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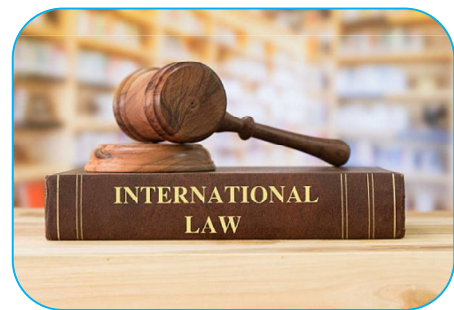


ROLE OF INTERNATIONAL LAW AND POLICIES IN THE ARENA OF SUSTAINABLE DEVELOPMENT: AN ANALYSIS WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT:

The aim of the paper is to analyze and assess both Indian and international legal solutions to the issue of environmental pollution and sustainable development. It shows how the Indian judiciary has embraced environmental activism and significantly improved the statute law to safeguard the environment and encourage sustainable development. The journey from Stockholm to Rio Summit put us on the path that all people should be on if they want to live healthy, productive lives that are in harmony with nature. In order to conserve and protect the environment as well as to avoid environmental contamination, a number of environmental laws were passed as a result of the idea of sustainable development. The report will also make mention of the specific function played by India's court in interpreting a number of legislation pertaining to environmental protection in that country. Global concern about environmental degradation has emerged, and it now poses a problem for both the current and upcoming human generations. For the continued existence of life and the defense of the right to life, environmental conservation must be a top concern. the obligation of the current generation, which has the chance to address environmental issues since, if the current condition is allowed to persist, the next generation won't exist. The future of humanity is now at stake in the environmental agenda. The environment is a part of the people, and the reverse is also true. The current article will shed light on the role of international law and policies in the field of sustainable development and offer a means of understanding the state of that field at the moment.



KEYWORDS: Environment, Sustainable Development Goals, Conventional Energy.

I. INTRODUCTION

Today the world and particularly India is facing its greatest problem of the degradation of environment and unsustainable development threatening to the existence of life. Environmental degradation has become the global problem and challenge for the present and the future. Environmental protection now become a priority for the existence of life and the protection of right to life. Human development has generally been parasitic on the environment because there is fundamental interdependence between environment, the physical, biological and social surroundings and their interactions, that sustain all life forms.

Destruction of environment leads to destruction of all living creatures including human beings. Over production, over exploitation of resources, nuclear radiations, industrial wastes, industrial accidents, brutal exploitation of forests, indiscriminate quarrying, pollution of rivers and water resources, rapid increase of air and noise pollution are the contributing factors for environmental

degradation. Global warming, ozone depletion and pollution are negative effects of existing development strategy, which affect the human life. The study will to analyse the objectives, such as, to determine the meaning and definition of sustainable development; to identify the basic reasons of environmental degradation and unsustainable development; to analyse the prevailing laws and compare the same with the existing international framework; to investigate the role of Indian judiciary in policies which link environment and sustainable development.

II. RESEARCH METHODOLOGY

This paper will be based on doctrinal method. The study requires an in-depth analysis of provisions relating to sustainable development, specific laws related to environmental protection and other laws indirectly dealing with sustainable development and various judicial pronouncements on this subject. Further, the present study is aimed to focus largely on an issue relating various aspects of international legal implications and regulations of sustainable development. The secondary sources of data are books on the subject, articles from various national and international journals, case laws, judicial pronouncements, law journals, etc. have been referred.

III. SIGNIFICANCE OF THE PROBLEM

The environmental degradation has become the subject of global concern and it has become a challenge to the present and the future generations of humankind. The environmental protection has to be a priority for the existence of life and for the protection of right to life.

Environmental law is a comparatively new branch of law and has evolved mainly over the last thirty years. It is therefore in a formative stage and is undergoing a process of rapid development inspired also by a quantum leap in our understanding of the environmental challenge. The responsibility of present generation which has the opportunity to tackle environmental problems because the next generation will not be there if the present situation is allowed to continue. The life of human beings depends not only upon on the environment but also upon ecological factors. So, there is a need to protect environment and maintain sustainable development by each and every country.

