

Approach of Indian Judiciary towards Sustainable Development in India

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Abstract

Sustainable development is increasingly promulgated in international and national legal contexts, but there is a long way to go in terms of implementation. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been triggered by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive agencies.

However, recently, Judiciary is playing the vital role in the protection of environment. One of the main developments in the Indian Judiciary is the Public Interest Litigation. It is the new jurisprudence and is called "Jurisprudence of Masses". The role of Indian Supreme Court in resolving environmental disputes has contributed immensely to the evolution of environmental jurisprudence and principles in India. This includes recognizing right to healthy environment as a part of fundamental rights and the various principles of environmental protection. It appears that the international environmental law principles have been utilized by the Indian courts not only to 'formulate' much of the contemporary environmental jurisprudence in India but also to 'enrich' the same. This process is still going on and is a strong approach towards the achievement of sustainable development.

Keywords:- Sustainable Development, Role of the Judiciary, Environment court, Environmental law.

Concept of the Right: Right to wholesome environment is a fundamental right protected under Article 21 of the Constitution of India.² But the question is, can the environment be protected at present times when almost all the countries in South-East Asia are still at their developing stages? Development comes through industrialization, which in turn the main factor behind the degradation of environment. To resolve the issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology. Sustainable development means that the richness of the earth's biodiversity would be conserved for future generations by greatly slowing and, if possible, halting extinctions, habitat and ecosystem destruction, and also by not risking significant alternations of the global environment that might – by

an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation - alter the opportunities available for future generations.

Origin of the doctrine:

The concept of '**Sustainable Development**' is not a new concept. The doctrine had come to be known as early as in 1972 in the Stockholm declaration. Principle 1 of the declaration states that³ " Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generation " But the concept was given a definite shape in a report by world commission on environment, which was known as ' our common future'. The commission, which was chaired by the then Norway Prime Minister, Ms. G.H. Brundtland defined 'Sustainable Development' as⁴ **“Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”**.

Its Scope and Applicability in India:

Perhaps the answer lies in the decision of the Supreme Court in **Narmada Bachao Andolan v. Union of India**⁵ wherein it was observed that “Sustainable development means what type or extent of development can take place, which can be sustained by nature/ecology with or without mitigation.” In this context, development primarily meant material or economic progress.

Various principles of 'Sustainable Development:

Some of the basic principles of 'Sustainable Development' as described in 'Brundtland report' are as follows: -

a) Inter-Generational Equity:

The principle talks about the right of every generation to get benefit from the natural resources. Principle 3 of the Rio declaration states that⁶ **“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”**. The main object behind the principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefit.

² Indian Constitutional law, Prof. M.P Jain. Sixth ed. Reprint 2011, pg.no.1178.

³ U.N International Conference on Human Environment, (June 5-16-1972)

⁴ World Commission on Environment and Development (WCED)

⁵ (2000) 10 SCC 644

⁶ Earth Summit- The Rio Declaration on Environment and Development, 1999.

b) The Precautionary Principle:

This principle has widely been recognized as the most important principle of 'Sustainable Development'. Principle 15 the Rio declaration states that⁷ **"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost- effective measures to prevent environmental degradation."**

In other words it means:

- 1) Environmental measures by the state government and the local authority must anticipate prevent and attack the causes of environmental degradation.
- 2) Where there are threats of serious and irreversible damage, lack of scientific certainty should not use as a reason for postponing measures to prevent environmental degradation.
- 3) The burden of proof' is on the actor or the developer to proof that his action is environmentally benign.

c) Polluter Pays Principle⁸

Principle 16 of the Rio declaration states that: *"National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment. It is quite obvious that the object of the above principle was to make the polluter liable not only for the compensation to the victims but also for the cost of restoring of environmental degradation. Once the actor is proved to be guilty, he is liable to compensate for his act irrelevant of the fact that whether he's involved in development process or not."*

Role of judiciary: Judiciary in India, more precisely, the Supreme Court and the High Court has played an important role in preserving the doctrine of ' Sustainable Development '. 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'.

⁷ Abid.

⁸ (1996) 4 SCC750.

It is worthwhile to mention here that principle 10 of Rio declaration, 1999 states that⁹

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. This is new jurisprudence and is called "Jurisprudence of Masses".

