

## SUSTAINABLE DEVELOPMENT AND INTERNATIONAL TRADE IN INDIAN CONTEXT

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### ABSTRACT

*The prominence of the concept of Sustainable Development is the preservation of assets both for the improvement of the present and future generations and the connection in the middle of trade and development with a surprising underscore on the protection of assets require more nitty `gritty clarification. The increasing speed of mechanical headway from one perspective, the Liberalization, Privatization and Globalization (LPG) on alternate has seen the monetary and developmental objectives at all level. Since, the majority of the legitimate components of the idea of Sustainable Development advanced and perceived just in Resolutions, Conventions and Declarations; there are not kidding question both with respect to the abidingness of the lawful components of the idea of Sustainable Development and in addition order for incorporating various lawful principles in deciding clash on environmental sustainability. In fact, the trade and environmental debates are not restricted with a particular subject that are mind boggling and multidimensional in nature. The privilege of individuals to uninhibitedly arrange their own characteristic assets must perceived as key components of financial freedom and also witnessed serious dangers to natives and their way of life desires additionally incited a feeling of apprehension as positive and negative consequences, domestically, nationally, regionally and internationally. This paper try to examine the enhancement of international trade of India with rest of world while keeping the set environmental standard goals and sustainability in view. Economic growth and development of any nation and region should not be at the cost of environment. Involving eco-friendly techniques of production, application of pigouvian taxes, conservation of resources etc are all in cognisance of sustainable developmental goals which India should maintain while framing any policy with regard to international trade.*

**KEYWORDS:** *International Trade, Sustainable Development, Foreign Policy, Pigouvian Tax, Economic Development*

**Received:** Mar 25, 2016; **Accepted:** Apr 12, 2016; **Published:** Apr 16, 2015; **Paper Id.:** JP SLIRJUN20161

### INTRODUCTION

The landmark conference convened by United Nations in 1992 in Rio de Janerio which set the tone and planned ambition for global policy on development and environment for the years to come. The results of earth summit, were reaffirmed in Johannesburg in 2002 at the World Summit on Sustainable Development. The global leaders reconvened in 2012 at the United Nations Conference on Sustainable development and reconsidered the progress since the two earlier meetings, assess remaining challenges, and reset the world on the path towards more sustainability of development along keeping green norms in to consideration. However for all the strategies and action plans generated, the global sustainable development policy community stands accused of failing to introduce the changes necessary to break the remorseless trends towards the increasing marginalization of the world's poor and the mounting degradation of the natural resource base. The representative of Pakistan probably spoke for many in the South at the April 2000 session of the UN Commission on Sustainable Development when he pointed out that developing countries couldn't stand in favour of sustainable development, which was viewed

through the prism of the mistrust, its social and economic aspects and equity concerns largely forgotten.

Sustainable development and international trade as two faces of same coin was recognised by both the Rio and Johannesburg conferences. Trade serves dual purposes. On the one hand it helps in enhancing efficiency in allocation of resources and on the other makes easy access to, rich and poor, to environmental goods, services and technologies. The fundamental ways with which world has changed over the last two decades and challenges both new and old, furthers the mutual supportiveness between sustainable development and trade remains vital. The sustainable development agenda led wide implications on multilateral trade arena. With the formation of World Trade Organisation (WTO) in 1995, sustainable development got much focus, with new agreements and wider coverage of trade policies and measures being adopted. The WTO offers a powerful supporting framework for sustainable development and a green economy. It provides an enabling environment through its objectives, institutions and monitoring of potential trade protectionism, enforcement mechanism, toolbox of rules, and growing case law in the environment area. WTO has properly identified the rules to achieve the balance between the legitimate goals such as protection of environment and bold mechanism for the enforcement of these rules. The rules ensured that such measures being devised shouldn't be applied arbitrarily. The sustainable development was the main objective of Doha round of negotiations which pitched for more open and free trade. These negotiations provided for greater access to environmental goods and services at cheaper cost. The recent agreements in Paris also signalled for realisation that our economic goals and ideals can't be achieved at the cost of our environmental assets. But countries are still in hovering around the idea that doing so will slow the pace of our economic growth.<sup>2</sup>