IV. SCOPE OF THE STUDY

The achievement of sustainable development depends on the commitment of all arms of government, i.e., the legislature, executive and judiciary. The judiciary plays an important role in promoting environmental governance, sustaining the rule of law and in safeguarding a fair balance between environmental, social and development. Environment and development should integrate in the policies and practices of each country. The present study extends to explore the need for sustainable environment and to examine how important the sustainable environment for Right to life.

The enactment and enforcement of laws and regulations (at the regional, national, state/provincial or local/municipal level) are also essential for the implementation of most international agreements that are made in the field of environment and development, as illustrated by the frequent treaty obligation to report on legislative measures.

V. MEANING OF SUSTAINABLE DEVELOPMENT

The concept of Sustainable Development (hereafter, SD) grew from numerous environmental movements in earlier decades. SD got importance particularly after the Earth Summit in Rio, Brazil, 1992. The concept of sustainable use of resources of the planet has ancient origin. The term 'Sustainable Development' came in use at the time of Cocoyoc Declaration on Environment and Development in the early 1970s. Since then, it has become trademark of international organisations dedicated to achieving environmentally benign or beneficial development (Redclift, 2003). SD represents a balance between the goals of environmental protection and economic development for the needs of present and future generations. Whole theory is based on the postulate that natural resources such as sea bed are not the fruits of labour of present generations and thus such resources can only be exploited with adequate consideration of the future generations' rights (Krämer, 2021). The most effective way to handle

climate change is to adopt a sustainable development pathway by shifting to environmentally sustainable technologies and promotion of energy efficiency, renewable energy, etc. (Fülöp, 2021).

SD is a mechanism through which society can interact with the environment while not risking damaging the resource for the future. Thus, it is a development as well as concept that calls for improving living standards without producing any harm to the earth's ecosystems or causing environmental challenges such as deforestation and water and air pollution that can result in problems such as climate change and extinction of species.

SD has, over the last 30 years, received wide support in non-binding international legal documents. It finds expression in countless declarations of states, resolutions of international organizations, programmes of action, however, such states are incapable to giving rise to a valid legal rule relating to sustainable development. SD can be found in 112 multilateral treaties, 30 of which are aimed at universal participation (Sustainable development, future generations, and Public Trust 2014). This points to a certain level of consensus among the international community concerning of SD for international law. SD reconcile conflicting norms of environment economy, social development and human rights. In many international treaties and conventions, SD is the main part of text. Concept of SD is part of many decisions of international courts of justice. Environmental law and developmental law are not alternatives but they are integral concepts. Development should not harm to the environment and concept of environmental protection should not prevent development.

VI. FUNDAMENTAL PRINCIPLES OF SUSTAINABLE DEVELOPMENT

The main principle of SD is the set of principles accommodated in the Rio Declaration on Environment and Development, Agenda 21, Climate Change Convention, Biodiversity Convention and Non-binding Principles on Forestry, 1992¹. Those are

- Principle of conservation²,
- Principle of right to development³,
- Principle of key elements of sustainable development and interconnections precaution⁴,
- Principle of integration⁵,
- Principle polluter pay⁶,
- Principle of inter-generational equity⁷ and
- Principle of common but differential responsibility⁸.

VII. INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT

Environmental law is the most outstanding legal development of the 21st Century and has become most popular throughout the world. Almost all the nations of the world have enacted laws for protection of environment to control pollution. Accordingly, international and national perspectives of environmental law have been developed. The Courts are gradually developing small pockets of environmental jurisprudence through case-law. In particular, it is seen in the cases relating to judicial activism and public interest litigation. As a result of United Nations' conventions after 30 years SD has become the part of international law and it has got circulation at global level (Reimer, 2021). Demand of the documentation of SD arises in international community but SD is a part of many international declarations, resolutions and treaties.

¹ Rio Declaration on Environment and Development, Agenda 21, Climate Change Convention, Biodiversity Convention and Non-binding Principles on Forestry, 1992.

² Rio Declaration, Principle 7.

³ Rio Declaration, Principle 25.

⁴ Climate Change Convention, Art. 3, Bio-diversity Convention.

⁵ Rio Declaration, Principle 2.

⁶ Rio Declaration, Principle 16.

⁷ Rio Declaration, Principle 3.