States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

It is also to be remembered that most of the environmental cases have come before the court through a PIL (Public Interest Litigation) either under Article 32 or under 226 of the Constitution. The first case on which the apex court had applied the doctrine of 'Sustainable Development' was

Vellore Citizen Welfare Forum vs. Union of India.¹⁰ In the instant case, a dispute arose over some tanneries in the state of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was the main source of drinking water in the state. The Hon'ble Supreme Court held that: "We have no hesitation in holding that the precautionary principle and polluter pays principle are part of the environmental law of India. The court also held that: Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

But before Vellore Citizen's case, the Supreme Court has in many cases tried to keep the balance between ecology and development. In **Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh, which is also known as Doon valley case**¹¹ dispute arose over mining in the hilly areas. The Supreme Court after much investigation ordered the stopping of mining work and held that: This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment."

⁹ Earth Summit- The Rio Declaration on Environment and Development, 1999.

However, in 1991, in the **Rural Litigation and Entitlement Kendra vs. State of U.P**¹² the Supreme Court allowed a mine to operate until the expiry of lease as exceptional case on condition that land taken on lease would be subjected to deforestation by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lacks to the fund of the monitoring committee. This has been directed on the principle of 'polluters pay'.

Likewise, various forests have also been protected. In a landmark case **Tarun Bhagat Sangh vs. Union of India**¹³ the petitioner through a PIL brought to the notice of the Supreme Court that the state government of Rajasthan though empowered to make rules to protect environment, failed to do so and in contrary allowed mining work to continue within the forest area. Consequently, the Supreme Court issued directions that no mining work or operation could be continue with in the protected area. But it would be unwise to hold that the courts always favors environment without giving any significance to the development aspect when dispute arises between environment and development.

In **M. C. Mehta vs. Union of India**¹⁴ the Supreme Court issued directions towards the closing of mechanical stone crushing activities in and around Delhi, which was declared by WHO as the third most polluted city in the world. However it realised the importance of stone crushing and issued directions for allotment of sites in the new 'crushing zone' set up at village Pali in the state of Haryana.

Challenges of Sustainable development:

How can, with economic progress and without environmental regression, be ensured within the Indian legal framework? This can be achieved through the implementation of good legislation. The courts have attempted to provide a balanced view of priorities while deciding environmental matters. As India is a developing country, certain ecological sacrifices are deemed necessary, while keeping in mind the nature of the environment in

¹⁰ Vellore Citizen Welfare Forum vs. Union of India. (1996) 5 SCC 647

¹¹ Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh (1985) 2 SCC 43

¹² Rural Litigation and Entitlement Kendra vs. State of U.P AIR 1987 SC 359

¹³ Tarun Bhagat Sangh vs. Union of India 1993 Supp (3) SCC 115

¹⁴ M. C. Mehta vs. Union of India (1996)4 SCC 750

that area, and its criticality to the community. This is in order that future generations may benefit from policies and laws that further environmental as well as developmental goals. This ethical mix is termed sustainable development, and has also been recognized by the Supreme Court in the **Taj Trapezium case**.¹⁵

In State of **Himachal Pradesh v. Ganesh Wood Products**¹⁶ the Supreme Court invalidated a forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development. Thus, it is quite obvious that the courts give equal importance to both ecology and development while dealing with cases of environmental degradation

Conclusion: Environment and development are two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future. Without Healthy environment life becomes critical and similarly development is need of modern era, thus the responsibility lies on citizens and Judiciary, Hence there is the new jurisprudence and is called “Jurisprudence of Masses”. The role of Indian Supreme Court in resolving environmental disputes has contributed immensely to the evolution of environmental jurisprudence and principles in India. Recently in the case of Arjun Gopal & Others Vs. Union of India a& Others¹⁷ Hon’ble Supreme Court declared to Suspend all such licenses as permit sale of fireworks, wholesale and retail within the territory of NCR. In Addition to the Supreme Court and the various High Courts to deal with these cases of Environment with caution of high degree now there are various Environmental courts called **Green Tribunals are established**. But rather than legislative force and judicial mandates there is great need of public awareness, regular inspection, Environmental Education. Its fundamental and moral duty of each and every citizen to take best efforts to protect the Environment, then only, we will achieve our goal i.e. to secure a pollution free developed country for our next generation.

¹⁵ M.C Mehata V. Union of India, (1997)2 SCC 353

¹⁶ Himachal Pradesh v. Ganesh Wood Products AIR 1986 SC 847.

¹⁷ Oct. 23, 2018 - the M.C. Mehta *case* and other *cases*, came up for hearing and it ... use of fireworks, including *firecrackers* during Diwali *last year*