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Judicial Approach Towards Environmental Sustainability for Youth in India: An Analysis

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Abstract

Environmental sustainability has been the issue for a number of decades at the global and national level. A lot of efforts have been made at the various level Governments in the world. The Indian Government, especially Indian judicial organ has also contributed a lot in this direction. In fact, in India, environmental law is basically emerged out of provisions of the Constitution i.e., fundamental right to live in pollution free environment, directive principles and fundamental duties under Article 21, Article 48-A and Article 51-A (g) respectively. However, still the pollution has been increasing with great pace. The objective of the paper is to emphasize upon the efforts made by the judiciary and to be made by the general public especially youth in India as it is only the youth who is going to suffer in future due to the environmental unsustainability. In order to achieve this objective, various statutory enactments at the global and national level along with landmark judgements and contributory work of the eminent jurists have been analyzed deeply. Finally, it has been concluded that without the participation of the youth in this direction, this menace is very difficult to be curbed. The Government need to support the youth by creating awareness amongst the youth along with properly monitoring the implementation of the legal statutory provisions for the wholesome realization of the human right to environmental sustainability.



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Keywords: Awareness, Contribution, Environmental sustainability, Judicial Approach, Youth.

Introduction

"We cannot always build the future for the youth, but we can build the youth for the future"

-Franklin D. Roosevelt T, Former President of United States

The world as it is known today is an unsustainable place. The globe has been thrown into a sliding twirl by the pollution. Saving this Mother Earth is now of paramount concern to the whole humanity particularly the young generation. In the preservation of the environment and its judicious management for the 'sustainable development', especially the young children have the utmost stake because their survival and growth depend upon it. Thus, the crying need of the hour is the "sustainable development" as different dimensions of the problem of the environment protection and its management has taken a serious twist. "Sustainable development" development which meets the needs of the present without compromising the ability of the future generations to meet their needs.

Youth have both special concerns and special responsibilities in relation to the environment. Because in the present age, a number of environmental risks and hazards excessively affect young people, who have to live for an extended period with the worsening environment handed down to them by earlier generations due to the adoption of the methods of urbanization, modernization, economic and technological development by them thereby emphasizing the need for India's youth to focus on driving the country's transition to a more environmentally friendly India. Mother India, a young nation, has 250 crore arms and 200 crores of those arms are younger than 35. It's the dire need to tackle the huge challenges by promoting the rights and aspirations and increasing the participation of youth in decision-making. In addition to educating themselves to lead the climate friendly changes that India needs, the young people need to play an important role on social media and on the ground in the climate change activism. As it is true that the dream of a 'Green Prosperous India' relies heavily on its empowered youth who are responsible social



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actors with the focus on "education for sustainability and not about sustainability."

Statement of Problem

The initiative at the global and national level have been proved to be a failure. Despite of huge contribution made by the Indian Government especially judiciary in curbing the problem of environmental pollution in India, pollution has been on the rise. The reason being the un-awareness among the general public regarding its bad consequences. A relevant education has not been given to the general mass focusing upon the youth in this regard and they do not have enough awareness to know and understand the problem. Only a youngsters have come forward to bring the solution but they are only few and can be counted on fingers. The need of the hour is to make the youth active part of the policy making and implementation mechanism for achieving the target of environmental sustainability as youth is going to be the lone sufferer in future and secondly, youth always come with more innovative techniques and creativity.

Objectives of the Study

This paper aims at analysing the legal provisions, policies and mechanism and their implementation apparatus at the global and national level regarding environmental sustainability.

- Its objective is to focus upon the judicial approach and its contribution towards achieving the environmental sustainability in India.
- It also has motive to emphasize upon the role and participation of youth in order to get the redressal of the problem of environmental un-sustainability and finally to suggest the measures to make the youth active part of the structure to get rid of this menace.

Research Methodology

In order to achieve the target of environmental sustainability, legal statutory provisions at the global and national level have been focused. Additionally, various reports of international committees, landmark judgements pronounced by the Indian judiciary from time to time for giving the solution of this grievous issue along with the work of eminence of the renowned jurists have been analyzed to get rid of this menace which has been the cause of the pandemic i.e., Covid 19 in the world at large.