### **Sustainable Development and International Trade**

The consistency between the objectives of growth, development and environmental quality is a critical one in its field. However, the broad objective of GATT-WTO is to liberalise the multilateral trading system in balancing resource conservation by setting minimum environmental standards. No doubt, the international trading system concerns about environmental sustainability, that is truly sustainable. The UNCHE (United Nations conference on Human environment) in its various principles re-emphasize the mandate of conservation of resources for the betterment of present and future generations and recognized the environmental right as a human right. The relation between trade and environment can be attributed with the two different branches of international law viz., Environmental Law and Trade Law. Under the first branch, a number of environmental measures are embodied in the various MEAs, including the Regional Agreements and National laws and policies. The second branch, a majority of trade measures covers under the GATT, Regional and Bilateral Trade Agreements (BTAs). These Agreements constantly emphasize that contracting parties must structure their economic activities with the common goal to conserve resources.<sup>3</sup>

In the early 1980s, trade and developmental issues are received attention and the World Conservation Strategy (WCS) remarkably describes that conservation of resources is the chief tool for achieving environmental sustainability. However, the WCS is not defined the concept of Sustainable Development. For the first time, in 1987, the Brundtland Report defines the concept of Sustainable Development as to meet the needs of the present without compromising the ability of future to meet their own needs. Subsequently, the World Charter for Nature, Caring for the Earth, UNCED (United Nations conference on environment and development), WSSD (World Commission on Sustainable Development), and Rio+20 categorically reemphasises that conservation of resources. Conservation of resources for the benefit of present and future generation is one of the fastest growing fields at the international, regional and national levels. The central element of the concept of Sustainable Development is the present generation has no legal right to exploit the natural wealth of

nation and cause damage. The mandate of the Rio Declaration is not only at the time of economic development but also at the time of conflict. This concept helps in achieving social justice. Realising, environmental sustainability is the need of the hour; Unlike the UNCHE and the UNCED, the UNCED describes the need of policy framework on sets rules and principles. These principles have been designed to protect the global environment from the stand point of the principles and goals of free trade that have increased attention to the complementarities between development and the environment.

### **Research Problem**

With the development of international trade, the effective conservation of resources for sustainable development was recognised in the UNGA resolutions, convention, declarations, agreements and reports which are considered as soft law. These laws and rules are merely restricted to books and nations aren't serious to make these laws operational. Most of the legal elements of the concept of Sustainable Development are incorporated in various WTO covered agreements. At the WTO-GATT context, the trade restriction must not be disproportionate to the benefits arising from the protection of the value covered by the measure. The Agenda for environmental sustainability is more complex and many problems are intertwined. It is not clear and there are substantial controversies as to how best the trade and environmental measures must be accommodated within GATT. This can seriously raised a doubt regarding the legal status and bindingness of the concept of Sustainable Development.

The concept of sustainable development was categorically accepted by various arbitral tribunal, ICJ and various other constitutional courts as components of law. Environmental experts have also recognised the importance of various legal elements of sustainable development as means to ensure social justice. However, the WTO-DSB's decisions do not remarked that the concept of Sustainable Development is norm and fundamental governance of the states.

In fact, the above mentioned judicial decisions also revealed that there is no uniqueness and fundamental certainties amongst judicial institutions to resolve conflict of unilateral trade measures for achieving environmental sustainability and common appreciation on environmental objectives in international law itself. Whether the interpretation given by the WTO-DSB (dispute settlement body) is applicable only for trade concerns or even non trade concerns?. Similarly, the WTO's competency to decide the national unilateral measures when disputed parties are not contracting parties to either the WTO covered agreements of MEAs. The WTO-DSB does not stand alone in the governance of international trading system and international trade order. It is one of the many other agreements that deal with international trading system in one way or other, although the role played by the WTO is probably the most important among them.<sup>123</sup> Similarly, the question of how international law impacts domestic law when absence of explicit agreement. All these developments have raised a serious doubt whether the legal elements of the concept of Sustainable Development will have a binding force among states.

### **Objectives of Study**

This paper overall aims at shedding light on the link between International Trade and the Environment. Hence, any depletion of resources will make an impact to all human being without any border and boundaries. To find out the impact of the concept of Sustainable Development the objectives of the study are listed hereunder:

- To analyse various dimensions of the concept of Sustainable development
- To realize any environmental measure against the trade and development is a territorial application or extra territorial in nature

- To analyse the WTO-DSB is a competent body to settle the conflict between trade and environmental conflicts
- To examine the judicial decisions with reference to conservation of resources for preserving the interest of present and future generations

### **Research Methodology**

The research work is predominantly doctrinal in nature. Various research methods such as, Historical method, Analytical method, Evaluative method and Comparative method can be employed. Historical method is employed to trace out the origin, development and evolution of the concept of Sustainable Development. Analytical method is used to analyse and test the nature of the concept in present scenario with the collection of information through the relevant multilateral treaties, legislations, policy documents and judicial decisions of international and municipal courts, articles, newspapers, journals and internet. However for the sake of convince the researcher has applied the evaluative method in order to find out the effective implementation of the concept of Sustainable Development both at national and international level. Comparative method can also employed to study the present status of the concept of Sustainable Development both international and Indian perspective. In addition, to understand the judicial contribution of the concept of Sustainable Development, several national and international case laws are analysed.

