SUSTAINABLE DEVELOPMENT VIS-À-VIS MINING LAWS IN INDIA: A CRITICAL STUDY WITH SPECIAL REFERENCE TO EASTERN JURISPRUDENCE

Arindam Saha¹, Dr. Aqueeda Khan ²
¹Research Scholar, Ph.D. in Law (full time), Amity Law School Noida, Amity University U. P
²Research Guide & Associate Professor, Amity Law School Noida, Amity University U. P

ABSTRACT
The topic titled as “Sustainable Development Vis-À-Vis Mining Laws in India: A Critical Study with Special Reference to Eastern Jurisprudence” is a topic which needs due and sincere attention keeping in essence to the understanding of present statutory and regulatory framework relating to mining in India. The enactment of various national statutes and adherence to the ratified international conventions in this arena, has subsequently led to the understanding of the present jurisprudence in relation to mining in India.

Whereas, it is evident that a constructive interpretation of the statutory provisions relating to the roles, powers, and functions of the statutory and adjudicatory authorities under the present statutes will clearly hint towards the better understanding of the functioning of the judicial mechanism in this field.

On the other hand, India strictly observes the policy of Sustainable Development. Not only has it ratified the conventions relating to sustainable development but has also strictly and specifically enforced a Sustainable Development Framework (SDF) all through its legal framework. Not only the Constitution of India, but also the several provisions of the statutes relating to mining in India (Mines Act, 1952, The Mines and Minerals Development and Regulation Act, 1957, etc.) have from time to time upheld the policy of sustainable development.

Besides, if we look into the tenets of Eastern Jurisprudence, we will find the concepts of sustainable development therein itself. On embarking upon a thorough study of the archives of Eastern Jurisprudence, we will find that in this regard the concepts of Pancha-vuta and Punarjanma as enunciated in the Rig Veda and the principles of co-existence, interdependence, etc. as propounded by various jurists, namely Yajnik, Narada, Manu, Kautilya and others are worth mentioning. Additionally, the very cornerstone of Rajdharma, which was observed and adhered to by all Kings (sovereign heads) of India in the early ages, was the idea of sustainable development in a Welfare State negating any kind of exploitation of the environment while pursuing the goal of economic growth and development.

Thus, “India, that is Bharat” ought to ponder upon its past in order to understand the true essence of sustainable development in the context of the present jurisprudence in relation to mining in India. The laws need to be reviewed with such modifications as to fit the conceptual understanding of the present topic.

The fundamental aim of the paper is to throw light on the historical origin and practice of sustainable development in India. A parallel effort has also been made to critically analyze the present statutory framework and adjudicatory mechanism in relation to mining in India. The methodology of the research topic referred has been doctrinal; whereby one data has been corroborated with the other to arrive at certainty. The literature on the topic has been surveyed which leads the researcher to find out the prospects as mentioned in the research title.

Keywords: Sustainable Development, Environmental Protection, Mining Laws, International Framework, Eastern Jurisprudence, Administration of Justice.
I. INTRODUCTION

Mining is a geo-centric activity in relation to sustainable development and environment. The topic “Sustainable Development Vis-A-Vis Mining Laws in India: A Critical Study with Special Reference to Eastern Jurisprudence” assumes its essence in the context of its study under Eastern Jurisprudence and its current scenario in India. The ancient India has innumerable examples with respect to environmental protection and sustainable development including in the form of prohibition of mining. It was considered as injury to Earth, as a sacred component of Panchabhuta. Even however, it was imperative to unearth what was under the Earth for any purpose whatsoever. Same was done in accordance of the said procedure by performance of Puja as enshrined in the scriptures. But with the passage of time, man has shown dependence on biosphere; including the ‘treasure underneath’ in the form of mining, obtaining coal and/or other minerals or resources. But in the context of global awareness towards environment, dealt and discussed in various ancient texts, there has been much strictness on the protection of environment towards sustainable development.

India though was earlier in tune with environmental protection, its medieval history has reflected a divergence from the past; compelling in the present scenario for promulgation of laws for protection of mines and sustainable development. However, there are entries in the Schedule VII of the Constitution of India whereby Entry 54 of the Union List and Entry 23 of the State List deals with the subject of mining. Accordingly, it can be said that what was the mantra of the Eastern Jurisprudence in the ancient times, has found a Constitutional mandate; for which statutory protection has also been given. Not only this, but the Indian judiciary deriving its powers from the Constitution of India, has expanded its horizons to cover sustainable development vis-à-vis prevention of mining with the goal of maintaining ecological balance. Our nation has already come across famous judicial pronouncements like the Aravalli cases and the cases relating to mining in Uttarakhand; whereby the Supreme Court has stated that how mining has changed ecology and created environmental imbalance.