⁸ Rio Declaration, Principle 3.

International law provides a mechanism through which the targets of the global community are made efficient, and can be strengthened and clarified. As Decleris states: 'like all social institutions created by man so far, the institution of sustainable development too will acquire its specific form via the science of law and its application by court decisions' (Directorate-General for Environment (European Commission) & Decleris, 2000).

International legal norms have been formerly initiated in Stockholm Conference 1972, but there wasn't a total absence of International Environment Law before Stockholm. This period can be divided as follows-

(a) Pre-Stockholm International Environmental Law

The public concern over international crisis grew with the signs of irreparable damage beginning to appear. This stimulated efforts to achieve International Environmental Regulation.

The beginning of international environmental law we find few bilateral or even multilateral agreements concluded largely during the first half of the present century having some references for preservation of natural resources. One of the provisions of the 1909 Boundary waters Treaty between Great Britain (on behalf of Canada) and United States is the waters defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property of the other. A clause in the Agreement between Germany and Belgium of 1929 concerning the frontier between the two countries lies down. In no case it is permissible to let water injuries to public health flow into streams and ditches.

The treaties and agreements concluded in those days could not play a serious part in view of their limited scope. Those regional treaties and agreements were primarily meant for resolving disputes as to the sharing of water with a few exceptions. But they had potentiality to affect the development of the international norms of environmental protection. Soon after the middle of the present century an International Convention was held in 1954 for pollution of sea by oil in year 1954. The Convention specifically prohibited the discharge from any tanker of oil any oily mixture the oil in which pollute the surface of sea and set penalties according to law of territory in question. With the adoption of Antarctic Treaty, the international law of environmental protection gained momentum and the environmental regulation in internationally shared areas further strengthened. Its emphasis on the use of Antarctica for peaceful purpose only, and its ban on nuclear explosions and the disposal of radioactive wastes exemplify this vividly (Jariwala, 1993).

(b) Post-Stockholm International Environmental Law Stockholm Declaration 1972.

The principle of SD further received impetus with the Stockholm Declaration 1972. There are certain principles enunciated in the Declaration. For example, Principle 3 of the Stockholm Declaration says that the Earth's Capacity to produce vital renewable resources be preserved and wherever practical, restored. Principle 5 of this Declaration states that non-renewable resource must be used in such a way that they any are protected against the danger of their future exhaustion. Moreover, the Principle 11 of the Declaration requires that the environmental protection policies of all countries should support and not to have detrimental effect on the present or future development energy of developing countries (Person et al., 1987).

Brundtland Commission Report: Our Common Future 1987

The concept of SD was first described by Brundtland Commission 1987 'Report over Common Future'. Brundtland Report defines SD as follows- 'Sustainable development is development that meets the needs of the present without compromising the ability of the future generations to meet their own needs' (*Report of the World Commission on Environment and Development: 1987*).

According to the Brundtland Report the concept of sustainable development contains two key concepts:

(a) The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given,

(b) The idea of limitations imposed by the State of technology and Social Organisation on the environment's ability to meet present and future needs (*Report of the World Commission on Environment and Development: 1987: P. 13*).

Brundtland Report emphasizes that sustainable development means an integration of economics and ecology in decision-making at all levels. sustainable development is viewed as a strategy which would integrate the apparently conflicting goals of economic development and ecological integrity.

Earth Summit

The United Nations Conference on Environment and Development (UNCEP)- Earth Summit was held in June 1992 at Rio De Janeiro wherein more than 150 Governments participated. This was the largest UN Conference ever held. UNCED's mission was to put the world on a path of sustainable development which aims to preserve resources for future generation.

The Earth Summit was inspired by 1987, Brundtland Report. The Earth Summit forced the people worldwide to think how their lives affect natural resources. The Five Documents of Earth Summit are as follows-

- Rio Declaration on Environment and Development- The Declaration contains 27 principles of nations towards more environmentally sustainable patterns of development.
- Agenda 21- Agenda 21 was adopted in UNCED to provide an agenda for local, national, and global action. Agenda 21 comprises hundreds of pages of recommended actions to address environmental problems and promote sustainable development.
- U.N. Commission on Sustainable Development 1993- The United Nations Commission on Sustainable Development (UNCSD) originated from chapter 38 of the Agenda 21 of Rio Summit to follow-up of the Rio Conference and to promote international Cooperation and rationalize the intergovernmental decision making capacity for the integration of environment and developmental. To examine the progress of the implementation of Agenda 21.
- Earth Summit plus Five 1997 - It was held in June 1997 at New York on the environment was held in June 1997. 'We commit ourselves to work together in the spirit of global partnership to reinforce our joint efforts to meet the needs of the present and future generations (*Take action for the sustainable development goals - united nations sustainable development 2004*).

