**INTERGENERATIONAL EQUITY**

(A Note on behalf of Goa Foundation)

The most widely accepted definition of ‘intergenerational equity’ is the one espoused by the World Commission on Environmental and Development in 1987, which held that “*policy makers should seek to meet their own needs without compromising the ability of future generations to meet their own needs*”. The concept of intergenerational equity has the following three aspects, as enumerated by Professor Edith Brown Weiss in her seminal paper ‘Intergenerational equity: a legal framework for global environmental change’ published in 1992 and reinforced by Justice Brian J. Preston in his paper ‘The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific’ :

1. Each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "conservation of options".

2. Each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "conservation of quality."

3. Each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access."

The essence of the concept is summarised by Edith Brown Weiss in the following terms:

“The proposed theory of intergenerational equity postulates that all countries have an intergenerational obligation to future generations as a class, regardless of nationality…There is increasing recognition that while we may be able to maximise the welfare of a few immediate successors, we will be able to do so only at the expense of our more remote descendants who will inherit a despoiled nature and environment. Our planet is finite, and we are becoming increasingly interdependent in using it. Our rapid technological growth ensures that this dependence will increase. Thus our concern for our own country must, as we extend our concerns into longer time horizons and broader geographical scales, focus on protecting the planetary quality of our natural and cultural environment. This means that, even to protect our own future nationals, we must cooperate in the conservation of natural and cultural resources for all future generations”.[[1]](#footnote-1)

**Historical development of the concept of ‘Intergenerational Equity’:**

In 1972, 113 nations of the world gathered in Stockholm, Sweden. They were concerned. The much-vaunted goal of economic growth had brought prosperity and high standards of living. But it had also brought unwanted spillover effects. The land, air and waters of the world were being polluted to a dangerous level. The natural resources were being exploited unsustainably. The world’s biological diversity was being diminished. Species were being culled at an exponential rate. It was time for a rethink.[[2]](#footnote-2)

The preamble to the Stockholm Declaration on the Human Environment expressly refers to the objective of protecting the well-being of future generations, "... to defend and improve the environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development." The Declaration's first principle provides that "man... bears a solemn responsibility to protect and improve the environment for present and future generations," while the second declares that the "natural resources of the earth, including the air, water, land, flora and fauna... must be safeguarded for the benefit of present and future generations through careful planning and management." The Stockholm Conference led directly to the creation of the United Nations Environment Programme (UNEP). The explicit concern for future generations and for enhancing the environment were new contributions to the process of developing international law in this area.[[3]](#footnote-3)

In 1983, the United Nations established the World Commission on Environment and Development (WCED) as an independent body to address global and environmental problems. One of the WCED’s principal tasks was to prepare the report, ‘Our Common Future’. This groundbreaking report was published in 1987. It is also referred to as the Brundtland Report, after the chairperson of the Commission, Gro Harlem Brundtland.[[4]](#footnote-4)

“Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits - not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities… ...in the end, sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs. We do not pretend that the process is easy or straightforward. Painful choices have to be made.” [[5]](#footnote-5)

The seminal article on intergenerational equity was published by Professor Edith Brown Weiss in 1992, and her theory, which has been cited widely since then, reads as follows:

“Sustainability is possible only if we look at the Earth and its resources not only as an investment opportunity but as a trust, passed to us by our ancestors, to be enjoyed and passed on to our descendants for their use. Such a "planetary trust" conveys to us both rights and responsibilities. Most importantly, it implies that future generations too have rights - although to be sure, these rights have meaning only if we the living respect them and if this respect transcends the differences among countries, religions, and cultures.

The theory of intergenerational equity proposed argues that we, the human species, hold the natural environment of our planet in common with all members of our species: past generations, the present generation, and future generations. As members of the present generation, we hold the Earth in trust for future generations. At the same time, we are beneficiaries entitled to use and benefit from it.

There are two relationships that must shape any theory of intergenerational equity in the context of our natural environment: our relationship to other generations of our own species and our relationship to the natural system of which we are a part. The human species is integrally linked with other parts of the natural system; we affect and are affected by what happens in the system. We alone among all living creatures have the capacity to shape significantly our relationship to the environment. We can use it on a sustainable basis or we can degrade environmental quality and deplete the natural-resource base. As the most sentient of living creatures, we have a special responsibility to care for the planet.

