

JUDICIAL RECOGNITION FOR SUSTAINABLE DEVELOPMENT IN INDIA

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Abstract: The sustainable development is now deeply embedded in both National and International scenario, it is a big Global problem; therefore India has also keen concern on the protection of environment, development and sustainable development. Being a developing country, economic progress is essential; at the same time, care has to be taken of the environment. Sustainable development, with economic progress and without environmental regression, 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 that area, and its critical impact on the community. This is in order that future generations may benefit from policies and laws that further environmental as well as developmental goals.

Keywords : sustainable development, environment, environmental regression, environmental law.

INTRODUCTION

Environmental law, as a field of learning, is comparatively recent, evolving mainly over the last forty years. It is still in a formative stage but is undergoing a process of rapid development. The rapidity of development is caused partly by “a quantum leap in our understanding of the environmental challenge” and partly by the urgency for the law to respond in an effective manner. One area of increasing importance, but comparatively little explored in judicial decisions, is the law concerning sustainable development. International, national, provincial and local law and policy-making bodies may have embraced principles of sustainable development, but they have been reticent to explicate their meaning, circumstances of application and precise details of the means of implementation. The judiciary, particularly at national levels, is therefore faced with the task of explicating the law of sustainable development, case by case. Incrementally, a body of environmental jurisprudence will emerge. In performing that task, national judiciaries will be assisted by the exchange of judicial decisions, information and experience between jurisdictions. In this way, national judiciaries may benefit from each other’s knowledge, experience and expertise. This paper has focuses on concept of sustainable development and role of Indian Judiciary visa-vice sustainable development in India.

The Concept Sustainable Development

The concept of sustainable development in essence attempts to scale between the quantity of development and quality of environment. The definition which is used most often comes from the report of the Bruntland Commission, in which it was suggested that the phrase covered “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. However, societies at different levels have their own concept of sustainable development and the object that is to be achieved by it. For instance, for rich countries, sustainable development may mean steady reduction in wasteful levels of consumption of energy and other natural resources through improvements in efficiency, and through changes in lifestyle, while in poorer countries, sustainable development would mean the commitment of resources towards continued improvement in living standards.

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 alterations 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.

While applying the concept of “sustainable development,” one has to keep in mind the “principle of proportionality” based on the concept of balance. It is an exercise in which Court have to balance the priorities of development on one hand and environmental protection on the other hand. The definition of “sustainable development” which Brandtland gave more than four decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan vs. Union of India* the Supreme Court of India observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest.

The Constitution of India and Concept of Sustainable Development

Indian constitution envisages specific provisions for the protection and improvement of environment. India also has credit to be the first country which made provisions for the protection and improvement of environment in its Constitution. By way of 42nd amendment to the Constitution in year 1976, Article 48-A which specifically deals with Environment protection and its improvements in several environmental cases the Indian courts also guided by the language of this Article. Article 51A (g) casts duty on the citizens for protection of environment. Schedule VII containing the three lists clearly lays down various areas relating to environment protection upon which the centre and states can legislate. As a result of which the Indian Parliament enacted various legislations which deal with environment protection and put the idea on track of sustainable development.

Indian Parliament also passed various laws effecting and regulating the environmental issues. Legislative enactments were always with the principles of economic, social security and sustainable development.

Role of Indian Judiciary visa-vice Sustainable Development in India

Being a developing country, economic progress is essential; at the same time, care has to be taken of the environment. Sustainable development, with economic progress and without environmental regression, 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 that area, and its critical impact on 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 of India in *M.C. Mehta vs. Union of India, i.e., Taj Trapezium* case. In *State of Himachal Pradesh vs. Ganesh Wood Products*, the Supreme Court of India invalidated forest based industry, recognizing the principle of intergenerational equity as being central to the conservation of forest resources and sustainable development. The Court also noted in *Indian Council for Enviro-Legal Action vs. Union of India*, that the principle would be violated if there were a substantial adverse ecological effect caused by industry. In certain cases, the judiciary has to choose between the preservation of environmental resources in the State, and the right of communities to extract value out of those resources. To facilitate this choice, the courts have evolved a right to livelihood for communities affected by new State run conservation initiatives.

The Supreme Court of India, in recent years, has been adopting a holistic approach towards environmental matters. This is usually done through detailed orders that are issued from time to time, while committees appointed by the Court monitor the ground situation.

Judicial Recognition

It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development. So much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations.

Recognizing the fact that the survival and well-being of a nation and its people depends on sustainable development, the Supreme Court through some of its landmark judgments has underlined the need for application of this principle in environmental considerations and reorienting policies and action in unison with the environmental perspective.

In the case of *Vellore Citizen Welfare Forum vs. Union of India* the doctrine of Sustainable Development was implemented for the first time by the Supreme Court. In the instant case, the Supreme Court held that the eradication of poverty by social equity and conservation of bio-diversity are both integral to sustainable development. Sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystem and environment.

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 was also known as Doon valley case, was the first and unique case of ecological imbalances and environmental degradation of India where issues related to environment and ecological balance was brought up. Two orders were given by the Court one in 1985 and the other in 1987 in which the Supreme Court It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51 A (g) of the Constitution." highlighted the fact that India citizens have the fundamental of protecting the environment under Article 51A (g). The Court emphasized the need for reconciling development and environmental conservation as envisaged by the principle of sustainable development in the larger interest of the human society. Similarly, the Calcutta High Court in *People United for Better Living in Calcutta vs. State of West Bengal*, observed that the problem of environmental degradation is a social problem and therefore, law courts have a social duty as a part of the society to take into consideration the socio-economic conditions of the country while taking cognizance of environmental problems. The Courts are required to strike a balance between development and ecology and apply the principle of sustainable development while dealing with the problem of environmental degradation.