Kyoto Conference and Pact on Global Warming

A summit to reduce global warming was held on 11th December 1997. Delegates from 159 nations attending the world climate conference reached a historic accord calling for mandatory cuts in emission of green-house gases by industrialised nations in the next millennium to help save the planet from potentially devastating global warming. Thus, this accord strengthened the 1992 convention climate change by setting binding limits on industrialised nation's emission of greenhouse gases.

United Nations Climate change conference 2005

The conference was held from 28 November to 10 December, 2005 in Montreal, Canada, in which most of the instituted countries are bound by specific and legally binding emission reduction targets following this convention on climate change.

Conference of Parties 26: Together for our Planet (2021)

- Recognizing the emergency- Countries reaffirmed the Paris Agreement goal of limiting the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit it to 1.5 °C.
- Accelerating action-Countries stressed the urgency of action "in this critical decade," when carbon dioxide emissions must be reduced by 45 per cent to reach net zero around mid-century.

- Moving away from fossil fuels- In perhaps the most contested decision in Glasgow, countries ultimately agreed to a provision calling for a phase-down of coal power and a phase-out of “inefficient” fossil fuel subsidies.
- Delivering on climate finance-Developed countries came to Glasgow falling short on their promise to deliver US\$100 billion a year for developing countries. Voicing “regret,” the Glasgow outcome reaffirms the pledge and urges developed countries to fully deliver on the US\$100 billion goal urgently.
- Stepping up support for adaptation- The Glasgow Pact calls for a doubling of finance to support developing countries in adapting to the impacts of climate change and building resilience.

VIII. INDIAN LAW AND SUSTAINABLE DEVELOPMENT

Industrialisation, urbanization, population explosion and poverty has been witnessed formidable scale of the environmental problems. To solve these environmental problems as an international commitment, a number of legislative and policy measures were adopted at all level. The multiplicity of environmental measures is further compounded to create various authorities to make effective implementation of all such measures. Although these regulatory agencies remarkably involved in framing and implementation of the measure, the various reports highlight the inadequacy in handling development and environmental issues. This has significantly raised a doubt that legal elements of SD are a part of environmental governance in India.

A country like India was confronted with a host of environmental problems when it took off to newer heights of industrial development in a planned way. The legal regime had to adjust itself to various kinds of demands of a socio-economic nature without damaging the existing resources. Accordingly, the growth of environmental law had to strike a balance between development and sustainable development. This is a phenomenon typical of a ‘rule of law’ society, where law becomes a dynamic instrument of change for a better environment.

IX. PROGRAMME AND POLICIES

- National Environment Awareness Campaign (hereafter, NEAC),1986- The need for a mass movement for protection of environment needs no emphasis. The concerns of the people for environment need to be harnessed into voluntary action. This requires a network of nodal agencies and grassroots level organisations. The NEAC was launched in mid-1986 with the Objective of creating environmental awareness at the national level. In this campaign, nominal financial assistance is provided to NGOs, schools, colleges, universities, research institutes, women and youth organisations, army units, government departments etc. from all over the country for promoting awareness and action-oriented activities.
- National Water Policy (hereafter, NWP), 1987 -Water development projects should be multi-purpose and should address various priorities such as drinking water provision and flood-mitigation. The plan sets a goal of a 20 per cent improvement in water use efficiency through pricing and other measures. Integrated water resources management is formed for conservation of water, minimizing wastage and ensuring its more equitable distribution both across and within States.
- National Environment Policy (hereafter, NEP) 2006- NEP, 2006 was a response to India’s commitment to a clean environment, mandated in the Indian Constitution in Articles 48A and 51A (g), strengthened by judicial interpretation of Article 21. It is recognized that maintaining a healthy environment is not the responsibility of the state alone, but also that of every citizen. Human beings are at the centre of concerns for sustainable development.
- National Action Plan on Climate Change (hereafter, NAPCC),2008- India launched NAPCC on June 30, 2008. It stresses that maintaining a high growth rate is essential for increasing living standards of the broad majority of people of India and reducing the impacts of climate change. It identifies measures that promote the objectives of sustainable development of India while also yielding to benefits for addressing climate change. NAPCC is co-ordinated by the Ministry of Environment and