The second fundamental relationship is that between different generations of the human species. All generations are inherently linked to other generations, past and future, in using the common patrimony of earth. The theory of intergenerational equity stipulates that all generations have an equal place in relation to the natural system. There is no basis for preferring the present generation over future generations in their use of the planet.

This premise finds deep roots in international law. The Preamble to the Universal Declaration of Human Rights begins: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... "; the reference to all members of the human family has a temporal dimension, which brings all generations within its scope. The reference to equal and inalienable rights affirms the basic equality of such generations in the human family.

Partnership between generations is the corollary to equality. It is appropriate to view the human community as a partnership among all generations. In describing a state as a partnership, Edmund Burke observed that "as the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living but between those who are living, those who are dead, and those who are to be born." The purpose of human society must be to realize and protect the welfare and well-being of every generation, in relation to the natural system, of which it is a part. This requires sustaining the robustness of the planet: the life-support systems and the ecological processes and environmental conditions necessary for a healthy and decent human environment.” [[6]](#footnote-6)

For many years, neoclassical economists have tried hard to propagate the view that environmental degradation and depletion of natural resources could simply be substituted with wealth creation, and have developed numerous tools to arrive at token monetary values for factoring in the ‘environmental costs’ of mining and other hazardous activities. They have argued that instead of legal intervention, the task of maintaining intergenerational equity should be left to the market, making use of some new pricing techniques.

However, the international consensus is that such tools are woefully inadequate for taking into account the true cost of depletion of scarce resources and of damage to the environment, and have essentially been designed by advocates of Laissez-Faire economics to maintain the status quo.Sharon Beder, has built upon the work of Professor Weiss, and has eloquently argued against ‘Discount rates’ and other econometric tools that were developed to commodify environmental damage. In her paper published in 2000, she listed the reasons for why the onerous task of ensuring intergenerational equity cannot be left to market forces and clever pricing techniques, and why legal intervention based on ethical principles is essential:

“The idea behind not reducing the ability of future generations to meet their needs is that, although future generations might gain from economic progress, those gains might be more than offset by environmental deterioration. Most people would acknowledge a moral obligation to future generations, particularly as people who are not yet born can have no say in decisions taken today that may affect them.

There are two different ways of looking at the need to ensure that future generations can supply their needs. One is to view the environment in terms of the natural resources or natural capital that is available for wealth creation, and to say that future generations should have the same ability to create wealth as we have. Therefore, future generations will be adequately compensated for any loss of environmental amenity by having alternative sources of wealth creation. This is referred to as ‘weak sustainability’. The other way is to view the environment as offering more than just economic potential that cannot be replaced by human-made wealth and to argue that future generations should not inherit a degraded environment, no matter how many extra sources of wealth are available to them. This is referred to as ‘strong sustainability’.

There are various reasons why strong sustainability may be preferable to weak sustainability. Closely related reasons are ‘non-substitutability’, ‘uncertainty’ and ‘irreversibility’. There are many types of environmental assets for which there are no substitutes: for example, the ozone layer, the climate-regulating functions of ocean phytoplankton, the watershed protection functions of tropical forests, the pollution-cleaning and nutrient-trap functions of wetlands. For those people who believe that animals and plants have an intrinsic value, there can be no substitute. We cannot be certain whether or not we will be able to substitute for other environmental assets in the future.

Scientific knowledge about the functions of natural ecosystems and the possible consequences of depleting and degrading them is at best uncertain. The depletion of natural capital can lead to irreversible losses such as species and habitats, which cannot be recreated using man-made capital. Other losses are not irreversible but repair may take centuries–for example, the ozone layer and soil degradation. Loss of species and ecosystem types also reduces diversity*.* Diverse ecological and economic systems are more resilient to shocks and stress.”[[7]](#footnote-7)

In her paper, Beder has also discussed, and argued against existing methods of pricing environmental damage by exposing their inadequacies:

“Most methods economists use to value the environment try to assess or extrapolate market values. They treat the environment as a commodity whose market value can be assessed by finding out the public's willingness to pay to preserve the environment. This is done directly through surveys (contingent valuation) where a selection of people are asked what they would pay to protect, for example, a particular area of forest. The responses are averaged and extrapolated to the whole community so that a final dollar total for the forest is arrived at.