### **Sustainable Development and International Trade in Indian Context**

In India industrialisation and urbanisation on one hand and population explosion and poverty had led to serious environmental problems. The quality of environment has been seriously degraded by the increasing quantum of pollutants into air which threatens the life support system of both present and future generations. In order to solve the environment problems, number of legislative policy measures were adopted at both national and international level. Various authorities were equipped with power to look into effective implementation of the measures. However these regulatory agencies couldn't deliver their promises as various reports highlighted their inadequacy in handling developmental and environmental issues. This led to serious fall back on the concept of sustainable development which couldn't tight its teeth against the mishandling of environmental governance. SDGs needs to get supersonic focus in order achieve environmental sustainability both for present and future generations mostly in India. The judiciary shouldn't put its legs off on trade development and environmental controversies in understanding the concept of sustainable development.

In India, deterioration of resources and environmental emergency is a direct result of destitution and populace blast as well as industrial advancement. Since the foundation of East India Company, to react to the colossal difficulties to the environment here are number of far reaching authoritative system and institutional components that were set up in expanded subjects like timberlands and wildlife. In any case, there is legislative provision that can entitle the remedy upon the person who has been affected by the environmental pollution. Environmental protection in pre constitution of India was without teeth and proper mechanism. Therefore not many restrictions were imposed for wrong doers who let their hands free to exploit the resources at the cost of environment. However after the establishment of constitution of India number of laws and legislations were framed. One of the important was forty second constitutional amendment act 1976 which provides the sound legislative machinery and institutional framework in order to deal with any environmental impasse.

While perceiving the centrality and responsibility of the UNCHE; in 1976, the 42nd Amendment to the Constitution introduced new Article 48-A in the Constitution under Part IV and Part IV A. Article 48 – A announces an obligation of the state to ensure protection of environment. Likewise, Article 51 (A) (g) additionally cast comparative

obligation of each citizen to secure and enhance the indigenous habitat. In this way, in late 1980s, to make a group and composed methodology the Parliament enacted environmental Protection Act. Insertion of Article 48-A and 51-A (g) portray that does not present upon citizen claim a privilege to clean environment. The premise of the amicable development depicts that environmental statutes are viewed as gainful enactment; it is the obligation of the court to embrace elucidation favouring biological conservation.

### **India and GATT-WTO**

From very inception of GATT-WTO India actively participated in multilateral trading system. While realising the commitment of GATT-WTO and the Rio Declaration as a protectionist policy; the government has launched the New Economic Policy of India. The liberalisation policy helps in a big way to accelerate investment across borders and makes the domestic enterprises more competitive.

However, there are conflicting perspectives on the liberalization strategy in India. From one perspective, a few economic experts contended that the multilateral exchanging framework and the noteworthy of liberalization strategies of India without causing any genuine damage to the environmental or tilting biological parity. On the other, the environmentalists contended that liberalization approach may intensify environmental issues and expand imbalances and involve a misfortune and disintegration of power.

Millennium Development Goals (MDGs) repeated that requirement for environmental security. Interestingly, national government can embrace any environmental measures against exchange without confining global exchange unless that is essential or unavoidable. Albeit, most the aforementioned measures are regularly restored as non-tariff barriers against trade and these measures may hinder trade with agriculture and food products. The vast majority of the trade and environmental measures are adopted by the WTO Member states in TBT(Technical Boundaries to Trade), SPS(Sanitary and phyto sanitary measure) and SCM(subsidies and countervailing measures) as for advancement or use of principles. Professor Chimni describes that developing nations ought to actively take in the WTO process whereby it is relied upon to entirely satisfy its commitments when all the powerful states can abstain from doing as such through the consolidation of novel interpretative plans or by utilizing the national security condition. In any case, the late Environmental Protection Approach (EPA) depicts that no measure will strife against with MFN standards of GATT.