Discussion and Findings



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Until now issues concerning climate and protection of the environment have come to engage the attention of the policy-makers in the civilized world, in the international bodies as well as at the national level Governments. In the area of International Environmental Law. Trail Smelter Arbitration is the father of developments.¹ Moreover, 1933 London Convention related to the Preservation of Fauna and Flora in their natural state as well as 1951 Rome International Plant Protection Convention was ratified by India. The United Nations Declaration on Human Rights, 1945 provides that Economic, Social and Cultural Rights include the Right to Health including healthy living conditions. United Nations Conferences on the Human Environment at Stockholm in June 1972 and Rio Conference in 1992 were held. These two international declarations (Stockholm and Rio) constitute the Magna Carta of the Human right relating Environment and the Gangotri of universally valid and just environmental world order.² There have been a number of other important international conferences and declarations on the specific problems of environment from time to time, like: Second United Nations Conference on Human

Settlements (HABITAY—II) 1996, Nairobi Declaration, Vienna Convention for the protection of Ozone Layer 1985, Basel Convention on the control of Trans-boundary Movements of Hazardous Wastes and their Disposal 1989, United Nations Conference on Environment and Development (UNCED) known as Earth Summit 1992, Climate Change Convention 1992, Convention on Biological Diversity 1992 etc. The "World Summit on Sustainable Development" at Johannesburg in August/September, 2002 and the adoption of "Delhi Declaration on Climate Change and Sustainable Development" in the Eighth Conference of Parties to the United Nations Framework Convention on Climate Change in October, 2002 are some of the important developments.

Regarding initiatives at the global level particularly about youth concern, there were the child survival and development goals proposed for the 1990s, seeking to improve the environment through skirmishing disease and malnutrition and promoting education. Obviously, the programs designed for reaching the child-related goals of the 1990s were extremely consistent with and compassionate to environment protection. Under Agenda 21 adopted the 1992 United **Nations** at



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Conference on Environment Development, in Chapter 25 there was a declaration regarding the important role to be played by the young people in attaining environmental sustainability. For sustainable development, Agenda 21 recognizes broad participation as an elementary principle in implementation for sustainable development and in turn recognizes the specific roles and responsibilities of nine civil society major groups, one of which is "Youth". 3 The important contribution of the youth was again delineated in the Johannesburg Platform for Implementation adopted at the World Summit on Sustainable Development (WSSD) 2000. 4 Similarly, protecting the integrity of the environment is among the most important of the Millennium Development Goals (MDGs), particularly youth. At the Commission for Sustainable Development, the youth caucus or Major Group of young people has a seat on the floor with the delegates that makes interventions where they share the performances and priorities of youth functioning at the grassroots level. Besides youth advisory groups are a more formal example of youth working with United **Nations** Youth agencies along with

Advisory Council supporting United Nations Environment Program in increasing environmental awareness and acting as ambassadors for the environment conscience of young people worldwide.⁵

At the national level, India has been active in the admission of its commitments to the environment protection after ratifying treaties according to the general principles of International Law while incorporating them into its national laws. The basic environmental imperative had been realized by the ancient India sages too. The close relationship between nature and the mankind, has been recognized by the Sikh religion also.⁶ On the same reasoning the ancient Greeks revered the Earth as Gaia, the Earth Goddess. The most important and noteworthy development of this period is that to protect the environment each individual knew his duty and he also tried his best to act accordingly.⁷

For about two centuries, India had been under the colonial rule and even prior to that no attention of any sort of environmental concerns was paid by minor kingdoms. The concern of the post-independence India was with the equity and growth and the environment concern was only added as a third



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dimension. It is not that in India to protect the environment from the pollution there were no laws earlier. There have been various statutory provisions, specific legislations and application of Common Law Principles for the same purpose. However, in the history of environment management in India, the 1972 Stockholm Conference marked a watershed which resulted in the codification of environment law. Accordingly, the ideals and principles of environment protection were incorporated by them in Directive Principles of State Policy and Fundamental Duties by way of Forty Second Amendment in 1976 in the Constitution of India. Adding to this, there is a large number of laws relating to environment, enacted over the last few decades. 8 However, the Constitution of India, 1950, did not include any specific provision relating to conservation of nature at the time of its inception. It was only the past six decades, which have witnessed two major developments in this connection. The first development took place when the Constitution (Forty-second Amendment) Act, 1976, was adopted in the mid-seventies inserting two new Articles in the Constitution of India: Article 48-A and

