parties) including the Russian federation, the Baltic States, and several Central and Eastern European States. Non-Annex I parties are mostly developing countries. [↑](#footnote-ref-13)
14. The UNEP Global Environment Outlook (GEO) project was initiated in response to the environmental reporting requirements of Agenda 21 and to a UNEP Governing Council decision of May 1995, which requested the production of a comprehensive global state of the environment report. The recent GEO-3 has projected and outlook for 2002-32 on the basis of our scenarios namely market, policy, security, and sustainability. It has emphasized that the next 30 years will be as crucial as the past 30 for shaping the future of the environment. Old troubles will persist and fresh challenges will emerge. As upon our fragile resources increasingly heavy demands are being placed. [↑](#footnote-ref-14)
15. Bhatt, “*Environmental Protection and International Law Efforts*” [↑](#footnote-ref-15)
16. Justice Ashok A. Desai “Environmental Jurisprudence” Modern Law House, Allahabad, 2nd ed. 2002 [↑](#footnote-ref-16)