The market is a system which advantages those most able to pay. Using the market, whether an actual market or a contrived one, to value the environment tends to produce values that reflect the prevailing distribution of income and denies people an equitable influence over their environment.” [[8]](#footnote-8) (emphasis added)

Currently, the most widespread method of factoring in environmental damage, or depletion of natural resources, is the ‘Cost Benefit Analysis’ (CBA), which has also been discussed by Beder:

“In a CBA, the value of future consequences is discounted (reduced). The further the costs are into the future, the less they will be worth in today’s values; yet future generations will still have to put up with them. An extreme example is that of the storage of radioactive waste, which can last hundreds of thousands of years into the future. A large cost arising from this waste hundreds of years hence would be worth almost nothing in today’s values. A more commonplace example is the case of re-forestation. ‘Except at very low discount rates, a tree that takes 40 years to grow would have a very low value today to show against its costs.’ Because costs that are more than thirty years away become almost valueless using discounting at normal rates, long-term environmental costs such as resource depletion may be effectively ignored. Discounting therefore discriminates against future generations by saying that future costs are worth less than present costs.

Discounting occurs because it is assumed that costs and benefits in the future are not worth as much to people today. This is a direct result of using money as a measure. The logic behind discounting derives from the logic of money–that a person would prefer to receive money now than the same amount in the future. Pearce, Markandya and Barbier put forward the following reasons for this[[9]](#footnote-9):

* Money obtained now can be invested and earn interest.
* People tend to be impatient.
* The person might die before he or she gets the money.
* One cannot be sure of getting the money in the future.
* People in the future will probably be better off; money will not be worth as much then.

The idea that someone would like to consume now rather than in the future is not applicable to public goods which can be enjoyed now *and* in the future. Also society gets the benefits of environmental preservation, and therefore the risk of one person dying before he or she gets the benefits is meaningless. Any positive discount rate devalues future environmental losses and this disadvantages future generations with respect to today’s decisions.

CBA also rests on the assumption, inherent in weak sustainability, that environmental assets can be substituted by human-made assets that can be bought on the market and all that matters in the end is that the aggregate gains outweigh the aggregated losses. If a project generates more wealth than the calculated monetary costs of environmental damage, then the project should go ahead. The loss of environmental amenity is made up for by the wealth that is generated.

The idea of passing on an equivalent stock of goods to future generations that may contain fewer environmental goods and more human-created sources of wealth is embodied in the use of cost—benefit analysis. Pearce argues that the requirement to keep the total amount of capital constant ‘is consistent with "running down" natural capital–i.e. with environmental degradation’ as long as human-made capital can be substituted for natural capital. He says that this means that the Amazon forest can be removed so long as the proceeds from removing it ‘are reinvested to build up some other form of capital.”

In Conclusion, Beder says the following:

“In a myriad of ways the approaches to sustainable development advocated by environmental economists, and taken up by governments in many countries, either reinforce or exacerbate inequities in those countries. Yet equity is supposed to be a central ethical principle of sustainable development. This suggests that either equity is merely part of the rhetoric of sustainable development and is not really a central concern of those governments, or those governments have not understood the equity consequences of policies being promoted by those who have other agendas and priorities.

If equity is to be taken seriously then new ways of decision-making must be found that enable the multifaceted values associated with the environment to be fully considered and heeded. Clearly, merely extending market values to incorporate the environment into existing economic systems will not achieve this.”[[10]](#footnote-10)

There have also been some suggestions to appoint an Ombudsman for future generations in order to safeguard their rights and interests:

The World Future Council of the United Nations has recommended the appointment of “Ombudspersons for Future Generations” at all governance levels to ensure that this reality of the planet’s fragile ecosystem and its finite supply of resources “is not blinded by short-term interests or tempting profiteering and short-cuts.” It emphasizes that “developing such an institution would by no means be a prioritization of people’s future needs over their current ones.” The mission of the Ombudsperson should be “to promote and protect the interest of the future generations in the context of meeting the needs of the present, without compromising the ability of the future generations to meet their own needs. This is in line with the Brundtland Commission’s definition of sustainable development.”[[11]](#footnote-11)

**Role of the Judiciary:-**

The Executive Director of the United Nations Environment Programme (UNEP), stated in his

message to the UNEP Global Judges Programme:

“Success in tackling environmental degradation relies on the full participation of everyone in society. It is essential, therefore, to forge a global partnership among all relevant stakeholders for the protection of the environment based on the affirmation of the human values set out in the United Nations Millennium Declaration: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. The judiciary plays a key role in weaving these values into the fabric of our societies.