Article 51-A (g) providing specific provisions especially for the protection of the forests and wildlife in the country were incorporated in Part IV- Directive Principles of the State Policy and Fundamental Duties respectively – in addition to inserting Article 246 in List III – The Concurrent List – of the Seventh Schedule of the Constitution. Thus, The Constitution of India puts on the "State" as well as on the "citizens" 10 a duty for protecting and improving the environment.

Although the Constitution of India is a product of pre-Environmental era, yet right to environment was weaved 11 into Article 21. And the fundamental right to a wholesome environment is now expressly guaranteed by the Constitution of India under Article 21. In this way, the second major development in India which has been the jurisprudence arising from certain remarkable **judicial** pronouncements in recent few decades, is connected especially with Article 21 of the Constitution dealing with 'the Right to Life'. Thus, Parliament has enacted various laws to deal with the problems of environmental degradation. In such a situation, the superior courts have played a pivotal role in interpreting those laws to suit the doctrine of ' Sustainable Development'.



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In Maneka Gandhi v. Union of India,¹² a liberal view of the scope of Article 21 opened the way for the incorporation, with in the protection of Article 21 of the Constitution, of the right to a wholesome environment and in the case of Municipal Council Ratlam v. Vardhi Chand,¹³ the efforts at the environmental protection were emboldened.

Then in Rural Litigation and Entitlement Kendra v. State of U.P. ¹⁴, environment protection as a Constitutional mandate was asserted ¹⁵ by the Apex Court. In M.C. Mehta v. Union of India, ¹⁶ compensation was allowed by the Supreme Court in the case of violation of the right of environment. In M.C. Mehta v. Union of India & Others ¹⁷ (the Oleum Gas Leak case), the Supreme Court established a new concept of managerial liability – 'absolute and non-delegable'. The same kind of approach was reflected in Sachidanand Panday v. State of West Bengal ¹⁸ and in Shanti Star Builders v. Narayan Totame. ¹⁹

However, in the case of **Subhash Kumar v. State of Bihar,**²⁰ for the first time it was declared by the Court that the right to clean water and air was included in right to life

under Article 21 and the rule of the locus standi was also enlarged. In Rajiv Ranjan Singh v. State of Bihar, ²¹ there was a decision given by the Patna High Court regarding award of the the compensation to the victim. In T.N. Godavarman Thirumulpad v. Union of India,²² the right of enjoyment of the healthy environment was again guaranteed under Article 21. In M. C. Mehta v. Kamal Nath,²³ the Public Trust Doctrine was evolved.

Thus, the most important achievement in modern law by the Apex Court of India is the constitutionalizing the environmental problems. The adoption of the right to sustainable development has also been the most significant contribution of the Supreme Court. This right for the first time appeared in the International Union for Conservation of Nature and Natural Resources (IUCN) Report of 1980 regarding World Conservation strategy. It was then picked up by the Report of the World Commission on Environment and Development in 1987, by the name of the Brundtland Report. 900 days of deliberation was contributed by an international group of politician, civil servants and experts on the environment to get this report.²⁴ This led to the creation of an International Sustainable



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Development Commission. In 1991, the World Conservation Union, United Nations Environment Programme and World-Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living.

The first case involving claims to the sustainable development was the Bichhri Village case. In Indian Council for Enviro-Legal Action, etc. v. Union of India and Others, ²⁵ a landmark and revolutionary judgment, the Central Government was directed by the Court on the bases of the polluter pays principle to determine the amount required for the purpose of remedial measures and then to recover the amount from the chemical industries responsible for the pollution in the said (Bichhri) village and the decision of Supreme Court in M.C. Mehta v. Union of India (Oleum Gas Leak case)²⁶ regarding absolute liability for the pollution by hazardous industries was reaffirmed.