Forests and implemented through the nodal Ministries and is aimed at advancing relevant actions in specific sectors/areas.

- National Ganga River Basin Authority, (NGRBA), 2009- The Central Government has given Ganga the Status of a National River and constituted NGRBA on February 20, 2009. NGRBA has been set up as an empowered planning, financing, monitoring and coordinating authority for the conservation of Ganga River with a holistic approach under the Environment (Protection) Act, 1986.
- Constitutional Environmentalism of India- In 1976 through the constitution 42nd Amendment Act, Environmental protection had been introduced in the constitution.
 - Directive Principles of State Policy -The constitution 42nd Amendment Act introduced Article 48-A⁹ to the directive principles. It deals specifically with protection and improvement of environment. In several environmental cases the courts have been guided by the language of Art. 48A¹⁰.
 - Fundamental Duties- Fundamental Duties was introduced in the constitution after 42nd Amendment Act, 1976 Part IVA. This was added on the recommendations of the Swarn Singh Committee, Article 51-A (g)¹¹ Deals with the fundamental duty specifically with respect to environment
 - Fundamental Rights- Fundamental rights and directive principles in Part III and Part IV of the Indian Constitution are supplementary and complementary to each other. Part III is the means to achieve the goals in Part IV. These rights in Part III can be enforced directly in the court of law. Article 21 of Indian Constitution.¹² It guarantees a fundamental right to life with dignity, livelihood, health and medical care, etc. There is a link between lives, health and environment, and without clean environment, one cannot be healthy. Without good health one's life is meaningless. Judiciary has done justification by interpreting right to live in healthy environment which is also *sanctum sanctorum* of Human Rights.

The essential ingredient of right to live in healthy environment is healthy existence and preservation of clean and healthy surroundings, stable ecological balance.

X. LEGISLATIVE FRAMEWORK OF INDIA

- Water (Prevention and Control of Pollution) Act, 1974- This Act provides for the prevention and control of water pollution, and for maintaining/restoring of wholesomeness of water in the country. If a proposed industrial unit is likely to discharge effluents into a stream, sewer, or on land, it is required to obtain a 'Consent to Establish' for discharge of effluents under this Act. The Act regulates water quality through the State Pollution Control Boards (hereafter, SPCBs). The Central Pollution Control Board (hereafter, CPCB), under the Ministry of Environment and Forests (hereafter, MoEF), has established a network of water quality monitoring stations across the country. The water quality monitoring network is being operated under a three-tier programme.
- Air (Prevention and Control of Pollution) Act, 1981- This Act was enacted in 1981 and amended in 1987 for the prevention, control and abatement of air pollution in India. The Act gives various functions for the CPCB and SPCBs at the state level.
- Biosphere Reserves Programme, 1986- Apart from the protected areas system mandated under the Wildlife (Protection) Act, 1972, certain areas have also been declared as biosphere reserves by the

⁹ Article 48-A of The Constitution of India provides that 'The state shall endeavour to protect and improve the environment and to safeguard the forest wildlife of the country'.

¹⁰ Virender Gaur v. State of Haryana 1995(4) SCC 571, 580, Indian Council for Enviro-Legal Action v. Union of India (Bichhri case) AIR 1996 SC 1446-9, M.C. Mehta v. Union of India AIR 1988 SC 1037; etc.

¹¹ Article 51-A (g) of The Constitution of India provides that 'It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures'.

¹² Article 21 of The Constitution of India provides that 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

Government of India. In the current situation, the selection of a biosphere reserve is based on considerations, which are generally ad hoc. In all instances, significant areas of biosphere reserves are managed either as sanctuaries or national park and as such all the applicable restrictions in such protected areas are operative.

