

SUSTAINABLE DEVELOPMENT AND INDIAN JUDICIARY

by

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Sustainable development is the pathway to the future we want for all. It offers a framework to generate economic growth, achieve social justice, exercise environmental stewardship and strengthen governance.

- Ban Ki-moon

Sustainable development is not a brand-new concept; many cultures over the human society found out the need for the concord among surroundings, society and economic system. In this 21st Century what is new is the articulation of this idea of world commercial and information society.¹ Sustainable Development means different things to different people, but in Brundtland Report it was said that,

“Sustainable Development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs”²

Sustainable development makes a speciality of improving the quality standards of all individual within the earth without compromising the immoderate use of herbal assets beyond the capacity of the environment to supply them indefinitely; it calls for and expertise that, this action has its consequences and we ought to find out revolutionary ways to exchange the institutional systems and character behaviour, in other phrases it’s approximately taking motion, converting coverage and exercise at all tiers from the man or woman to global.³

Implementation of Sustainable Development in India

There had been various factors which caused and end up the guiding thing to skip numerous laws regarding surroundings by means of the Indian Parliament. these factors cumulatively created an environment to legislate on diverse components of environment such as the umbrella regulation - the environment protection Act, 1986.⁴ In June 1972, the First U.N (International) Conference on Human Environment was held in Stockholm declared that:

¹ Singh. J, Compliance and Role of Judiciary in meeting the challenge of Sustainable Development, [online] Available at: <http://www.goforthelaw.com/articles/fromlawstu/article50.htm> [Accessed 16 February 2022].

² *Id.*

³ *Id.*

⁴ Shastri. C. S, 2005. *Environment Law*. 2nd ed. New Delhi: Eastern Book Company.

'to defend and improve the human environment for present and future generations has become an imperative goal for mankind.'

consequently, it known as upon government and those of the world to exert common efforts for the upkeep and development of the human surroundings. The then prime Minister of India, Mrs Indira Gandhi, was the primary head of the nation to cope with this convention and voiced her challenge about the eco-imbalances, environmental degradations and pollution problem. until now India is one of the signatories of this conference and to stopping environmental degradation, it has surpassed diverse statutes to enhance and to guard the surroundings.⁵

From the beginning of the attendance in the Stockholm Conference in 1072, India has passed various major laws on environment, namely:

1. Water (Prevention and Control of Pollution) Act, 1974,
2. Air (Prevention and Control of Pollution) Act, 1981,
3. Environment (Protection) Act, 1986,
4. National Environment Tribunal Act, 1995,
5. National Green Tribunal Act, 2010.

The Supreme Court of India has also noted that the United Nations Conference on the Human Environment has raised awareness of environmental protection.⁶ The concept of "sustainable development" was also first introduced at the 1972 Stockholm Conference and is now accepted as part of customary international law.⁷

Principles Adopted under the Sustainable Development by the Superior Courts of India

The supreme court of India acknowledges the following sustainable development principle, which we may refer to as a strategy or policy for continuing economic and social progress without harming the environment and natural resources that are essential for ongoing activity and future development.

(a) Inter-General Equity: The correct development must be accomplished so as to equally meet developmental and environmental needs to present generations," the Rio de Janeiro Declaration's Principle 3 declares. Additionally, in the case of *Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group*, the Supreme Court of India supported this approach. The principle's major goal is to prevent the current generation from abusing non-renewable resources in order to deny the benefit to future generations.⁸

(b) The Precautionary Principle: - According to Principle 15 of the Rio de Janeiro Declaration, "States shall generally apply the precautionary approach in accordance with their capacity to protect the environment. Lack of complete scientific knowledge shall not be used as an excuse for

⁵ *Id.*

⁶ See *Rural Litigation and Entitlement Kendra Vs State of U.P.* 1986 Supp SCC 517; *Vellore Citizens' Welfare Forum Vs Union of India*, (1996) 5 SCC 647; *M.C. Mehta Vs Union of India*, (1992) 1 SCC 358; *M.C. Mehta Vs Kamal Nath*, (2000) 6 SCC 213.