The case involving the same kind of problem is **Vellore Citizens Welfare Forum v. Union of India.** 27 **'Precautionary Principle'** and **'Polluter**

Pays Principle' has been accepted as a part of the law of the country in this case.²⁸

Then, in **Union Carbide Corporation v. Union of India,**²⁹ it was held by the Court that the person who was carrying on hazardous or inherently dangerous activity was liable for making good the loss caused by his activity to any other person.

In **A.P. Pollution Control Board v. M.V. Nayadu,**³⁰ The judge went on referring to the Rio Conference and Earth Summit Meeting of 1997 by which this principle of sustainable development was reflected.

The above stated cases clearly indicate the willingness of the Apex Court for adopting the principle of sustainable development as a basic principle of the environment law in India for the purpose of protecting the young generation from the disastrous effects of the pollution. This basic principle also received its maximum acceptability in M. C. Mehta v. Union of India.³¹ In this case, the Supreme Court ordered that all buses in the city of Delhi were required to be converted to Compressed Natural Gas (CNG).³²Further, in the case of M.C. Mehta v. Union of India and Others,³³ again both the essential features i.e.,



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precautionary principle and the polluter pays principle were reaffirmed. Correspondingly, the principle of inter-generational equity which emphasizes that development should meet the current generation's needs without depleting non-renewable resources and depriving future generations of their benefits, was supported by the Supreme Court, in the case of Bombay Dveing & Mfg. Co. Ltd. vs. Bombay Environmental **Action Group**, ³⁴ ensuring that present generations do not exploit resources to the detriment of future generations. In another case of Intellectual forum, Tirupathi v. State of Andhra Pradesh,³⁵ the public trust doctrine and the principle of intergenerational equity were held to be the integral part of the principle of the sustainable development.

After that, in the case of **Ankur Gutka v. Indian Asthama Care Society & Others,**³⁶
the interim direction ordering a ban on the sale of tobacco, gutka and pan masala in the plastic pouches from March 2011 was given.
The judiciary issued guidelines in certain cases to prevent and remedy ecological balance including the directions to close certain industrial establishments like, a

direction to close 168 pollution causing industries in Delhi.³⁷

The Apex Court has also laid down guidelines calling upon the Central Government to appoint a 'National Regulator' under Section 3(3) of the Environment (Protection) Act, 1986.³⁸ In view of the various decisions of the Apex Court and United Nations Conferences, the Government of India with an intention to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding constitution of Green Tribunal as well as liability and compensation for the victims of pollution and other environmental damage enacted two legislations namely National Tribunal Act 2010 and Civil Liability for Nuclear Damage Act, 2010.

Then, in the case of **Pandalaneni Srimannarayan & Another v. State of Andhra Pradesh & Others** ³⁹ the Registrar was directed by the National Green Tribunal to communicate the order of not to carry out any operations of clearing of the land falling in the project area without obtaining environmental clearance to the project in question.

Similarly, in the case of Nagri Hakka Sangharsha Samiti & Another v. Mira



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Bhayander M. C. & Others, ⁴⁰ the Committee of Principal Scientific Officer, Joint Director (Water Pollution), Regional Officer (Head Office), MPCB was directed by National Green Tribunal, Western Zone Bench Pune to visit the MSW dumping site in question at Pali, Uttan, and inspect the site for making recommendations for handling the Municipal Solid Waste in scientific manner.

In **Gaurav Bansal v. Union of India**,⁴¹ the NGT directed State Governments to submit their climate action plans in consonance with NAPCC and obtain approval from the Environment and Climate Change Ministry. The tribunal also expressed its willingness to entertain specific cases regarding violation of the NAPCC, its impact, or consequences.

Climate consciousness is also evidenced in forest-related cases. In Court on its own motion v. State of Himachal Pradesh, ⁴³ the NGT contextualized the illegal felling of trees and its adverse contribution to deforestation including the destruction of carbon sinks, animal habitats and medicinal plants; global warming; and soil erosion. By highlighting the severity of climate change

impact, the tribunal engaged with deep and complex inter-dependent sustainability domains.