The present research paper is based on doctrinal methodology covering the sources, both primary and secondary whereby an attempt has been made to study not only the statutory framework but also the international adherence as to mining, sustainable development and environmental protection in India.

II. STATUTORY FRAMEWORK AS TO MINING IN INDIA

Mining in India operates under a federal structure where powers and responsibilities for its regulation are uniformly divided between the Central Government and the respective State Governments. Under the Constitution of India mining sector is designated as a collective responsibility whereby Schedule VII clarifies its position under Entry 54 of the Union List and Entry 23 of the State List respectively. Article 294 and 295 of the Constitution of India has conferred the properties, assets and rights, liabilities and obligations of sub-soil wealth and mineable minerals to the respective State Governments, whereas by virtue of Article 297, the complete ownership of minerals in offshore areas belong to the Central Government exclusively. However, in the case of Threesiamma Jacob &Ors. vs. Geologist, Deptt. of Mining & Geology[2013 (9) SCALE 1], the Supreme Court has also recognised the rights of private land owners as to subsoil and mineral wealth.

Further by virtue of its power under Entry 54 of the Union List, the Central Government has from time-to-time framed various legislations to regulate mining regime in India; among which the following are worth mentioning:

- **The Mines and Minerals (Development and Regulation) Act, 1957**: This Act of 1957, also known as the MMDR Act is presently the principal legislation governing the mining sector in India. This Act clearly differentiates between minor minerals and major minerals. The changes brought about by this legislation, primarily establishes a transparent and non-discretionary regime for the grant of mineral concessions. It was also further amended in 2016 to allow the transfer of mining leases that are granted other than through auction and used for captive consumption purposes.

- **The Mineral Concession Rules, 1960 (MC Rules)**


- **The Mineral (Auction) Rules, 2015**

- **The Mines Act, 1952**: This Act defines the requirements for labour safety, working conditions of mines and provisions for management and conduct of mining operations.
• The Mines Rules, 1955
• The Offshore Areas Mineral (Development and Regulation) Act, 2002 (OAMDR)
• The Offshore Areas Mineral Concession Rules, 2006
• Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015
• Coal Block Allocation Rules, 2017
• Coal Mines (Special Provisions) Act, 2015 (CMSPA)

Pro Active and Responsive facilitation by Interactive and Virtuos Environmental Single Window Hub (PARIVESH): This is a single-window integrated environmental management system, launched by the Ministry of Environment, Forests and Climate Change, as a part of “Digital India” initiative. PARIVESH seeks to automate the entire process of submitting and tracking applications for various types of clearances by Project Proponents to the MoEFCC as well as to the State level environmental impact assessment authorities.

Apart from the above stated statutory framework, there is also various Regulatory Authorities regulating the mining activity in India. These are as follows:

• Ministry of Mines (MoM)
• Indian Bureau of Mines (IBM)
• Ministry of Coal (MoC)
• Ministry of Petroleum and Natural Gas (MoPN)
• Ministry of Environment, Forests and Climate Change

Mining is a major economic activity in India and accounted for 2.3% of the country’s Gross Value Added (GVA) for the first quarter of 2018-19. The sector provides the basic raw materials required by further manufacturing and infrastructure industries in the country. India produces 95 minerals through mining, including: 4 fuel-related minerals, 10 metallic minerals, 23 non-metallic minerals, 3 atomic minerals and 55 minor minerals. The mining sector in India is highly regulated; and the statutory framework has undergone significant changes from time to time, the result of which is a more transparent and efficient regime.

INDIAN ADHERENCE TO INTERNATIONAL CONVENTIONS

A profound fact of environmental protection and conservation is that, the impacts of human-induced processes on the environment must be measured and the performance of the process assessed. Most international agreements for the environment aim towards such objectives, so that a process and discipline are present in the regulation of the natural environment. This procedure in order to take shape needs organization not just at the local/national level but also at the international sphere where it has reached between an array of participating parties and also requires the consent of individual signatories. The legal definition of the term ‘environment’ signifies the interaction between human actions and the natural world. However, mankind does not understand the complete ecological process or the nature in totality nor can it successfully anticipate its impact in concatenation.