⁷ Shastri. C. S, 2005. *Environment Law*. 2nd ed. New Delhi: Eastern Book Company.

⁸ *ibid*

delaying cost-effective steps to avoid environmental deterioration where there is a threat of substantial or irreparable harm. The Indian Supreme Court adopted this principle as well, but in a modified form, explaining that it gave rise to the special principle of burden of proof in environmental cases, where the burden of proving the absence of harms resulting from the proposed actions is placed on those who want to maintain the status quo.⁹

(c) **Polluter Pays Principle:-** According to Principle 16 of the Rio de Janeiro Declaration, *"national authorities should seek to encourage the internationalisation of environmental costs and the use of economic mechanisms, with due regard for public interest and without impeding international trade and investment."* It is obvious from the preceding note that the goal of the above concept is to hold polluters accountable not only for compensating victims, but also for the expense of correcting environmental deterioration.¹⁰

Pivotal Role of Indian Judiciary for interpreting laws to suit the Doctrine of Sustainable Development

The Supreme Court and High Courts of India have played a significant role in safeguarding the Doctrine of Sustainable Development. The Indian legislature has created a number of legislation to protect the environment. In this case, the higher court has played a critical role in interpreting those statutes to fit the Doctrine of Sustainable Development.¹¹

The Indian judiciary has played an important role in promoting sustainable development and encouraging public and private industrialization while minimising the possibility of irreversible damage to the natural environment, which is necessary to maintain healthy flora and fauna on the planet and in India in particular¹². It should be mentioned that all cases involving environmental issues have been brought before the court via Public Interest Litigation (PIL), either under Article 32 or Article 226 of the Indian Constitution.¹³

This paper is primarily concerned with the various problems of environmental pollution caused by growing industrialization in a developing country such as India, as well as the role of the Indian judiciary in maintaining sustainable development alongside the social needs of industrialization¹⁴ or human economic development to meet present and future needs.¹⁵

⁹ *Id*

¹⁰ *Id.*

¹¹ Gosh. S. S, Sustainable Development and Indian Judiciary. Legal Service India.com. Available at: <http://www.legalserviceindia.com/articles/jud.htm> [Accessed 18 February 2022].

¹² Dr. Sudarshan, V., 2006, Sustainable Development and Indian Judiciary. Lucknow Journal of Social Sciences. [online] Volume : 3, Issue : 1. [Accessed 18 February 2022].

¹³ Gosh. S. S, Sustainable Development and Indian Judiciary. Legal Service India.com. [online] Available at: <http://www.legalserviceindia.com/articles/jud.htm> [Accessed 18 February 2022].

¹⁴ Dr. Sudarshan, V., 2006, Sustainable Development and Indian Judiciary. Lucknow Journal of Social Sciences. [online] Volume : 3

¹⁵ Chattopadhyay, b., sustainable urban development in india: sustainable urban development in india: some issues,[Online]

The right to a healthy environment has been incorporated directly and indirectly into superior court judgments in India, and the link between environmental quality and the right to life was first established in the case of *Charan Lal Sahu Etc. Etc. vs. Union of India*¹⁶ and Others, also known as the Bhopal Case.

In *Subhash Kumar vs. State of Bihar*¹⁷, the Supreme Court interpreted the basic right guaranteed under Article 21 of the Indian Constitution and declared that the right to life includes the right to a clean environment, which includes the right to drink clean water and breathe clean air. Through these decisions, the Supreme Court recognises the right to a healthy environment as a basic right.

In *M.C. Mehta vs. Union of India & others*¹⁸, also known as the Oleum Gas Leak case, the Supreme Court introduced a new concept of managerial liability- "absolute and non-delegable liability for disasters arising out of the storage or use of hazardous materials from their factories, the enterprise must ensure that no harm has been caused because negligent occurred or not."