In the case of **Rajiv Dutta v. Union of India**,⁴⁴ also the NGT observed the emissions from forest fires contributing to climate change by increasing concentrations of greenhouse gases and changing the earth's albedo by depositing more light-absorbing particles such as black carbon.⁴⁵

In this way, an emerging trend in Indian decisions reflects the spirit of climate consciousness. For example, in Ajay Khera v. Container Corporation of India, 46 the NGT employed the concept of carrying capacity as a yard- stick of sustainability to raise climate consciousness. The tribunal through the sustainable development vision held that "the consciousness meaningful requires commitment by devising measures in climate capacity to restrict overuse of natural resources on reaching optimum capacity. The concept of carrying capacity, originally developed by ecologists, means the maximum number or density of individuals of a population that a specific area can sustainably support. It is an essential 'tool for sustainable development of human settlements especially



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in the face of the serious environmental degradation of air, water, and land ... a threshold level of anthropo-pressure, which the environment is able to balance and withstand without irreversible changes and serious degradation."⁴⁷

In Hanuman Laxman **Aroskar v. Union of India**,⁴⁸ Chandrachud J. stated that Article 14 of the Constitution of India guaranteed action against arbitrary decision-making and an affirmative duty of fair treatment.⁴⁹ This ensures not only upholding environmental rule of law through effective, accountable, and transparent institutions but also promotes the advancement of SDGs and transformative change. This is the first Indian case to formally recognise and explain sustainability transformations.⁵⁰

Similarly, in **Nuggehalli Jayasimha v. Government of Delhi,**⁵¹ the NGT examined the climatic impact of the dairy livestock. Referring to a 2018 study, the NGT observed Indian livestock emitting of 15.3 million tonnes of methane in 2012 and had the potential to increase surface temperatures up to 0.69 mk over a period of 20 years. Accordingly, the NGT directed the Central Pollution Control Board (CPCB)

to develop an evidence-based, livestockmethane inventory for dairies throughout India and lay down sustainability indicators as guidelines for the management and monitoring of livestock farming.

Promoting non-coal fuel sources also reflects climate futurity. For example, the NGT in **Utkarsh Panwar v. CPCB** (brick kiln industries), ⁵² directed exploring and employing cleaner fuels including piped natural gas (PNG), compressed natural gas, biogas, propane, butane and others that help in reducing carbon dioxide emissions.

In this way, the Indian judiciary through a step-change or a small win process underpinned by the environmental rule of law contributes towards an evolving climate change transformation. For example, Justice Chandrachud in an illuminating 2021 Supreme Court judgement states 'environmental rule of law seeks to create essential tools conceptual, procedural and institutional to bring structure the discourse to on environmental protection (including climate change). It does so to enhance our understanding of environmental challenges of how they have been shaped by humanity's interface with nature in the past, how they



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continue to be affected by its engagement with nature in the present and the prospects for the future, if the course of destruction is to be altered radically which humanity's actions have charted'.⁵³

In this way, India with the help of its active and efficient judicial organ, has taken on a leading role as an aspiring change-maker in tackling climate change and in framing developmental schemes that are aligned with the Sustainable Development Goals which were adopted in September 2015 which encompass social, environmental and social dimensions of development, including ending all forms of poverty.

On the other hand, on Governmental side, on October 7, 2015, there has also been a draft Environment Laws (Amendment) Bill, 2015 proposing amendment in Environment (Protection) Act, 1986 and National Green Tribunal Act, 2010 with the objective of providing for an effective deterrent penal provision and introducing the concept of monetary penalty for violation and contraventions formulated. Additionally, in February 2018, a national workshop on capacity development was held with the intent of localizing the sustainable

development goals. In August 2018, a government and business partnership conclave aimed to sensitize private businesses and industries about sustainable development goals, and to analyze their programme strategies in accordance with these goals. The NITI Aayog – a policy think-tank by the Government of India focused on sustainable development goals — released the SDG India Index — Baseline Report 2018 in December 2018, to track the progress made by all the States Union Territories on interventions and schemes initiated by the Central Government. Environmental practices Swachh Bharat like; Abhiyan, Green Initiatives like "Each one, plant one", environmental Camps such as CLEAN-India, Namami Ganga Plan, and Ganga River Basin Management Plan, and vouth forums like Youth ki Awaz aim to reduce consumption and eliminate waste. Organizing events and inter-collegiate competitions with posters, slogans, and informative skits and promotion of such events in social media and Raahgiri with the observation of Earth Day and Environment Day engaged the society. "Each One Teach One" program where each student imparts Disaster preparedness and ecofriendly strategies to mitigate climate change



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to at least one individual of the society. Thus, to this end, efforts have been made to involve all stakeholders from the public and private sectors in framing effective policies, implementation strategies and best practices.