After that, the Supreme Court interpreted and implemented the doctrine of Sustainable Development that in *Narmada Bachao Andolan vs. Union of India* observed that "Sustainable Development means what type or extent of development can take place, which can be sustained by nature or ecology with or without mitigation".

In *T.N. Godavaraman Thirumulpad vs. Union of India*, the Supreme Court said "as a matter of preface, we may state that adherence to the principle of Sustainable Development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case". In *Indian Council of Enviro-Legal Action vs. Union of India*, the Apex Court held: "while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments". Hence, importance has been given both to development and environment and the quest is to maintain a fine balance between environment and economic development.

In *N.D. Jayal vs. Union of India*, the Supreme Court reiterated that sustainable development which relates to environmental protection is inherent in right to life under Article 21 of the Constitution and therefore, it should be given due importance as a fundamental right in the process of industrial and economic development of the country.

The first case that can be discussed in respect to the Courts interpretation of Article 21 is *MC Mehta vs. Union of India* or the Oleum Gas Leak Case. A writ was filed under Article 32 on the event of leakage of Oleum gas from one of the units Shri Ram Foods and Fertilizers Industries. The primary issue dealt with in this case was the scope of Article 21 and 32 of the Constitution. And application for enforcement of right to life a "hyper-technical" approach cannot be adopted which would defeat the goal of justice. "Right to life means a life of dignity to be lived in proper environment free from danger of diseases or infections. In this case Supreme Court established the rule of absolute liability and held that if any damage is caused due to hazardous or dangerous activity than the sufferer is liable to be compensated. Further, the Court also observed that the claim for compensation under Article 21 is sustainable. In respect to Article 32 the Court observed that the ambit of Article 32 is extremely broad and it allows the Courts to force new remedies and to formulae new strategies to enforce fundamental right

The case *Chhetriya Mukti Sangharsh Samiti v State of UP* was one of the earliest cases where the right to environment was linked to right to life. In this case the Supreme Court unequivocally held that “every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or degradation of laws, the quality of life or living of people is entitled to be taken recourse of Article 32 of the Constitution’.

Another noteworthy case that can be mentioned is Indian Council for *The Indian Environ-Legal Action vs. Union of India*. In this case writ was filed under Article 32 on behalf of villagers alleging that dangerous chemicals were being emitted by private companies and this violated the right to life of the villagers. The Court found that the sludge released by the companies was toxic in nature and it made the water in the wells and streams unfit for human consumption. The Court held in this instant case that if Companies flagrantly violated the right to life of individuals then the Court has a right under Article 32 of the Constitution to intervene to protect the right to life and liberty of the citizens.

Similarly, in *Subhash Kumar v. State of Bihar* The Supreme Court observed that “The right to life is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution...”

The Supreme Court in *Samatha v State of Andhra Pradesh*, held that It is the duty to ensure that the industry or enterprise do not denude the forest to become menace to human existence nor a source to destroy flora and fauna and biodiversity.

In *Bombay Dyeing and Manufacturing Co. Ltd vs. Bombay Environmental Action Group*, The Supreme Court observed that with major threats to environment such as climate change, global warming etc.; the need to protect the environment has become priority, at the same time it is also necessary to promote development, so much so that it has become the most significant and local point of environment legislation and judicial decision relating to the same.

Similarly, the apex court in *Amarnath Shrine, in Re vs. Union of India and Others*, explained that the doctrine of Sustainable Development and precautionary principle have been applied where development was necessary, but not at the cost of environment” appropriate balance between the various activities of the states very foundation of socio- economic security and proper environment of the right to life. “And this balance to be made by the courts to ensure the protection of environment and forests.

The High Court of Himachal Pradesh in *Kinkri Devi vs. State*, focusing on the need for maintenance of ecological balance observed: “The natural resources have got to be tapped for the purposes of social development but at the same time, it cannot be forgotten that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way and there may not be depletion of water resources. Long term planning must be undertaken to preserve the national wealth. It has always to be borne in mind that resources are permanent assets of mankind and are not intended to be exhausted in one generation.”

Supreme Court’s concern for sustainable development for preservation of environment was also reflected in the case of *RL & E. Kendra vs. State of U.P.*, wherein the Court reiterated that development was not adverse to environment; but thoughtless development was bound to cause irreversible harm to the environment and therefore, should be avoided for the conservation of environment and ecology.

The Indian Government and Indian judiciary, both are playing vital role in developing the principle of sustainable development by protecting, preserving, and conserving the environment and natural sources. Article 21. Right to clean and healthy environment has been interpreted as a part and parcel of right to dignified life of people of India by the Indian judiciary specially our apex court.

Indian judiciary is playing very pivotal role to make safe environment and bring an equilibrium between ecology and sustainable development.

A lot has been done legally and judicially to protect environment, but still we are lacking far behind from our goal. Preservation and protection of the environment and keeping the ecological balance unaffected is a mission which is not only for Governments and judiciary but also for every citizen of India, it is a pious, social, moral and legal obligation on every Indian citizens, it is also their fundamental duty as enshrined in Article 51A(g) of the Indian Constitution.

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