In *Vellore Citizen Welfare Forum vs. Union of India*,¹⁹ the Supreme Court stated that companies are important for a country's development, but when it comes to pollution, the doctrine of "sustainable development" must be adopted as a balancing concept, along with the "precautionary principle" and the "polluter pays principle."

The court concluded in *M.C. Mehta vs. Kamal Nath*²⁰ that natural resources including as air, sea, waterways, and forests are so important to the people as a whole that the State Government committed a major breach of public trust by leasing environmentally sensitive property to Motel management.²¹

How Judicial Interpretation is helpful towards Sustainable development?

The Supreme Court of India has made a tremendous contribution to the protection of the environment, ecology, forest wildlife, and so on. Despite its lack of jurisdiction, the court has played an important role in this matter. True, we have adequate laws to preserve the environment, but their execution is in the hands of administrative authorities, and in this regard, effective governance devoid of corruption is a vital requirement for environmental protection.²²

¹⁶ 1990 AIR 1480, 1989 SCR Supl. (2) 597.

¹⁷ AIR 1991 SC 420/ 1991 (1) SCC 598.

¹⁸ 1987 SCR (I) 819.

¹⁹ AIR 1996 SC 2715.

²⁰ (1997) 1 SCC 388

²¹ Dr.G. Indira Priya Darsini & Prof. K. Uma Devi, 2009. Article 21 of the Constitution – A Mandate to Pollution Free Environment. Available at: <http://www.legalserviceindia.com/article/1399-A-Mandate-To- Pollution-Free-Environment.html> [Accessed 18 February 2022].

India. N, 2009. Judicial Activism and the Role of Green Benches in India. Law Resource India. Available at: <http://indialawyers.wordpress.com/2009/05/24/judicial-activism-and-the-role-of-green-benches-in-india/> [Accessed 21 February 2022].

The challenge now is how judicial interpretation might aid with sustainable development. In India, the court has made two contributions to environmental preservation. They are as follows:

1. It has provided procedural innovations to allow far broader access to justice²³, and
2. It has incorporated a 'right to a healthy environment' within its scope through a positive and expansive interpretation of the 'right to life' established in Article 21 of the Constitution.²⁴

It should be noted that a major initiative towards environmental protection and sustainable development in India has originated from the Indian judiciary, and the judiciary's commitment to social good in general, and environmental protection in particular, has resulted in the emergence of the innovative use of 'public interest litigation' under Articles 32 and 226 of the Indian Constitution, as a tool for social and environmental justice²⁵

Since the Stockholm Conference, the Indian judiciary has taken a more environmentally friendly stance and implemented an interpretative link between a clean environment and the 'right to life',²⁶ and the superior courts have done an excellent job to prevent environmental pollution for the sake of societal growth and further development, as well as due to specific legislation in this regard.²⁷

Right to Trade and Right to Health

It should be noted that since most pollution is caused by trade and business practises such as tanneries, acid factories, tie and dye factories, distilleries, and now hotel industries, all of which contribute to environmental pollution. This all relates to a fundamental right²⁸, namely the freedom to trade and commerce/business guaranteed under Article 19 (1) (g) of the Indian Constitution.²⁹

The Supreme Court stated in *M. C. Mehta vs. Kamal Nath* ³⁰that "any disruption of the essential environment components, namely air, water, and soil, which are necessary for existence, would be harmful to life." Thus, in exercising its power under Article 32, the court may not only award damages but also assess a fine for environmental degradation.

²³ Tripathi. R. K, How Judicial Interpretation is helping towards Sustainable development in India? Preserving Articles For Eternity. Available at: <http://www.preservearticles.com/201103314839/judicial-interpretations-is-helping-towards-sustainable-development-in-india.html> [Assessed 21 February 2022].

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Gopal. S, 2010. Sustainable Development - A Conflict Between Environment And Development. JurisOnline.in. Available at: <http://jurisonline.in/2010/09/sustainable-development-a-conflict-between-environment-and-development/> [Accessed 21 February 2022]

²⁸ *Supra*7.