The judiciary is also a crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between environmental, social and developmental consideration through its judgements and declarations”.[[12]](#footnote-12)

The concepts of intergenerational and intragenerational equity are an integral element of ecologically sustainable development, and have been incorporated into international law as such.[[13]](#footnote-13) The 1975 Charter of Economic Rights and Duties of States declared that:

“The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States shall enhance and not adversely affect the present and future development potential of developing countries”.[[14]](#footnote-14)

Similarly, the concepts of intergenerational and intragenerational equity are enshrined in Principle 3 of the 1992 Rio Declaration which provides that:

“the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.

**Judicial Decisions: -**

1) In the landmark decision of the Supreme Court of the Philippines, ***Minors Oposa v Secretary of the Department of Environment and Natural Resources***[[15]](#footnote-15), the plaintiffs were minors represented by their parents. They sought an order that the government discontinue existing and further timber licence agreements, alleging that deforestation was causing environmental damage. The government argued that the plaintiffs had failed to state a cause of action, that the issues raised were non justiciable and political and that the existing licences could not be cancelled without violating due process of law. The trial court upheld the government’s contentions and dismissed the complaint. The plaintiffs filed an action for certiorari asking the Supreme Court to rescind and set aside the dismissal order. The Supreme Court held that the case brought by the plaintiffs constituted a class suit, not merely because the plaintiffs were numerous and representative enough to ensure the full protection of all concerned interests but also because the plaintiffs represented present and future generations[[16]](#footnote-16):

“We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue on behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the ‘rhythm and harmony of nature’. Nature means the created world in its entirety. Such rhythm and harmony indispensably include inter alia, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come”.[[17]](#footnote-17)

Having determined that the plaintiffs had standing to bring the proceedings, the Supreme Court addressed the substantive issues. The Supreme Court found that the trial court was in error in holding that the plaintiffs had failed to allege a specific legal right involved or a specific legal wrong committed. The Supreme Court found that the complaint focused on a specific fundamental legal right, the right to a balanced and healthful ecology, incorporated in the fundamental constitutional law. The Supreme Court therefore granted the petition and reversed the trial court’s order dismissing the complaint.[[18]](#footnote-18)

2) In India, in ***State of Himachal Pradesh v Ganesh Wood Products***[[19]](#footnote-19), a writ petition was filed seeking issuance of a writ restraining the government of the State of Himachal Pradesh from permitting the establishment of any factory units for the manufacture of Katha in the State. Katha is derived from the Khair tree which are found in considerable numbers in the State. Only the central portion of the trunk of the Khair tree is used for the manufacture of Katha. Hence, the manufacture of Katha requires the cutting of the Khair trees. The ground for seeking the writ was that the establishment of Katha manufacturing units would lead to indiscriminate felling of

Khair trees which would have a deep and adverse effect upon the environment and ecology of the State.

The Supreme Court of India (B.P Jeevan Reddy J and M.K. Mukherjee J) in a Judgement delivered by B P Jeevan Reddy J upheld the appeal. The Supreme Court stated that:

“The considerations of environment and ecology and preservation of forest wealth are absolutely relevant considerations which the Government must keep in mind while devising its policies and programmes”.[[20]](#footnote-20)

The Supreme Court then emphasised the significance of the concepts of sustainable development and intergenerational equity. As to the latter, the Supreme Court said:

“Intergenerational equity means the concern for the generations to come. The present generation has no right to impede the safety and well being of the next generation or the generation sot come thereafter”.[[21]](#footnote-21)

The Supreme Court found the actions of the relevant government body to approve any and every proposal that came before it, on the assumption that so long as there is no commitment on the part of the Government to supply Khair wood to the proposed factories there is no harm, to be “a totally faulty and a myopic approach”. It not only violated relevant and National and State Forest Policies, it was also[[22]](#footnote-22):

“contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and inter-generational equity. After all, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations. Not keeping the above considerations in mind, it is obvious, has vitiated the approvals granted by the sub-committee of IPARA – apart from the fact that it was not empowered to grant any such approval. The obligation of sustainable development requires that a proper assessment should be made of the forest wealth and the establishment of industries based on forest produce should not only be restricted accordingly but their working should also be monitored closely to ensure that the required balance is not disturbed”.[[23]](#footnote-23)

3) In ***Rural Litigation and Entitlement Kendra v State of Uttar Pradesh***[[24]](#footnote-24), the petitioners were rural villagers concerned about the unauthorised and illegal mining of limestone in the Mussorie-Dehradun belt in the State of Uttar Pradesh which adversely affected the ecology of the area and led to environmental disorder. The mining also adversely affect the villagers.

