



## **NOTES AND COMMENTS**

### **POPULATION GROWTH AND SUSTAINABLE DEVELOPMENT**

#### **Introduction**

SUSTAINABLE DEVELOPMENT connotes the process by which people satisfy their present needs and improve their quality of life while safeguarding the ability of the future generations to meet their own needs. Each year the number of human beings increases, but the amount of natural resources with which to sustain this population to improve the quality of human lives remains finite. The world population growth has been recognized as one of the most important ecological problems facing the planet today. Yet the population question has been virtually invisible as an issue in the environmental concerns including environmental law.

This paper attempts to analyze as to how India's burgeoning population is influencing the attainment of sustainable development. It also seeks to examine the development of law in this regard.

#### **India's population**

India ranks second in population size. While India has only 2.4% of the world area *i.e.* 2.5 million square miles, it has 16 percent of the world population. As per the Census of India 2001, its population was 1,027,015,247 (1027 million),<sup>1</sup> and is increasing by about 17 million every year, which is equivalent to the population of Australia, area-wise two and half times bigger than India. Though China is at present the most populous country in the world, but India is more densely populated than China which has three times land space of India. The absolute addition to the population during the decade 1991-2001 is more than the estimated population of Brazil, the fifth most populous country in the world.

From a growth rate of 13.3 percent in the decade 1941-51, India's population has arisen to 21.5 percent in 1951-61 and further to 24.8 percent in 1961-71. The decadal growth rate of India's population declined from 24.6 in 1971-81 to 23.8 in 1981-91, and further to 21.34 in 1991-2001. However, the mechanism of the growth of population is such that percent

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1. Registrar General and Ceasus Commissioner of India 1991, *I Primary Census, Abstract General Population* vii India.



do not always present a correct picture. For example, with a growth rate of 2.48 percent per annum in 1961-71, the average increase in the population was of the order of 10 million persons a year, whereas a growth rate of 2.46 per cent per annum in 1971-81 has been adding 13 million people to the population every year. With a declining growth rate of 2.38 per cent during 1981-91 India has added approximately 16 million persons per year. Now, with a growth rate of 1.93 percent per year during 1991-2001, India's population has increased by a whopping 17 million per year.<sup>2</sup>

### **Sustainable development – international concerns**

The idea that for the benefit of future generations, present generations should be modest in their exploitation of natural resources has found wide spread international approval since the Maltese proposal at the UN General Assembly of 1967, which conceded that there was a common heritage of mankind and that this also required legal protection by the international community. This whole concept is based on the idea that natural resources are not only for the present generations but these resources can only be exploited with adequate consideration of the rights of future generations.<sup>3</sup> The term “sustainable development” was used at the time of Cocoyoc Declaration on Environment and Development in the early 1970s.<sup>4</sup> The concept of sustainable development further received impetus in the Stockholm Declaration on Human Environment resulting from the United Nations Conference on Human Environment in 1972.

The term was, however, brought into common use by the World Commission on Environment and Development (the Brundtland Commission) in its seminal 1987 report: *Our Common Future*.<sup>5</sup> The Brundtland Commission defines Sustainable Development as “development that meets

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2. See Usha Tandon, *Population Law* 66-94 (2003).

3. Meinhard Schroder. “Sustainable Development – A principle for Action and an Instrument to Secure the Conditions for Survival of Future generations” 101 *Law and State* Vol 51 (1995).

4. Micheal Redclift, *Sustainable Development- Exploring the Contradictions* 32 (1987).

5. The World Commission on Environment and Development chaired by Mrs. Gro Harlem Brundtland, Prime Minister of Norway, was commissioned by the General Assembly of United Nations in the year 1983. The report begins with a lengthy summary of the Commission's findings and recommendations. The remainder is divided into three parts. The first explains the problem of growing number of people living in poverty and the environmental stress they cause, the growth of pollution problems in the industrialized world, and how global economic changes in the 1970 and 80s have showed efforts to correct these problems. The concept of sustainable development is introduced, emphasizing the role of international political and economic cooperation in achieving it. In the second part, particular problems are examined in more detail, including population, food, species and ecosystems, energy, industry, and urbanization



the needs of the present without compromising the ability of the future generations to meet their own needs. The concept of sustainable development, according to Brundtland report contains within it two key concepts: (i) The concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given and (ii) the idea of 'limitations' imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