²⁹ Article 19 (1) (g): All the citizens of India „shall have a right to practice any profession, to carry out on any occupation, trade and business

³⁰ *Supra*20.

The Gujarat High Court said unequivocally in *Abhilash Textiles vs. Rajkot Municipal*³¹ Corpn. that "the petitioners cannot be permitted to harvest profit at the expense of public health."

In another case, Wing Commander *Utpal Barbara vs. State of Assam*³², the court ruled that the Magistrate's absolute prohibition on the use of plastic bags under Section 144 of the Criminal Procedure Code is a violation of freedom of commerce and business under Article 19 (1) (g) of the Indian Constitution. Instead of a prohibition, the remedy may have been to take proper steps to regulate its use and disposal, as well as to resort to relevant legislation.

In this approach, the Supreme Court establishes a balance between growth and the environment, which is a basic human necessity.

The Judiciary's Controversial Role in the Bhopal Gas Leak Disaster Case

Union Carbide vs. Union of India, a review petition under Article 137 and a writ petition under Article 32 of the Indian Constitution, raised fundamental issues concerning the constitutionality, legal validity, propriety, fairness, and conceivability of the settlement of the victims' claims in a mass-tort-action relating to what is known as the "Bhopal Gas Leak Disaster," considered to be the world's worst industrial disaster, unprecedented in its nature and magnitude.³³

This catastrophe occurred in 1984 as a result of a leak of Methyl Isocyanate (MIC) gas from the Union Carbide India Ltd (UCIL) pesticide manufacturing factory.³⁴ The Supreme Court handed the last just judgement after a protracted struggle of justice in 2010, which is far more contentious than ever.

On June 9th, 2010, a protest was organised in Kolkata, where the PUDR stated that the latest judgement on the Bhopal gas leak of 1984 is a complete farce and absolutely criminal in the gap between the enormity of the crime and the punishment meted out to the offenders, a reflection of the social location of the victims and the accused person. However, it is the Supreme Court that is at blame, not the lesser courts that issue the judgement.³⁵

According to a TASAM press release³⁶, the latest decision in the Bhopal catastrophe case cannot be accepted by any Indian who cares about the people and the country. The way the case of mass murder has been reduced to a mere accident, resulting in a miscarriage of justice, is a grave betrayal

³¹ AIR 1988 Gau 78.

³² AIR 1999 Gau 78.

³³ Razdan. K. V., Air Pollution, Legislative Controls and Judicial Response. Available at: <http://www.nieindia.org/bulletin/bull-PDF/V15/B15-239.pdf> [Accessed 7 March 2022].

³⁴ Deepikanuals., 2010. Legal Aspects of the Bhopal Gas Tragedy. Legal Service India.com. Available at: <http://legalservicesindia.com/article/article/legal-aspects-of-the-bhopal-gas-tragedy-373-1.html> [Accessed 7 March 2022].

³⁵ . The Definiton of Injustice: The Bhopal Gas Murders. Sanhati. PUDR Press Statement. Available at: <http://sanhati.com/articles/2464/> [Accessed 7 March 2022].

³⁶ 2010. TASAM Press Release. Sanhati. Available at: <http://sanhati.com/articles/2464/> [Accessed 7 March 2022]

not just of the gas victims, but of the entire nation. It was also said that all of this is taking place as a result of the Indian political clout and the Indian legal system's game plan.