The Ministry of Environment and Forest has adopted certain arrangements towards accomplishing Sustainable Development. The approach incorporates Development of Management Tools for forestalling environmental pollution, Indian Centre for Promotion of Cleaner Technologies (ICPC), National Environmental Action Plan for Control of Pollution, Environment Management System (EMS), Program for Mitigating Pollution and National Bio Diversity Strategy and Action Plan (NBSAP). India has additionally consoled its dedication towards UN Convention to Combat Desertification furthermore approved Convention on Biological Diversity and Kyoto Protocol on Convention on Climate Change. The representatives from India have actively taken an interest in the 22nd Special Session of the General Assembly furthermore at the Global Conference on Sustainable Development of Small Island Developing States in Barbados.

Adhering to the effective trade and environmental measures; **Abdul Haseeb Ansari** welcomed that economic reconciliation additionally changed environmental assurance from an obviously residential, exceedingly restricted issue into one of intrinsically worldwide extension. **Jagdish Bhagwati** astoundingly depicted that the GATT framework approve

the self-governance of national governments putting their economic policies inside of their ward. **Anand** remarks that attention on economic development and Economic advancement was demanded for the dissatisfaction with "pollution of poverty". The law guarantees that industrial advancement, does not give up environmental interests and polluting industries are made to pay as per the polluter pay principle.

In 2003, Cancun Declaration, Mr. Arun Jaitley has commented that we don't trust that all the Singapore issues are trade related. Other than the orders proposed here would require new approach to be taken in developing nations. Para 30 of the Hong Kong Ministerial Declaration portray that India's recommitment to Para. 31 of the Doha Declaration; and guaranteed that particular commitments that are set out in trade arrangements and multilateral agreements by the UNCTE. India additionally made recommendations for trade facilitation by exchange of technology and implementation. India being a unique Member States, adequately spoke to in the dispute settlement process. India documented more than 15 claims against various nations, including United States of America. There are more than 22 cases were recorded against India testing the environmental measures that are taken under Article XX of GATT. This commitment demonstrates a powerful representation in adopting measures to conserve resources with the strict compliance of both international trade law as well as international environmental law. Over past decades, Indian Exports have enlisted solid development over all the commodity categories, agriculture, Leather, Textile, Marine resources (Shrimp culture). Besides legislative measures both at national and domestic level, there is need of suitable institutional framework authorised with the effective laws to deal any environmental problem at first hand. These measures can enhance conservation of resources and helps in a big way to achieve environmental sustainability in India.

### **Research Findings**

Environment and international trade are related in the sense that a change in direction of trade may have environmental cost behind it. With the countries highly involving in international trade natural resources got highly involved. Over exploitation of these resources may be detrimental for ecological balance.

Various environmental legislations have positive impact both on trade and environment. Adaptation of environmental laws will on the one hand decrease the pollution and will enhance the trading capacity of countries on other hand. Imposition of Pigovian Taxes i.e. pollution tax may lead to Pareto Optimality in environmental canvas.

WTO-GATT structure provide a feasible solution of long standing paradox of environmental vs development. While committing to the WTO rules economic development is possible with minimal intervention with ecological balance.

Effective recognition of the concept of Sustainable Development at the repeated resolution remarkably proved that national governments‡ commitments towards achieving environmental sustainability both for present and future generations.

The application of the legal elements of the concept of Sustainable Development in checking the exploitation of resources in industry like Aquaculture, Leather, Mining and Textile is fruitful. The Role of Judiciary in contributing the growth of environment the various judicial decisions of Indian courts thoroughly examined with the help of principles and doctrines are effective.

### **CONCLUSIONS**

In the last decade of the twentieth century, international environmentalism gained momentum and the concept of



Sustainable Development is popular language and has rapidly become part of law locally, nationally, regionally and internationally. The formation of GATT-WTO for an open and liberalized international trading system is important instrument for economic development. The real mandate of the elements of the concept of Sustainable Development is to help in redefining the state's legal obligations towards effective environmental and developmental policies both for present and future generations. Although, trade and environmental measures what the present generations make today will determine their initial welfare of the future generations also. However, non availability of effective means of decision-making process not allowed the future generations representation in the decision-making processes today.

Hence representation must occur in a few distinctive manner: in the market place, in authoritative and legislative decision making, and in legal procedure. This requires the central privilege among generations accurately, so that the future generations have an equivalent benefit with the present generations to utilize natural environment. When we consider this qualification of uniformity among generations, economic instruments can be developed to accomplish intergenerational equity effectively.

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