

# Sustainability agenda 2030: maintaining a balance between goal no: 9 and goal no 15 in the real estate sector

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## Abstract

**Background/Objectives:** To identify the balance between Goal No. 9 which is the Right to infrastructural development and Goal No. 15 which is the Right to Clean and Healthy Environment in light of the Real Estate Regulation and Development Act.

**Methods/Statistical analysis:** The method that has been adopted as a part of the analysis includes secondary research and legal analysis with the means of various governmental reports, UN reports and official reports of NGO's.

**Findings:** There are two-fold findings that can be recorded from the abovementioned analysis:

Firstly, according to data collected there has been a decline in gross value (as per the report given by the Research and Information Systems of Developing Countries) negating the objective given under a Goal No. 9. With rapid deforestation rates, there is a legitimate cause with reference to the applicability of protection being successful under Goal No. 15.

Secondly, according to the research conducted there seems to be also an indication of anomaly in the interpretation of the legal provisions of Real Estate (Regulation and Development Act, 2016 (herein referred to as 'RERA Act').

**Improvements/Applications:** The improvements suggested include the interpretation to ambiguities be carried out keeping in mind the interests of the homebuyers. Secondly creation of an efficient policy making mechanism involving relevant stakeholders and judicial impact assessment through the means of pre-legislative consultation.

**Keywords:** Goal No.9- Sustainable Development Goals, Goal No. 15- Sustainable Development Goals, deforestation, infrastructural development, RERA 2016.

## 1. Introduction

The idea of sustainable development Goal No 9 is to promote the infrastructural development within every country. Infrastructure is a concept that plays a vital role in the development of the country and effective infrastructure in the world of real estate is not just the creation of effective real estate projects. It is beyond that scope and the idea indicates the need to provide affordable housing with increased employment rates. While that may be the idea behind sustainable development Goal no.9, Goal no.15 proposes the concept of the existence of a healthy environment.

Now, this is a paradox because in India the idea of development requires deforestation in order to build more landscape. Thus, in the Indian context the question arises with reference to whether the idea can be applicable and if applicable to what extent? Furthermore, the various judgments provided by the courts and the concept proposed by UN are giving an idea with reference to the concept of development and the manner it should play out in the Indian context. This further requires an effective interpretation and implementation.

## 2. Materials and Methods

The major research questions that can be identified are the extent of the applicability of the Act in the Goal No 9 and Goal No 15. The major questions include:

1. Is the current perspective of law on infrastructural development in India sufficient in ensuring a balance between the Right to development and the Right to a healthy environment?
2. Does the Real Estate (Regulation and Development) Act, 2016 enable the achievement of balance between the two rights?

The methodology adopted has been the use of various sources that include government reports and case laws that deal with this particular issue. The idea has been to go through each of the judgments and their open ended views on the Rights in Sustainable Development Goals. Further post the evaluation it has been aimed at the study of the Real Estate (Regulation and Development) Act, 2016. The main research has been of secondary nature with the objective of being able to determine as to the real idea behind each and every concept that has been proposed by the Legal community and the legislator.

## 3. Results and Discussion

### 1. Right to development in the Indian context: an international perspective

Development in Real Estate (Regulation and Development) Act, 2016 [1] has been defined as “development” with its grammatical and cognate expressions, means of carrying out the development of immovable property, engineering or other operations in, on, over, or under the land or the making of any material change in any immovable party or land and includes re-development. The development work has been defined into two categories i.e. external development work and internal development work on immovable property. The scope of external development work includes roads and road system landscaping, water supply, sewage and drainage system, electricity, solid waste management and any other work which may be required to be done for the benefit of the project. This is analogous to the Right to infrastructure that has been suggested as a part of the Sustainable Development Goals which are duties that a State must fulfill for every country by 2030. The meaning of resilient infrastructure is that the infrastructure which is flexible and adaptive to changes. Developments include activities such as design, construction and operation, maintenance or renovation or up gradation of such infrastructural facility. The implementation of the idea of development is very difficult in India as a concept mainly because of the problem of financing of the infrastructure due to the high degree of financial risk [2]. As was given in the World Economic Forum’s Global Competitiveness Report 2015-16; India’s overall infrastructure ranking was 81 out of 140 Economies. India also seems to be lagging behind in the BRICS countries in overall infrastructure. This indicates a problem that has evolved and left the investment market dull. A dull market works contrary to objectives of Real Estate development.

### 2. Right to environment in the Indian context: an international perspective

The interpretation was also created through the Sustainable Development Goals, Goal No. 15 which proposed the end of desertification and deforestation as was considered and it promoted the protection, restoration and promotion of the use of terrestrial ecosystem, sustainably manage forests and reverse land degradation and biodiversity loss [3]. At present India’s achievement on this front is heavily questionable.

India is a signatory for the following conventions with reference to the environment as a MEA. There are 20 major multilateral global MEAs [4], to which India is a signatory. These are listed below:

#### 1. Nature conservation

1. Ramsar Convention on Wetlands
2. CITES (Convention on International Trade in Endangered Species of Fauna and Flora)
3. TRAFFIC (The Wildlife Trade Monitoring Network)
4. CMS (Convention on the Conservation of Migratory Species)
5. CAWT (Coalition against Wildlife Trafficking)

6. CBD (Convention on Biological Diversity)
7. ITTC (International Tropical Timber Organization)
8. UNFF (United Nations Forum on Forests)
9. IUCN (International Union for Conservation of Nature and Natural Resources)
10. GTF (Global Tiger Forum)

## **2. Hazardous material**

1. Cartagena Protocol on Bio safety
2. SAICM (Strategic Approach to International Chemicals Management)
3. Stockholm Convention on Persistent Organic Pollutants (POPs)
4. Basel Convention on the Control of Trans-boundary Movement of Hazardous Waste and Their Disposal.
5. Rotterdam Convention on Prior Informed Consent (PIC) for certain Hazardous Chemicals and Pesticides in International Trade.