The report emphasized that sustainable development cannot be achieved in a world ridden by poverty. As far as non-renewable resources like fossil fuels and minerals are concerned their use reduces the stock available for future generations. But this does not imply that such resources should not be used. The rate of depletion should take into account the criticality of that resource, the availability of technologies for minimizing depletion and the likelihood of substitutes being available. Sustainable development also requires that the adverse impact on the quality of air, water and other natural resources are minimized so as to sustain the ecosystems' overall integrity. According to Brundtland report, critical objectives for environment and development policies that follow from the concept of sustainable development include — meeting essential needs for jobs, food energy, water and sanitation, ensuring sustainable level of population, conserving and enhancing resource base, merging environment and economics in decision making etc.

Some of the salient principles of sustainable development as culled out from Brundtland report are intergenerational equity, use and conservation of natural resources, the precautionary principle, polluter pays principle, obligation to assist and cooperate, eradication of poverty, and financial assistance to the developing countries.

The World Summit on Environment and Development<sup>6</sup> (UNCED) popularly known as Earth Summit held in 1992 at Rio-de-Janeiro was inspired and guided by the Brundtland Report. Agenda 21, the most comprehensive and far-reaching programme of action to affect the transition of sustainable development in the 21<sup>st</sup> century, lays emphasis on the international co-operation for achieving the goal of sustainable development.

The World Summit on Sustainable Development held in Johannesburg in 2002, reaffirmed the commitment to sustainable development. The Johannesburg declaration recognized that poverty eradication, changing

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In part three, topics include managing the global commons, the relationship between militarization, development and the environment, and the proposals for institutional and legal changes. Sprinkled throughout the text are statements by a wide variety of people who spoke at the World commission public hearings, which were conducted in cities in five continents.

6. Reprinted in P. Burnie and A. Boyle, *Basic Documents on International Law and Environment* 9 (1995).



consumption and production patterns, the protecting and managing the natural resource base for social-economic development are overreaching objectives of and essential requirements for sustainable development. It noted that global environment continues to suffer loss of bio-diversity, fish stock continues to be depleted and desertification claims more and more fertile land. The adverse effects of climate change are already evident, natural disasters are more frequent, developing countries are more vulnerable, and air, water, and marine pollution continue to rob millions of a decent life. The Johannesburg summit focused on the invisibility of human dignity and resolved to speedily increase access to basic requirements such as clean water, sanitation, adequate shelter, energy, health care, food security, and the protection of bio-diversity. At the same time it was resolved to work together to assist one another to have access to financial resources, ensure capacity building, use modern technology to bring about development had make sure that there is technology transfer, human resource development, education and training to banish forever under development. In Johannesburg, the representatives of the people of the world restated their commitment to sustainable development and it was declared that they were determined to ensure that rich diversity which is our collective strength would be used for constructive partnership for change and for achievement of the common goal of sustainable development.

### **Sustainable development – national concerns**

When the UN General Assembly decided to convene a conference on the Human Development in 1972, and requested a report from each member country on the state of the environment, a committee on the human environment was set up to prepare India's report. By May 1971 three reports had been prepared : 'Some aspects of environmental degradation and its control in India', 'Some aspects of problems of human settlement in India' and some aspects of rational management of natural resources.' With the help of these reports, the impact of population explosion on the natural environment and the existing state of environmental problems were examined.<sup>7</sup>

The fifth five year plan (1974-79) emphasizes that the pursuit of development goals would not be less likely to cause a reduction in the quality of life if a link and balance between development planning and environmental management was maintained. In this context the minimum needs programme concerning rural and elementary education, rural health and sanitation, nutrition, drinking water, provision for housing sites and slum improvement received a fairly high priority and was expected to

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7. See Dwivedi, *India's Environmental Policies, Programmes and Stewardship* 54 (1997).



minimize environmental pollution and degradation in rural areas and reduce poverty levels. The basic approach taken by the seventh five year plan (1985-90) was to emphasize sustainable development in harmony with the environment, as the plan recognized the negative effects that development programmes were having on the environment. By the late 1980s it was realized that poverty and under-development, as opposed to developmental activities, had led to many of the country's environmental problems, and such problems could no longer be side-stepped. That is why the seventh plan emphasized that the 'nation's planning for economic growth and social well-being in each sector must always take note of the need to protect environmental resources and where possible must work to secure improvement in environmental quality.

