



CRITICAL STUDY OF EVOLUTION OF THE PRINCIPLES OF INTERGENERATIONAL EQUITY THROUGH THE LENS OF INDIAN JUDICIARY

Adv. Wankhede Dnyandeo Changoji¹

Advocate, Aurangabad (MS)

Abstract

The notion of intergenerational justice was developed, and it is based on the use of natural resources and the environment for future generations. The environment and natural resources were plundered by the current generation as a result of industrialization, globalization, and rapid increase in human civilization, and it appears that nothing will be left for future generations. The notion of intergenerational fairness is based on long-term development and equitable utilization of natural resources, both of which should be preserved for future generations. Given the gravity of environmental deterioration, the Supreme Court of India emphasized the principles of sustainable development, polluter pay, and intergenerational equality in its judgement. The researcher will highlight the judicial decision in this study paper, which focuses on the long-term development and preservation of natural resources and the environment for future generations.

Key Words: Intergenerational Equity, Environment protection, Sustainable development, natural resources, judicial decisions.

I. Introduction

The term "intergenerational equity" refers to a widely accepted principle of international environmental law that calls for the preservation of natural resources and the environment for future generations' benefit. The concept was first proposed in 1972 by the Stockholm Declaration, and it now serves as a foundational principle in the framework of sustainable development. Intergenerational equality is a basic premise of the UNFCCC's international climate change policy. Article 3 establishes a framework for the protection of the climate system for future generations' benefit and usage. In the form of sustainable development, the same notion has been changed and reinforced. "The main concern and relevance of intergenerational equity as a guiding principle shaping climate action is reaffirmed by the Paris Agreement preamble, yet its precise conceptualization and

implementation measures, beyond the implicit benefits of climate mitigation for future generations generally, remain unclear”ⁱⁱ. Intergenerational equity is increasingly developing and taking shape as a primary concern and component of environmental law and philosophy. The same principle has been acknowledged and adopted by a number of international conferences and conventions.

The idea of intergenerational equity was adopted in 1992 by the Rio Declaration on Environment and Development and the UN Framework Convention on Climate Change to safeguard the environment for future generations. The primary focus is on future generations borrowing the earth. The principle pertains to and promotes generational equity. The ecosystem must be preserved for future generations to enjoy. The policy must be created and implemented for future usage of the environment in order to achieve sustainable development and environmental preservation. The concept of intergenerational equity places a responsibility on the current policymaker and future policymakers. Generations to come must work together to protect the environment for future generations. The primary concept is to use the environment and other natural resources in a sustainable manner. The current generation will be responsible for the preservation of natural resources for future generations. The environment and natural resources must be used in a sustainable manner so that future generations can benefit from them.

The notion is based on the natural-flow theory of English water law, which states that persons living on the upper bank of a river may use water as long as their use does not adversely affect the quantity or quality of water available to others downstream. Finally, because they have no one to whom they may turn before the stream hits the ocean or vanishes, this helps the final riparians before the stream enters the ocean or vanishes. “Similarly, the present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind”ⁱⁱⁱ.

The principle of constitution takes into account environmental conservation and sustainable use. The notion of life is defined in Art. 21 of the Indian Constitution, and it encompasses a healthy life for human beings. Healthy living can only be attained in a healthy and clean environment, and it is the individual's obligation to utilise in a sustainable manner in order to maintain a healthy and clean environment. “On October 8, 2021, the UN Human Rights Council adopted a resolution recognizing that the right to a clean, healthy and sustainable environment is a human right”.^{iv} Individual human rights are primarily concerned with the right to a healthy environment. The Indian judiciary, in keeping with the same idea and care, pays close attention and concern to environmental protection, sustainable development, and the utilisation of natural resources. At the same time, the judiciary is concerned about future generations' sustainable use of natural resources.