India has an existing network of 700 protected areas (ENVIS Centre on Wildlife & Protected Areas, 2015) [5]. India has a small number of protected areas and therefore the percentage of protected areas hardly amounts to only 5.06%. Thus, India needs to expand its protected areas network and almost quadruple the area covered under the network. It is indicative that in this particular instance that there is a need for India to grow in the direction of protection of environment of its own accord. In spite of being a signatory to such a list of International Environment Conventions India has failed in its fundamentality to protect the functions of the environment. It is heavily shocking to see what the data says vis-à-vis the idea of the extent to which the environment laws are actually being applied. The Reports that has been quoted above is indicating that barely any amount of protected areas exist within this country. This Report has also highlighted the need to bring to the light the fact that the laws of environment need some fine tuning with reference to the financials that are applied.

## **3. Balance between environment protection and development under Indian law**

In the international sphere, The General Assembly has reaffirmed UNOPS role as a central resource in the United Nations system for physical infrastructure development. It is the commitment of UNOPS to ensure that the designing and the implementation of projects that involve infrastructure are of not such a nature resulting which there is an adverse effect on the burden faced by poor and vulnerable individuals or create destruction of environment. These activities need to ensure opportunities for the recognition and enhancement of human rights and fundamental freedoms following the protection of the environment.

In the Indian sphere the case of Citizens of Bundi vs. Municipal Board Bundi [6], the Rajasthan High Court observed that the safeguards contained in constitutional mandates of Articles 47, 48A, 51, 51A (g) could not be undermined and weakened for commercial benefits. The court in legally interpreting the idea has been giving various ideas that are made to ensure environmental protection from the occurrence of disasters. It is furthermore the most applicable in the scenario to point out that the State has ensured legislations have been passed with reference to industries abusing the power and leading to the death of innocent people. Further it also includes the protection of the environment that needs to be considered. In the case of Rural Litigation and Entitlement Kendra Dehradun V/s State of Uttar Pradesh (AIR 1988 SC 2187)[7], the Supreme Court recognized the right to a clean environment as a part of the Right to Life but in an indirect fashion. In this case, the court said that the economic hardship caused to the lessees of a quarry was outweighed by the necessity to protect and safeguard the right of the people to live in a healthy environment. It is clear that every industrial disaster will definitely cause damage to environment. It will also affect human lives, cattle, agricultural land as well as other sources of livelihood. Thus, industrial disasters will always pose a serious threat to the right to life. In [8] there was a clear recognition by the Court indicative of the need to be able to create a balance between development through natural resources and the protection of ecological health and environment. It even pointed out that the idea of the lack of achievement in this particular arena will create an unconstitutional situation.

#### 4. Impact of real estate regulation and development act on the balance between environment protection and development under Indian law

As per the bare text of Real Estate (Regulation & Development) Act, 2016 the scope of development has been made limited to the industrial development only. India is an important member of UN and it has signed various treaties on Sustainable development. The main objectives of passing the RERA included harmonious development with environmental development and notwithstanding anything inconsistent with other laws.

The objective of enacting the RERA was that earlier there were no direct statutes which dealt with this sector and this sector had major flaws in its functioning which was quite evident from the records of several cases. Section 13(2) of the said Act transfers the power of defining the "Agreement to Sale" clause in the hands of respective authoritative government, again as per the subsection, there is no uniformity for the promoters as in the state, and where the party in power is in majority may act as monarch. That particular state government knows what is better for the development of its state and also uniform system shall not be beneficial to everyone. If the promoter defaults on delivery within the agreed deadline, they will be required to return the entire money invested by the buyers along with the pre agreed interest rate mentioned in the contract based on the model contract given by RERA [9]. It seeks to impose strict regulations on the promoter and ensure that construction is completed on time. It has also penalised the act by term of up to 3 years (has to be confirmed) and a fine of up to 10% amount of the total cost of the project. A question that arises here is how is 10 % a reasonable amount on the part of small scale builders? This raises certain fundamental issues that need to be answered.

#### 5. Suggestion

1. Awareness and activeness towards environment is going to be key to success for achieving the 17 Sustainable Development Goals by 2030 for any country and its citizens. Now, in a democracy like India, the pillars of the democracy have a very prominent and sensitive role to play. If the ruler is not efficient then the mass can't be expected to be efficient and prospering in any case. The Legislature has a very prominent role to play in order to conserve environment and ensure harmonious development of infrastructure at the same time. Now given the point RERA needs a serious upgrade as this is the only legislation which specifically deals with Real Estate sector. It may be said that it is a subsidiary of the Consumer Protection Act, 1986 but still an efficient law has to regulate the concerning issues too especially when they are specialized legislations in a particular field.
2. Hence, RERA needs an amendment from the perspective of sustainable development of environment and the Judiciary will have a very prominent role to ensure protection and proper implementation of laws for better future.
3. Policy making needs to start taking into account various dimensions of judicial impact assessment and every policy must try to minimize ambiguity and create greater clarity in every policy. The best way to increase accountability is to involve stakeholders in the decision making process and create an efficient consultation mechanism.

#### 6. Conclusion

To conclude, the idea of the balance between development and environment can be obtained if there is a balance in policies both in the Indian as well as the international context. In the international context this can be obtained through effective institutional balance and in the Indian context the solution lies in utmost transparency in policy-making. The first step towards the aforementioned transparency is to create a system where every stakeholder has a say in policy making. In addition to this within the Indian context the ambiguities associated with RERA need to be interpreted in line of the objectives of the act to ensure that the fraudulent promoters do not benefit from its operation.

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