International treaties are defined under the Vienna Convention on the Law of Treaties, 1969 as an international agreement concluded between States in written form and governed by International Law; whether embodied in a single instrument or in two or more related instruments with a particular designation. Thus, a Convention or a Treaty is an instrumental creation of the legal rights and obligations of the countries who are signatories for its effective implementation. International cooperation is therefore primarily required for safeguarding the diminishing reserves of natural resources. India is a party to many such international agreements in nexus to environmental management. Some of these important agreements are –

• The Antarctic Treaty (Washington), 1959:
It was framed with the objective that the Antarctic shall continue to be a zone that shall be used for peaceful purposes and not become an object of international discord. It also imbibes the suspension of territorial claims, freedom of scientific inquiry and international cooperation in scientific activities. India signed this Treaty in 1983 as a Consultative Party Member.

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973:
  This was signed in March 1973 for the regulation of international trade in endangered species. India has signed this agreement in July 1976 and the Director, Wildlife Preservation in India is the designated CITES Management Authority.

- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987:
  Also known popularly as the Montreal Protocol, sets targets aimed at reduction in the production and consumption of Ozone-depleting substances and came into force in 1989. The Montreal Protocol was adopted by India in September 1992.

- Basel Convention on Trans-boundary Movement of Hazardous Wastes, 1989:
  Also popularly known as the Basel Convention, it aims for a reduction in the Trans-boundary movement of Hazardous Wastes. It sees to that creation of hazardous wastes in minimized and also prohibits the shipment of the same to countries who are unable to dispose it in an environment friendly manner. India ratified this Treaty in 1992 and included some provisions therefrom into the Indian Hazardous Waste Management Act, 1989.

- U.N. Framework Convention on Climate Change (UNFCCC), 1992:
  This Convention aims at regulation of greenhouse gas emissions through international cooperation. India became a Member of the Convention in 1992 and went on to ratify it in 1993.


- Agenda 21:
  It is a product of the Earth Summit organized by the United Nations at Rio de Janeiro in 1992. The stakeholders included local and national governments, business organizations, citizen groups, international organizations and NGOs. All the above entities joined hands to discuss the agenda of sustainable development and to implement the same in their environmental policies. India also became a signatory to the Agenda 21 and has aligned the principles of the Agenda 21 into its various environmental policies and legislations.


- The Paris Agreement of 2015:
  Under this Agreement, India has a commitment to participate in multilateral negotiations under the UNFCCC. In this, India has shown leadership in moving ahead with policy frameworks that include, National Environmental Policy (NEP) and the National Action Plan on Climate Change (NAPCC).


International environmental law has witnessed extraordinary changes in the last few decades since the United Nations Stockholm Conference on the Human Environment. In India, after the said Conference in 1976, the 42nd Amendment to the Constitution was introduced in which constitutional sanctions were given to concerns over the environment as per Article 48A and Article 51A(g).
Besides mining, one of the most sincere issues that are to be encountered in respect of hazardous substances is the disposal of radioactive waste material. Disposal or reprocessing on land carries risks for the health of both present and future generations. Thus, several states including India, like U.K., U.S.A. and Japan have ratified to dump radioactive waste in the sea. Article 25 of High Seas Convention, 1958 requires the States to prevent pollution of high seas from dumping of radioactive material. Following this precedent, the 1972 London Convention prohibited the dumping of those ‘high-level radioactive matter’ defined by the International Atomic Energy Association (IAEA) as unsuitable for this form of disposal and issued guidelines for the dumping of low-level wastes which it permits.


The necessity of adequate institutional machinery for supervising implementation of these Treaties and Conventions thereby ensuring their continued development has already been dealt with. Moreover, the acceptance both in State practice and international conventions of the principles laid therein supports the view that these have become a requirement of International Law. Growing support for a precautionary approach towards the protection of the environment is apparent in the present technological developments. However, evidence supports that it is premature to treat the Precautionary Principle as a rule of International Law or to draw firm conclusions regarding its content. Renewed attempts to efficiently deal with these problems and to integrate the prevention of environmental exploitation; a much broader framework of ‘Sustainable Development’ was framed in the UNCED Conference of 1982.