- The National Environment Tribunal Act, 1995- A National Environment Tribunal was established for effective and expeditious dispersal of cases arising out of any accident, damages for strict liability with a view to giving relief and compensation for damages to persons, property and the environment and for matters incidental thereto or connected therewith.
- Energy Conservation Act, 2001- Energy conservation has emerged as major policy objective in India. Energy Conservation Act (hereafter, EGA), 2001, was passed by the Indian Parliament in September 2001. This Act requires large energy consumers to adhere to energy consumption norms, new buildings to follow the Energy Conservation Building Codes (hereafter, ECBCs) and appliances to meet energy performance standards and to display energy consumption labels. In other words, the Act provides a legal framework for energy efficiency initiatives in the country. It has mandatory and promotional initiatives which broadly relate to designated consumers', standards and labelling programme for equipment and appliances and ECBCs for new commercial buildings.
- National Green Tribunal Act (NGTA), 2010- NGT was officially notified on October 19, 2010. The tribunal is exclusively dedicated to environmental issues. Established by an Act of Parliament (National Green Tribunal Act, 2010), it will have circuit benches across the country to try all matters related to and arising out of environmental issues. The tribunal consists of one chairman and other members who are experts in the field of environmental and related sciences. It is empowered to issue directions for the compensation and restitution of damage caused from actions of environmental negligence. This is the first body of its kind that is required by its parent statute to apply the polluter pays principle and the principle of sustainable development.

XI. THE ROLE OF JUDICIARY

The judiciary plays a key role in progress of sustainable development in India. The judiciary is an essential partner in promoting environmental governance, uplifting the rule of law and in ensuring an equilibrium between environmental, social and developmental consideration through its judgements. One area of increasing importance, is the law concerning sustainable development. International, national, provincial and local law and policymaking bodies may have in circled principles of sustainable development. The judiciary is faced with the task of explaining the law of sustainable development, case by case. In performing that task, national judiciaries will be assisted by the exchange of judicial decisions, information and experience between jurisdictions (*Global judges symposium from 18-20 August 2002, members of the ... - eufje 2002*).

The judiciary is imperative partner of promoting environmental governance, advocate the rule of law and in establishing a fair balance between environmental, social and developmental consideration through its judgements and declarations (*UNEP Global Judges programme - united nations environment programme 2005*).

Some famous and impactful judgement delivered by the Indian Apex court are:

- Approaches to judicial reasoning in environmental matters and the importance of promoting public awareness and environmental education at secondary and tertiary levels (*MC Mehta v Union of India & Ors, Supreme Court of India*),¹³
- Forbidding limestone mining operations in the Himalayan hills, the Supreme Court of India took into account the interests of future generations in the unique legacy of the Himalayan ecosystem. (*Rural Litigation and Entitlement Kendra V. State Of U.P.*)¹⁴,

¹³Writ Petition Civil No 860 of 1991.

¹⁴AIR 1988 SC 2187.

- In this case the Supreme Court of India, held that though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose as a health hazard. (*Vellore Citizens Welfare Forum v Union of India*,)¹⁵.
- 'The Polluter Pays' principle has been held by the Supreme Court and the court also observed, 'We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'. The Court ruled that 'Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his irrespective activity without reasonable caring'. (*Indian Council for Enviro Legal Action v Union of India*,1996)¹⁶

XII. CONCLUSION

There is a significant progress in providing legal protection to the environment but there are several loopholes. The principle of SD must be recognized and emphasis on Environmental Impact Assessment is needed. India being a developing country should concentrate on the socio-economic development but it must be in co-ordination with environmental upgradation and this is possible only if the economic growth and progress are based on the concept of SD.

In the end, it can be said that developed country are not looking so interested to make world safe, their only focus to make their premises safe which can be seen this through their conduct. From Earth Summit, 1992 to COP26, world leaders have been delivering the same speech over and over again. Their statement and promises are so articulative but their aid to the developing countries is not in the same stated manner. Even today the developed country rarely would want to share the technology which will be helpful to maintain the SD of developing countries. So, if the worlds' so called great and powerful countries aim to have a safe environment, they will have to help developing countries without any greed.

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¹⁵AIR 1996 SC 2715.

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