Reduction in population growth has been recognized as one of the priority objectives for achieving socio-economic development right from first five year plan to tenth five year plan. The issue of population stabilization has also been recognized as an essential requirement for promoting sustainable development in National Population Policy, 2000.<sup>8</sup> However, due to the unsound approach to the problem, inspite of the existence of family planning programmes for the country for the last more than fifty years, the Census of India 2001 delivers billion plus figure, and is soon going to achieve the questionable distinction of becoming the most populous country in the world overtaking China.<sup>9</sup>

### **Nexus between India's population and sustainable development**

The continued growth in India's population is creating increased pressure on the natural resources and thus adversely affecting sustainable development. The rapid increase in population since 1921, more so since 1951 has put tremendous pressure on the carrying capacity of the nature. Growing human population affects the environment in two ways: they consume resources like food, wood, water, oxygen etc. and produce waste like excreta, garbage, effluent from factories, exhaust from factories etc. It puts pressure on natural resources and on the environment indirectly through increased need for employment and development. In many rural areas growing population demanding more food, employment, and livelihood accelerated conversion of forests and other natural habits to agriculture and other uses. Land-less poor migrate from rural areas into cities in search of employment, and the resulting rapid pace of urbanization imposes huge

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8. *Supra* note 2 at 102-112.

9. For a critical analysis of government's approach to stabilize the population see Usha Tandon, "Population Stabilization vis-à-vis the National commission to Review the Working of the Constitution." XXIII *DLR* 125 (2001).



environmental challenges. While rural to urban migration increases the subsistence pressure on natural habits, it also increases the market pressure for food, timber and energy. In addition, urbanization brings with it a whole set of pollution related concerns starting from sanitation, industry, energy and transport.

The state of India's ecological balance is now in crisis. The balance of nature is being disturbed by cutting down forest, indiscriminately converting grasslands into areas of human habitation. India's natural resources are under intense pressure today. The challenges of their conservation and sustainable use remain enormous. The land base per person is shrinking, posing the challenge of maintaining the quality of soil. One of the major problems before the country is to rehabilitate the degraded forests and to enhance the area under forest to 33% of total area as envisaged in the National Forest Policy, 1988. Though efforts are being made, due to ever increasing demands of forest products, the desired results could not be achieved. Many ecosystems and species of flora and fauna have become endangered. The possibility of green-house effect warming the globe and of damaged ozone layer affecting life on earth haunts India like a ghost.

The UNFPA, India study (1999) gave important insights into the implications of rapid population growth for bio-diversity conservation. The study highlights the conflict between human need and the need of the wild life and concluded that the disappearance of the majestic Siberian crane is almost inevitable and many other species are equally balanced precariously on the verge of extinction from growing demands of a burgeoning population. The availability of renewable fresh water per-capita in India fell from around 6000 cubic meters per head a year in 1947 to about 2,300 cubic meters in 1997. It is estimated that by the year 2017, India will be 'water stressed' because water availability will go down to 1,600 cubic meters. The over-exploitation of groundwater is emerging as an increasingly serious problem in the country. At many places, the ground water table is declining at the rate of a half-meter each year. Further, India's water resources are facing problems of pollution leading to high occurrence of water borne diseases. Most of the water resources, in the country are polluted and untreated or partially treated wastes from domestic sewage, industry and fertilizer or pesticide run-off from agricultural fields. About 1.5 million children die each year due to water related diseases only. It is really pity that although more than half of a century since independence, about 200 million people in India are not having access to potable drinking water.<sup>10</sup>

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10. For a detailed account of linkages between population and sustainable development, see Usha Tondon. "Rising Population and Degrading Environment — An analysis of Linkages and Law in India" VII *Nyaya Deep*, Issue 67 (2006).



### The development of law

Four years after the Stockholm Conference, the forty-second amendment<sup>11</sup> added to the Constitution of India brought about certain significant provisions relating to sustainable development. Under the new provision added to the directive principle of state policy which guide the state in moulding its laws, the state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.<sup>12</sup> The fundamental duties of the citizens incorporated by the forty-second amendment include the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.<sup>13</sup> Previously forests, wildlife, were subjects on which the states had exclusive power to make laws, but now the concurrent list enables both the centre and states to make laws on those areas.<sup>14</sup>

From the point of view of population control forty-second amendment has added a new entry 20A entitled “population control and family planning.” to list III to the 7<sup>th</sup> schedule to the Constitution. After change was made when a proviso was added to article 81 to the effect that froze the number of seats in the *Lok Sabha* and state assemblies till 2001 as per 1971 census. The ninety-first amendment<sup>15</sup> has now extended the freeze up to the year 2026.