In 1988, the Supreme Court considered the further evidence and gave reasoning for its conclusion that mining in the Doon Valley area should be stopped. The Supreme Court surveyed the ecological consequences of mining of the limestone deposits and noted[[25]](#footnote-25):

“21. The Doon Valley limestone deposits are a gift of nature to mankind. Underneath the soil cover there is an unseen storehouse of bounty almost everywhere. Similarly forests provide the green belt and are a bequest of the past generations to the present. Limestone deposits if excavated and utilised get exhausted while if forests are exploited, there can be regeneration provided reforestation is undertaken. Trees however take time to grown and ordinarily a 15 to 25 year period is necessary for such purpose”.[[26]](#footnote-26)

“We are also satisfied that if mining activity even to a limited extent is permitted in future, it would be not congenial to ecology and environment and the natural calm and peace which is a special feature of this area in its normal condition shall not be restored. This tourist zone in its natural setting would certainly be at its best if its serenity is restored in the fullest way. We are of the considered opinion that mining activity in this Valley must be completely stopped but as indicated in another part of this judgement such a situation will be available only after the original leases of the working mines are over”.[[27]](#footnote-27)

The Supreme Court described the environmental consequences caused by the excessive exploitation and clearing of the forests and considered the mines that were operating in reserved forests: The Supreme Court held that:

“To these areas the Forest Conservation Act applies and to the allow mining in these areas even under strictest control as a permanent feature would not only be violative of the provision of Forest (Conservation) Act but would be detrimental to restoration of the forest growth in a natural way in this area. Once the importance of forests is realised and as a matter of national policy and in the interests of the community, preservation of forests is accepted as the goal, nothing which would detract from that end should be permitted. In such circumstances we reiterate our conclusion that mining in this area has to be totally stopped”.[[28]](#footnote-28)

The Supreme Court’s decision, therefore, addressed both intergenerational equity and intragenerational equity for the affected villagers in the valley.

4) In ***M.C. Mehta v. Union of India***[[29]](#footnote-29), The Supreme Court stayed All mining operations in the entire Aravalli Hill range within the State of Haryana in which mining operations were being carried out. The Supreme Court held that:

“Environment and ecology are national assets. They are subject to inter-generational equity. Time has now come to suspend all mining in the above Area on Sustainable Development Principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India. In fact, these Articles have been extensively discussed in the judgment in M.C. Mehta's case (2004)[[30]](#footnote-30) which keeps the option of imposing a ban in future open. Mining within the Principle of Sustainable Development comes within the concept of "balancing" whereas mining beyond the Principle of Sustainable Development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of Precautionary Principle.”

5) In ***T.N. Godavarman Thirumulpad v. Union of India***[[31]](#footnote-31), The Supreme Court, while considering Measures to be taken to compensate for loss of forest land and effect on ecology when forest land is used for non-forest purposes including payment of Net Present Value based on Total Economic Value, held that:

“The damage to environment is a damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation.”[[32]](#footnote-32)

“We may also briefly refer to Public Trust doctrine and its applicability to the matters under consideration. The Public Trust Doctrine looks beyond the need of the present generation and also suggests that certain resources are invested with a special nature. It would be instructive to make a note of a story given in by Timothy Patrick Brady in Boston College Environmental Affairs Law Review, Spring 1990 under the title 'But most of it belongs to those yet to be born'. The story relates to digging of [a] well at the time of drought. When a Frenchman told villagers of a prudent African solution of digging well, many villagers agreed but others argued that it will bring people from other villages and they would bring their cattle and that would increase the pressure on the already precious water. The Frenchman told the villagers that why not explain to them that the well is only for your own village and they can dig their own. It was then said that 'water is not only ours, but is gift of nature from God and must be shared.' Ultimately, they concluded that it was wiser not to dig the well at all. The moral of the story is that we are trustees of natural resources which belong to all including future generation as well. The public trust doctrine has to be used to protect the right of this as also future generation.”[[33]](#footnote-33)

6) In ***Glanrock Estate v. State of Tamil Nadu***[[34]](#footnote-34), the Supreme Court observed that:

“Forests in India are an important part of environment. They constitute national asset. In various judgments of this Court delivered by the Forest Bench of this Court in the case of T.N. Godavarman v. Union of India Writ Petition No. 202 of 1995, it has been held that "inter-generational equity" is part of Article 21 of the Constitution. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The "precautionary principle" and the "polluter pays principle" flow from the core value in Article 21.”