**MINING VIS-À-VIS SUSTAINABLE DEVELOPMENT**

The concept of sustainable development has its origin prior to the United Nations Conference on Environment & Development in 1992. However, as an evolving international jurisprudence and a worldwide policy, it secured endorsement at Rio. The 1992 Convention on Climate Change (Article 3), 1992 Convention on Biological Diversity (Article 8 & 10) and the 1994 Convention to Combat Desertification (Article 4 & 5) have also significantly contributed to the idea of sustainable development. Agenda 21, adopted at the Rio Conference also refers in its Preamble the need for “Global Partnership of Sustainable Development”. Since then, it has influenced the policy-making of various international organizations such as the FAO, IMO, WTO, UNDP and others.

The impact of sustainable development can be observed in the ‘Case Concerning the Gabkicovo-Nagyamaros Dam’ in which the ICJ referred for the first time to “... this need to reconcile economic development with protection of the environment (which) is aptly expressed in the concept of sustainable development ...”


The relationship between environmentalism and development conceptualized and structuralized in these conferences paving the path of internationalization of sustainable development to walk upon by the nations of the world. The vows taken at the Conference of 1972 on Human Environment proclaim that negligence towards the environment poses a threat to the development of the nations and man’s right to life, which is affected by the environmental degradation and that only a healthy environment can preserve man’s right to life. The World Commission on Environment and Development was a further manifestation of the inter-link between development and environment, although the Commission lacked in luster to establish relation between man and his environment at the localized level in the nations. The 1992 United Nations Conference on Environment and Development in the journey of environment sustenance coupled with right to development was the charter on increasing consumption and production in an ecologically sustained manner so as to offer a solution to environmental degradation. However, the Conference recognized the role of civil society in environment protection as a concept percolating at the local level. The environmental law at the international level emphasizes
on the rights of the Man, capability of man expressed through development and capability of environment and that the capability of man to develop, to progress economically and to revolutionize is conveniently consistent with the environment.

The concept of sustainable development arguing for reconciliation of development and environment protection born in the post-colonial world required the post-colonial countries to internalize demands sought by sustainable development and imposition of these demands on the countries of the developing world. As the concept of sustainable development is the approach of right to life incorporating right to healthy environment, thus the formulation of environmental jurisprudence in these nations as a part of public policy and judicial role in making successful environment protection policies, seeks to balance right to life, right to environment and the right to development.

The environmental law currently advocates man’s right to development and progress on the one hand, and on the other hand environment protection rights, that is rights of forests, rights of rivers and that development contradicts environment protection. Emphasizing on the rights, The 1992 Declaration on Environment and Development observes a healthy and productive life as the right of a man coupled with the healthy environment under Article 1. Further, Article 2 of the Declaration balances right to natural resources derived from the environment coupled with the obligation of the States towards their environment.

Sustainable development contains both substantive and procedural elements. The substantive elements are envisaged in Principles 3 – 8 & 16, which includes – Substantive Utilization of Natural Resources, the Integration of Environmental Protection and Environmental Development, the Right to Development, the Pursuit of Equitable Allocation of Resources through Inter-generational and Intra-generational Equity, and the Polluter Pays Principle. The principle procedural elements are found in Principles 10 & 17, which deal with – Environmental Impact Assessment, Access to Information, Public Participation in Decision-making, etc.

The 1992 Agenda 21 of Rio Conference on Environment and Development, proposes to evolve new concept of production and consumption in developing nations and more focus on developed nations and less dependency on non-renewable resources. The point in discussion is that the United Nations and international law is moving towards evolving a paradigm in thinking and implementation on environment and development. But in the process the international law seeks to put more pressure to change the standard of living and production and consumption levels. Most importantly, the change in production, consumption and adoption of environmentally sustainable technologies would ultimately require the balancing of rights of people on one hand, and on the other hand sustainable development.

SUSTAINABLE DEVELOPMENT AND EASTERN JURISPRUDENCE

India possesses an array of municipal legislations for preserving the environment and preventing its further exploitation. India has been directed on the path of ‘environmentalism’ to National Green Tribunal Act; after the formulation of the Environment Protection Act which favours internationalization into the context of India. Even if we consider the ancient Indian philosophy, we will find that the Earth was referred and honoured as “The Mother”. Even the Atharva Veda has protected and enunciated the Earth as “Bhoomimataputroham-Prithivyah”. Various Indian communities have also inherited the rich tradition of reverence for nature, through ages of religious and philosophical preaching.