As far as the statutory law is concerned, the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, for the control of pollution of water on request from states under article 252 of the Constitution. The Air (Prevention and Control of Pollution) Act, 1981 was passed by the Parliament with a view to implement the decisions of the Stockholm conference, which asked the member states to take appropriate steps among other things for the preservation of quality of air and control of air pollution. The Environment (Protection) Act, 1986, a skeleton legislation, was enacted for a wider purpose of protecting and improving the human environment, a goal laid down by the Stockholm conference.<sup>16</sup> Out of the wide spread concern for large-scale deforestation, resulting in ecological imbalance and environmental degradation, the Forest (Conservation) Act, 1980 was passed. The Act put restrictions on de-reservation of forest, use of forest land for non-forest purpose, lease of forest land to a private agency etc. For the purpose of protecting, propagating

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11. The Constitution (Forty-second Amendment) Act, 1976 w.e.f. 3.1.1997.

12. The Constitution of India, Art. 48A.

13. *Id.*, Art. 51(g).

14. *Id.* Seventh Schedule List III. The forest is mentioned in 17A, wildlife in 17B.

15. The Constitution (Ninety-First Amendment) Act 2000.

16. For details see *supra* note 10 at 83-87.



or developing wildlife and its environment, the Wildlife (Protection) Act, 1972 was passed. The setting or transferring wild animals, dealing in wild animals, animal articles and trophies are regulated by the Wildlife Act. It may be noted that these major environmental laws are industry-regulating laws. These legislations have taken note, only of industrialization as the cause of environmental pollution and degradation, population explosion does not find any place in these legislations.

The judiciary in India has played a very important role in the environmental protection and has created a new environmental jurisprudence. It has noted that in a developing country, there shall have to be developments, but that development shall have to be in closest possible harmony with environment. As otherwise there would be development but no environment, which would result in total devastation, though, however, it may not be felt in present but at some future point of time, but then it would be too late in the day. The judiciary has emphasized that the society shall have to prosper, but not at the cost of the environment, and in the similar vein the environment shall have to be protected, but not at the cost of the development of the society. And sustainable development is the only answer. The courts have applied the principle of sustainable development to the cases relating to quarrying, mining, stone crushing, hazardous industries,<sup>17</sup> etc. It needs to be emphasized that in all these cases the court was applying the principle of the sustainable development as a balancing concept between the industrial development or the economic development and the environment.

Coming to the population law, at present there is no specific law in India which directly regulates the population explosion of the country. Due to the fear of loosing vote bank, the apathy of the politicians towards population stabilization is one of the biggest hurdles in the success of country's population programmes as required. Hence with a view to make politicians demonstrate strong commitment for population control, the Constitution (Seventy Nine Amendment) Bill, 1992 was introduced in the *Rajya Sabha*. As elected representatives need to set an example and act as role models for the population they represent, the bill proposed to add additional schedule under which person shall be disqualified for being a member of either House of Parliament or either House of the Legislature of a State, if he has more than two children. The bill is still pending in the

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17. See for example *Rural Litigation and Entitlement Kendra v. State of UP*, AIR 1985 SC 352; *M.C. Mehta v. Union of India*, AIR 1987 SC 982 (popularly known as *Oleum gas leak case*); *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1986 SC 1446 (popularly known as *H-acid case* or *Bichhri case*); *Vellor Citizens Welfare Forum v. Union of India*, AIR 1986 SC 2718 (popularly known as *T.N. Tanneries case*); *A.P. Pollution Control Board v. Prof M.V. Nayudu*, AIR 199 SC 812.





*Rajya Sabha*. Although the constitutional amendment could not so far been passed, several states follow the path at the local level. To promote family welfare programmes, in pursuance to the powers given to state legislatures under entries 24 (family welfare) and 25 (women and child development) of eleventh schedule to the Constitution of India, some states have enacted laws debaring persons with two or more children from contesting local body elections.<sup>18</sup> Some of the state population policies have also provided similar disqualification and other disincentives.