As far as the contribution of youth is concerned, at the international level, Global organizations like the United Nations believe that youth are the driving force for social progress and have the ability to progress the sustainable development goals towards a sustainable future for everyone on the planet. In 2018, the Asian Development Bank and Plan International, UK conducted research titled 'What's the evidence? Sustainable Youth Engagement and Development Goals' that revealed that young people are already working towards achieving sustainable development goals. The report said that designing programs with young leadership had a huge positive impact the project outcomes and beneficiaries. It also stated that keeping such a large world youth population out of development wasn't a sensible idea and instead ways to seize the opportunity of making young people and their group work towards achieving sustainable development goals by 2030. The United Nations has also actively advocated to incorporate methods and approaches that are welcoming of young people's diversity in all forms.

Notably, in India, a lot of steps have been remarkably taken by youth in this direction. Youth activism bolstered by broader connectivity and social media, exposure to technology and instant communication has made the world a global village. In 2019, the movement 'Fridays for Future' was initiated by Youth Activist, Greta Thunberg. Indian students were quick to follow in her footsteps began calling for and change environmental practices from business and Governmental authorities. Young people like Vedant Modak are putting their energies in clean energy but green energy startups lack financial support. India has the energy of the youth on its side as there is fight against climate change, but the leaders need to make policy changes to support the youth to secure a greener, healthier India.

Conclusion and Suggestions

Finally, it is absolutely correct to say that protecting the integrity of the environment is a vital issue in promoting the human health, and



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life, basic human rights and creating sustainable development keeping into view youth concerns at the global and national level. Evidently, a lot of efforts have been taken at international level as well as at the national level by the Indian Government with the involvement of youth (but only few) and the judiciary in the nation from time to time in protecting the environment and ecology, forest, wild life, etc. for sustainable development especially for the youth, however it is a paradox that the pollution rate has crossed the dead line. This is probably due to the lack of environmental concerns; slack and inadequate enforcement of laws and legislations due to lack of proper mechanism and indifference of the executive as well as politicians; the lack of informed citizenry particularly the youth; lack of sufficient power and sufficient funds to the Ministry of Environment and Forestry; shortage of sufficient number of qualified and trained staff in the Ministry and its subordinate; complicated, vague and lengthy law as well as procedures for the approvals and authorizations of the Pollution Control Boards which contribute to the still grim condition. Thus, there is need to have an integrated, comprehensive, rationalized and

simplified law on environmental more protection adopting the principle of sustainable development for its meaningful enforcement. Additionally, the measures like: playing continuous vigorous role of a watch-dog agency by judiciary; establishing Green Tribunals at State and district levels on need based principle; confining provisions to single appeal; appointing qualified and trained staff; vesting Ministry of Environment and Forestry with sufficient power and funds to help it to implement the laws of environmental protection; making young people aware through media about the various ill-effects of the environmental pollution and finally making them (youth) participate in the decision-making process at the various stages of a plan or a project affecting our environment ranging from grass roots activism to policy-making bodies of the Government as well as Non-Government bodies. Apart from it, the youngsters need to be trained in sustainable ways of living through vocational workshops that would empower them to fulfill their requirements without being callous to the environment. As one of the youngest countries in the world, our youth must also be empowered to create business solutions that are not detrimental to the environment and



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aligned with Government initiatives such as Skill India and Make in India. These kinds of initiatives, if taken can help a lot in curbing this menace and thereby in bringing sustainable development.

Conclusively, it is appropriate to say that while India is already making rapid strides **References**

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in the area of sustainability, there is an urgent need to engage the nation's youth at large in enabling the Government to meet the sustainable development goals at the national and international level. The Government needs to support young people in their fight for the environment and a better tomorrow.

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