It should be noted that, while deciding the Shrirams case involving the oleum gas leak case in 1986, Justice P.N. Bhagawati observed that enterprises engaged in ultra-hazardous activities owed an absolute and non-delegable duty to ensure that no harm was done, but in the Bhopal gas tragedy, we found that this view was not at all considered by the Supreme Court.³⁷



³⁷ *Id.*

National Green Tribunal Act, 2010

In June 2010, the Government of India notified the introduction of the National Green Tribunal Act 2010, which resulted in the establishment of a National Green Tribunal (NGT) for the effective and expeditious disposal of cases relating to environmental protection, conservation of forests, and other natural resources. The NGT is a special fast-track court for the speedy disposal of environment-related cases, and it was stated that the tribunal repeals and replaces the previous National Environment Tribunal.³⁸

The law's enactment takes into account³⁹

1. The United Nations Conference on the Human Environment, held in Stockholm in June 1972, and the United Nations Conference on Environment and Development, held in Rio de Janeiro in June 1992, both of which India participated.⁴⁰
2. Indian judicial statements interpreting the right to a healthy environment as a component of the right to life protected by Article 21 of the Indian Constitution.
3. To establish the Tribunal with the authority to rule on environmental concerns, taking into account the "involvement of multidisciplinary issues" concerning the environment.

Later, in the Law Commission of India's 186th Report (2003), there was a "Proposal to Constitute Environment Court."⁴¹

The main goal of the Act is to give effect to India's international obligations arising from various decisions made at International Conferences to which India has been a Party, as well as to implement the Indian Supreme Court's decision that the right to a healthy environment is a component of the right to life under Article 21 of the Indian Constitution. This goal has been abundantly expressed in the Act's preamble.⁴²

The NGT serves as an appellate authority for anyone who is dissatisfied with any order or decision made under the Water (Prevention and Control of Pollution) Act 1974, the Water (Prevention and Control of Pollution) Cess Act 1977, the Forest (Conservation) Act 1980, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act 1986, and the Biological Diversity Act 2002. It should be emphasised that the NGT Act of 2010 applies to civil proceedings, and

³⁸ Ganeson. S, A Primer on National Green Tribunal Act-2010. Available at: http://www.indianchemicalcouncil.com/articles-lectures.php?action=view_item&content_id=58 [Accessed 17 February 2022].

³⁹ Jain. T, 2010. National Green Tribunal Act, 2010 passed. Law-In-Perspective. Available at: March 2022]

⁴¹ 2009. Green Tribunal Bill has many flaws. One World South Asia. Available at: <http://southasia.oneworld.net/opinioncomment/green-tribunal-bill-has-many-flaws> [Accessed 7 March 2022].

⁴² Venkat. B. A, 2011. The National Green Tribunal Act, 2010: An Overview. NALSAR Law Review Vol.6: No.1. Available at: <http://www.commonlii.org/in/journals/NALSARLawRw/2011/7.pdf> [Accessed 7 March 2022].

anybody who is dissatisfied with the tribunal's verdict or award may file an appeal with the Supreme Court.

Conclusion

The environment and development are two sides of the same coin that cannot be sacrificed for the sake of the other. On the contrary, both are critical to a better future. In this scenario, it is the Supreme Court and the High Courts' obligation to handle these cases with extreme prudence; only then can we achieve our aim, which is to ensure a pollution-free developed country for our next generation.

Another issue that must be resolved is the location of industry. In this regard, it is recommended that, when the industry is dangerous, it not be situated in an area where a large number of people live or near a colony, taking into account the happiness and health of the resident. It refers to the provisions of Directives Principles of State Policy Articles 48A and 51A (g).

Without a question, the Judiciary's innovative role in filling the statutory hole and encouraging environmental examination is commendable. Judicial skill is especially evident when the court orders the state to adopt necessary steps for sustainable development and pollution prevention. The ecosystem is not constrained by national borders. The original forest cover of the planet has been diminished, causing the maintenance of healthy ecosystems to be disrupted.

There is rarely any country that has not paid attention to environmental concerns since the Stockholm Declaration. Thus, it is imperative that adequate environmental planning and management be undertaken not just by policymakers, lawmakers, and the courts, but also by all to achieve the goals outlined in Principle 21 of the 1972 Declaration, which states that the earth's natural resources, particularly representative sampling of natural ecosystems, must be preserved for the benefit of present and future generations.

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