In *Javed v. State of Haryana*<sup>19</sup> the constitutional validity of the law of two-child norm for population stabilization was challenged before the Supreme Court. It was argued that the impugned provision is arbitrary, discriminatory, violates the personal liberty of persons to have as many children as they want and also violates the freedom to religion. Rejecting the arguments, raised by hundreds of petitioners, in this path-breaking judgment, the apex court through RC Lahoti J (for himself, Ashok Bhan and Arun Kumar JJ) ruled that “the impugned provision is neither arbitrary nor unreasonable nor discriminatory. The disqualification contained in section 175 [1(q)] of Haryana Panchayat Raj Act seeks to achieve a laudable purpose *i.e.* socio-economic welfare and health care of masses and is consistent with the national population policy”. Further, the judicial recognition of the fact that the lowering per capita crop land in India, if it falls below the minimum sustainable level may lead to famine and abnormal conditions in the country, though late is quite appropriate.

### Conclusion

The issue of sustainable development is a matter of serious concern for both the developed and developing countries including India. However, there is a marked difference in the character of the issues involved in two differing situations. Therefore, the conservation of natural resources, prevention of pollution and the restoration of the degraded environment cannot be effected universally by one and the same measures. Broadly speaking, two factors influence the attainment of sustainable development (i) industrialization and (ii) excessive population. India is not an industrialized country. Hence the major cause for achieving sustainable development could not be industrialization. On the other hand, India is facing the burning problem of arresting the burgeoning population. The population factor is the major factor that restricts the sustainable development of India. Tremendous pressure is placed upon the country's land and natural resources to support the massive over population.

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18. See Usha Tandon, ‘The Population Law: Two Landmark Judgments from Rajasthan’ XX *DLR* 175.

19. AIR 2003 SC 3057.



Though there is a national consensus that the tremendous increase in the population of the country must be restricted, there is no specific law in India which directly regulates the growth in population.

The concept of sustainable development, though does not find express mention in environmental statutes of India, but it can be read in various provisions of the Environment (Protection) Act; Water (Prevention and Control of Pollution) Act; Air (Prevention and Control of Pollution Act) and other environment related laws. The Indian judiciary, particularly the Supreme Court of India in various judgments<sup>20</sup> has accepted the principle of sustainable development as part of the law of the land. However in all these judgments Indian judiciary has applied 'sustainable development' as a balancing concept between ecology and development *i.e.* industrial development.

Though the population issues do recognize that the country's efforts to conserve the resource endowment and environment are being neutralized by increase in population, the Indian environmental concerns could not recognize that population factor is the major factor that restricts the sustainable development of India. The population issue is probably the most uncomfortable and divisive of all environmental concerns. Hence, if the issue of population is ignored, it will eventually render all efforts for sustainable development fruitless, which may result in disastrous consequences.<sup>21</sup> The environment law (statutory, as well as case law), as it is developing in India, could not link the problem of attaining sustainable development with the burgeoning population of the country. How and in what manner law could enforce the principle of "sustainable population for sustainable development" may be a matter of further study and research. However one thing is clear, that the massive population of the country has a bearing on various directive principles of state policy, particularly articles 38,39, 41 and 42 of the Constitution of India. Since it is the constitutional obligation of state to secure the well being and progress of the people, the responsibility of the state to maintain population levels most conducive to

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20. *Supra* note 17.

21. The story of the mistakes of the past should be a lesson in the present day. Over the ages civilization have risen and fallen, leaving future generations to wonder what went wrong. A study (Pointing, Clive, "A Green History of the World: The Environment and the Collapse of Great Civilization" (1991) suggests that increasing population pushed local resources beyond sustainable limits, causing the decline of their civilization. It sets the stage with the case of Easter Island, where population increase and a technology requiring large amounts of wood lead to deforestation, soil erosion, and the collapse of the population and their civilization. It then backs up to the beginning to the history, explaining ecosystems, hunter gatherer life and subsistence techniques. Three core areas of the world Southwest Asia, China and Mesoamerica could not sustain the intensive agriculture needed for large population and became increasingly degraded.



national welfare is unquestionable, hence unavoidable. The nation is looking forward to the pro-active Indian judiciary to help state secure constitutional guarantee of socio-economic justice to the people of India by evoking the principles of sustainable population.

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