II. Role of Judiciary on sustainable development and protection of environment

The Indian judiciary has been very active in generating pro-environmental rulings over the last decade. The Indian judiciary makes judgements while taking into account the concepts of sustainable development, intergenerational equity, and environmental protection. When passing judgement, the court always considers and emphasizes sustainable development that satisfies the needs of current and future generations. Future

generations will be able to meet their own requirements through environmental conservation on an equal footing. The court has traditionally placed a premium on developmental mechanisms that balance progress without jeopardising the environment or future needs. Furthermore, the court clarified that the concepts of sustainable development and equity are two sides of the same coin. The principles of justice and equality, Sustainable development is concerned with the adoption of mechanisms for environmental prevention, preservation, and protection. The court emphasizes the polluter pays principle for environmental preservation and stakeholder prevention of harmful activity. “The polluting industries were directed to compensate for the harm cause to environment”^v. According to the Supreme Court, natural resources such as air, sea, and water, as well as forests, are vital to human life and should be maintained for future generations. The environment is linked to human existence, and everyone has the right to have a healthy life, which should be conserved for future generations as well. Furthermore, the Supreme Court of India's entire bench remarked and held that the law should be created with a specific goal of protecting and preserving the environment, saving it for future generations, and ensuring a good quality of life. When determining disputes involving environmental issues and intergenerational justice, the court establishes several standards to ensure that the environment is preserved and protected for future generations. The use and preservation of natural resource considering intergenerational equity principle

- Sustainable development
- Precautionary principles
- Polluter pay principle^{vi}

These are the core concern of the right to life according to the principle of constitution of India. The court also makes clear that, the doctrine of public trust is applicable to natural resources where state is trustee for the individuals and specially for the future generation. The state is bound to protect environment and natural resources for future generations.

“The use of natural resource, healthy and clean environment is human rights of individual and same is guaranteed by UDHR^{vii} and other international instruments”^{viii}. “The Court has emphasis on the importance of the Doctrine of Public Trust in maintaining sustainable development which has been declared as inalienable human right by UN General Assembly”^{ix}. “It means that, no one allowed to cause disturbance to basic environmental elements including air, water, soil which are essential elements for human existence”^x. “Pollution free environment is basic rights guaranteed under Art. 21 of constitution of India under the parameter of right to healthy life”^{xi}. Not only this the court makes serious concern about the elements which cause to environment. “The direction was issued by the court about dumping of hazardous waste, for destruction of consignments with a view to protect environment”^{xii}. The concept of right to life has not limited application. It provides right to life with human dignity includes right to food, right to clothing, right to decent environment and reasonable accommodations to live in^{xiii}. “The constitution itself guarantees to every individual fundamental rights to a wholesome, clean and decent environment”^{xiv}. Not only this, the scope of Art. 21 of constitution of India provides, the individual has right to enjoy the right to life, pollution free, healthy

and clean water and air for full enjoyment of life. “If anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life”^{xv}. And for the reason the state has responsibility to protect the environment for future generations and healthy life of individuals.

“The state is under fundamental obligation to protect and improve the environment including forest, lakes, rivers, wild life and to have compassion for living creatures”^{xvi}. “Considering the commitment towards the state and individual the Supreme court close 400 marble mines around *Sariska* Tiger Reserve which threatened the wildlife of the area”^{xvii}. “No doubt the industries and corporation are very much important for the economic progress of the country but considering the emanation of pollutants in the environment polluter pay and sustainable development principles should be applicable to such industries”^{xviii}.

III. Intergenerational Equity and Judicial Decisions

Considering the important role of environment in human life the court pay attention towards its protection for future generations. “In the landmark decision the court held that, for the healthy human life flora, fauna, water and other environment component are important but at the same time it should be protected and preserve for future generation by adopting policy of sustainable development”^{xix}. The state should strive to maintain the balance between development and environmental rights. For the protection of environment, the court imposes some condition on corporations and companies and state is bound to look in this regards for intergenerational equity. State shall not grant license and enter in to lease deed unless considering the following guidelines

- Consultation with Commission for Environmental Cooperation
- Drawing comprehensive scheme of sustainable development
- Creating fund for reclamation in the interest of sustainable development and intergenerational equity
- Probable loss cause to forest and other environment components^{xx}

Additionally, “the state is bound to create a fund for reclamation in the interest of sustainable development and intergenerational equity and for the purpose of curing damage cause to forest and environment”^{xxi}. The word development is relative term it cannot be achieved on the cost of environment degradation and loss to future generations in term of healthy environment and right to life.