7) ***Gray v. Minister of Planning***[[35]](#footnote-35):-

This case concerned the decision of the Director-General of the Department of Planning to grant permission to Centennial Hunter Pty Ltd (Centennial) to commence development of a coal mine at Anvil Hill in New South Wales in 2006. In Gray, the Applicant, an environmental activist, argued amongst other things that the Director-General had failed to take into account principles of Ecologically Sustainable Development (ESD), including the principle of intergenerational equity, in his decision to accept Centennial’s environmental impact assessment for public display. The presiding judge, Pain J, found that the Director-General had failed to take ESD principles into account in his decision to accept Centennial’s environmental impact assessment, and declared that the decision was void. Noting that ‘intergenerational equity has received relatively little judicial consideration in this Court in the context of the requirements for environmental assessment under the EP&A Act,’ Pain J drew upon an academic article written by Justice Brian Preston (which was itself influenced by the writings of Edith Brown Weiss).[[36]](#footnote-36)

Pain J concluded that the environmental impact assessment for the Anvil Hill coal mine should include estimations of greenhouse gas emissions from not only the construction of the coal mine but also from the end-uses of the coal to be mined there. The judgment in Gray suggests two requirements of the principle of intergenerational equity in the context of environmental impact assessment: an assessment of cumulative impact, and an appropriately detailed analysis of relevant considerations:

“simply raising an issue such as climate change/global warming is unlikely to satisfy a requirement that intergenerational equity or the precautionary principle has been considered in the absence of any analysis of the impact of activities which potentially contribute in the NSW context in a substantial way to climate change/global warming.”[[37]](#footnote-37)

8) ***Taralga Landscape Guardians Inc v Minister for Planning***[[38]](#footnote-38):-

This was a 2007 case involving a dispute between a group of rural residents and a wind energy company over the company’s development proposal for a wind farm that would be visible from the residents’ properties. The case required the balancing of local interests (the appearance, noise and impact upon local flora and fauna of the wind farm, considered unacceptable by local residents) with wider interests (the advantages to the community at large of provision of wind energy, a low carbon-emitting energy). The presiding judge, Preston CJ, found that the interests of the broader population in having a clean energy source at the site outweighed those of the local residents. Most relevantly to this Chapter, Preston CJ drew upon the concept of intergenerational equity, stating that the attainment of intergenerational equity in the production of energy involves meeting at least two of the following requirements[[39]](#footnote-39):

“1. Mining of and subsequent use in the production of energy of finite, fossil fuel resources need to be sustainable. Sustainability refers not only to the exploitation and use of the resource (including rational and prudent use and the elimination of waste) but also to the environment in which the exploitation and use takes place and which may be affected. The objective is not only to extend the life of the finite resources and the benefits yielded by exploitation and use of the resources to future generations, but also to maintain the environment, including the ecological processes on which life depends, for the benefit of future generations’; and

2. As far as is practicable, to increasingly substitute energy sources that result in less greenhouse gas emissions for energy sources that result in more greenhouse gas emissions, thereby reducing the cumulative and long-term effects caused by anthropogenic climate change. In this way, the present generation reduces the adverse consequences for future generations.”[[40]](#footnote-40)

Taralga involved a situation in which narrow, immediate interests (those of the local residents) were in conflict with broader, long-term interests (those of the wider community over a long timeframe) and the broader, long-term interests including that of future generations were safeguarded.

**The reason for it being absolutely necessary for the Judiciary to intervene and lay down objective principles and standards of intergenerational equity is that both the legislature and the executive are only concerned with the present generation as the present generation determines their political fortunes and their political future. Therefore it is absolutely necessary for the Judiciary to safeguard the rights of future generations.**

**The direct implication of the abovementioned judicial decisions, Article 21 and Part 4 of the Constitution of India for the present case is that the Court must lay down an upper limit on the total mining that can be permitted in the State of Goa which gives meaning to the concept of Intergenerational Equity and gives authoritative guidelines for the minimum number of generations (years) that current reserves of non-renewable resources should last.**

Prashant Bhushan

(Counsel for the Petitioners)

1. E Brown Weiss, In Fairness to Future Generations, UN University Press, 1989 at pp. 26 – 27 [↑](#footnote-ref-1)
2. Justice Brian J. Preston, Chief Judge of the Land and Environment Court of New South Wales, Australia - “*The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific*”, January 2006. (Link:- [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
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