Indian culture and heritage have indoctrinated the values like ‘tolerance’, ‘non-violence’, ‘equity’ and compassion for all living beings, and collective human effort should be made to preserve and protect it. The Upanishads and the Rig Veda enunciates the view of “One Reality”, where the man and the Earth’s resources stem from the same source and are deeply rooted in the concept of Dharma. It is incorrect to state that economic development was absent in the Indian society in the Early Ages. Rather, man’s capability of economic progress has remained unacknowledged. Eastern Jurisprudence constantly reflects a harmonious balance between development and conservation of ‘the Green’.

As time paved its way from the Vedas to the Arthashastrathrough the Upanishads, “development acknowledging conservation of the environment” was implemented in public policy. The Rig Veda reveres Earth and Heaven as spiritual Cosmic Entities and not mere physical objects. Thus, indiscriminate abuse of the Earth and its resources were strictly prohibited. (Rig Veda : VI – 51 – 8)
In the “Mundakya Upanishad” there is merging of ‘One’ with all the consciousness, rather than creating different realities and focus on non – duality. The understanding is sought to limit one’s desires through surrendering to the world, rather than surrendering to one’s senses or desires. Hence, if there is no different reality or different nature of rights in the form of rights of life and need for development, it does not require the need to balance two of them. The “Katha Upanishad” argues on curtailing of all longings. It believe in physical and spiritual refinement through ‘Aparigraha’ signifying non-possessiveness, lack of greed and non-acquisitiveness. The Upanishad is premised on the importance to be given to the spiritual, rather than material, fulfillment and greed.

The Mundakya Upanishad observes values in life as the most significant, which is to be followed by each individual. (Mundakya Upanishad 1:2:12). The values can be inferred as the development of the inner self in terms of spiritual aspects of life. In contradiction, the International Environmental law takes significance of development in the life of the nation however seeking to sacrifice neither environment, nor progressiveness of the society. It is to understand commonsensical that economic development would lead to repercussions on the “Green.”

The worship of Earth and its resources as a very way of life; clearly hints that economic and materialistic development was a part of ‘Kama’ and ‘Artha’; while environmental conservation linked to ‘Dharma’ and ‘Moksha’. Even the tenets of the early jurist Manu in Manusmriti, has its basis upon the duties of a man and its fulfillment. These principles have also found place when Manu framed the Manabdharmastras.

It is pertinent to note that the effect of development acts adversely on environment, thereby conceptualization of sustainable development implies the idea that man and man’s activities and environment work together. The idea that man and environment work together has been stated earlier in “Taittriya Upanishad” and that there is no conflict between man, environment and forests. The idea dealt on life and aspects of life of man is that, man should restrict his desires so that the sustenance of man, his needs and environment can be made possible together, in such a way that there may not arise conflict between realities. The inter-connectivity between man and environment and Earth has been put forth in the “Taittriya Upanishad” in the idea that ‘the herbs consumed as food by man grows from Earth, and thus man grows from the Earth as well.

The alternative approach in the Eastern Jurisprudence is being called upon to seek solutions from this unique paradigm. Ancient Indian texts like Arthashastra, SathapathaBhramanas, Vedas, Manusmriti, Brhat-Samhita, Ramayana, Mahabharata, Rajatarangini reflected the concepts of sustainable development. In the Indus valley civilization, several characteristics of the city planning and social structure showed environmental awareness. The Arthashastra also states the duties of the king as the protection of territory, the role of government and governance and its effect on life of the people in context of environmental protection.

III. CONCLUSION

It can be concluded that ancient Indian Jurisprudence is well balanced with principles of sustainable development. By accepting the divinity in all beings, living and non-living, Indian thought and philosophy view the universe as a family or, in Sanskrit, ‘VasudhevaKutumbakam’. Thus, it can be said that ancient Indians were very much aware about the ecology and sustainability. It helps in solving specific environmental problems and the modern principles of sustainability were adopted at that time. Now it is time to revive ancient Indian concept of sustainability and move from right oriented jurisprudence to duty-oriented jurisprudence. For this, “India, that is Bharat” ought to ponder upon its past in order to understand the true essence of sustainable development in the context of the present jurisprudence in relation to mining in India. The laws need to be reviewed with such modifications as to fit the conceptual understanding of the present topic.

REFERENCE

11. Il-ii-7 Katha Upanishad
12. http://shodhganga.inflibnet.ac.in/bitstream/10603/145973/12/m.chapter-v%20evolution%20of%20the%20law%20relating%20to%20environmental%20law.pdf