IV. Conclusion

Considering the judicial decision, it is observed that, the judiciary is very much concern with protection of environment for future generations. If the environment and natural resources are exploited and misuse by the present generation the future generation will not survive on this earth. For the healthy life the balance between development and environment should be maintain for the progress and existence of future generations. The principle of intergenerational equity refers every generation hold and enjoy earth commonly. The resources and environment is not only available to present generation rather it should be protected and preserve for upcoming future generation. The future generation has equal right to enjoy the healthy environment.

The principle is based on the core value of fairness among generations in the use and conservation of the environment and its natural resources. With the advancement of human civilization, the persistent threat is existing to environment degradation. The threat is ever hanging sword on the people who will live tomorrow. But with the interference by the judiciary the protection of environment come in reality. Considering the growing practices against the degradation of environment it is need to think WE the people.... are bound to protect and preserve the environment and natural resources for our future generations. We need to take pledge to act with integrity and responsibility to protect and preserve the environment for future generation.

ⁱ The Author is practicing as Advocate in Mumbai High Court, bench at Aurangabad. Any criticism, suggestion, feedback may address to dcwankhede@gmail.com

ⁱⁱ Alice Venn, Managing Global Warming (Academic Press, 2019) pp.711-728

ⁱⁱⁱ Hemant More, "Intergenerational Equity Principle" The Fact Factor (Feb. 22, 2022, 4:44pm) https://thefactfactor.com/facts/law/civil_law/environmental_laws/intergenerational-equity/1487/ access on 10/02/2022

^{iv} Yann Aguila , The Right to a Healthy Environment, International Union for Conservation of Nature, available at <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment> Access on 02/03/2022

^v M. C. Mehta vs. Kamal Nath (1997) 1 SCC 388, Enviro-Legal Action v Union of India, 1996 AIR 1446

^{vi} Goa Foundation vs. North Goa Planning and Development Authority 1995(1) GLT 181

^{vii} Art. 25 Universal Declaration of Human Rights, 1948

^{viii} Article, 24 of African Charter on Human and Peoples Rights, 1991

^{ix} Intellectuals Forum, Tirupathi v. State of AP Appeal (civil) 1251 of 2006

^x M. C. Mehta vs. Kamal Nath (1997) 1 SCC 388

^{xi} Ratlam Municipality v Vardicharan, 1980 AIR 1622

^{xii} Research Foundation for science Technology and Natural Resources Policy v. Union of India, (2005) 10 SCC 510

^{xiii} Shantistar Builders vs. Narayan Khimalal Totame (AIR 1990 SC 630)

^{xiv} Sher Singh vs State of Himachal Pradesh, CWPIL No.15 of 2010, decided on 6th Feb. 2014

^{xv} Subhash Kumar vs. State. of Bihar- (1991) 1 SCC 598

^{xvi} T.N. Godavarman Thirumalpad v. Union of India & Ors., (2002) 10 SCC 606

^{xvii} Tarun Bharat Sangh (NGO) v. Union of India, AIR 1992 SC 514

^{xviii} Vellore citizen's welfare forum v. Union of India 1996 5 SCR 241

^{xix} N.D. Jayal and Another v. Union of India and Others (2004) 9 SCC 362

^{xx} War Jaintia Limestone Boulders. vs State of Meghalaya and Ors, Writ Appeal No. 38 of 2017 decided on 21st July 2017

^{xxi} State of Meghalaya and Ors vs Shri. Tangkham M Sangma and Ors WP(C) No. 140 of 2014 decided on 26th November, 2015