

INDIAN JUDICIARY AND THE CONCEPT OF SUSTAINABLE DEVELOPMENT

Written by Adv. Kirti Bajaj

Research Scholar, Dr. Panjabrao Deshmukh College of Law, Amravati, Amravati, India

ABSTRACT

Healthy environment is need of everyone. Today we witness ecological imbalance, degrading environment, depredated earth, traumatic subversion of the eco-system, poisoning of air, water and food and technological plunder of resources of nature. India has participated in various UN conferences on environment and sustainable development and enshrined them in various legislations and also in its constitution. Constitution of India being law of land had played very important role in protection of environment. Through its various provisions of fundamental rights and directive principles it has shown the greater concern and due attention to the protection of environment from various pollinations. To protect the constitutional rights and duties Indian judiciary had evolved various doctrines. The Supreme Court as well as High Courts has played significant role. By establishing National Green Tribunal, India has opened new aspirations in the arena of environmental protection. This paper throws light on India's efforts to apply the concept of sustainable development.

Keywords: Sustainable Development, Environment Protection

INTRODUCTION

Environment is the sum total of all social, economic, biological, physical or chemical factors which constitute the surrounding of man, who is maker of his own environment. The dictionary meaning of the word 'environment' is twofold: a) external conditions or surroundings especially those in which people live and work; and b) in ecological sense it means the external surroundings in which a plant or animal lives which tends to influence its development and behavior.¹

Clean and healthy environment helps in enriching the quality of life. In the busy life, man has almost forgotten nature and has become more and more modernized with the help of latest scientific and technological developments. Last few decades have witnessed rapid industrial progress of man. At every step, man has chosen convenience over environment. We can cite numerous examples even from day-to-day life where man uses non-biodegradable material like rayon, polythene etc. For e.g. Man has preferred milk in plastic bags than in glass bottles, vegetables in polythene bags instead of jute/cotton bags.

In developing countries like India, there has been environmental degradation due to over exploitation of resources, depletion of traditional resources, industrialization, urbanization and population explosion. Since, man is the creator of his own environment, his conduct can be regulated through the instrument of law. In fact, India has always been in the first position of taking all possible steps for the protection and improvement of the environment and aiming at sustainable development.

THE POLLUTION AND ITS PROBLEMS

Environmental pollution is the result of technological development, rapid industrialization and urbanization. Scientific advancement has increased their impact on environment. Environment pollution is increasing rapidly, alarming a serious threat to us. Natural environment is to be maintained for ecological balance but excessive exploitation of natural resources has disturbed this balance. Natural resources should not be used in such a manner so as to adversely affect the environment. The serious consequences of this rise in pollution and ecological imbalance are loss to bio-diversity, acid rain, water and air pollution, depletion of ozone layer and global

warming. Environment protection has not just remained an issue of any one State or nation, but today it has assumed global dimensions. And definitely various developments were responsible for this.

The decline in environment quality has been evidence by increasing pollution. Loss of forest and biological diversity, excessive construction and release of harmful chemicals in the atmosphere leads to growing risks of environmental accidents and threat to life support system. It is undoubted fact that natural calamities like drought, volcanic eruption, floods, forest fire, earthquakes are also responsible for environment degradation and pollution. Pollution created by mankind by using hazardous and dangerous substances are comes under the category of artificial pollution which can be broadly classified under different heads such as, Water pollution, Air pollution, soil pollution, Noise pollution, Land pollution and Radiation pollution.

HISTORICAL PERSPECTIVE OF ENVIRONMENT PROTECTION

India is not unknown with the concept of environmental jurisprudence. During ancient times, there was emphasizes on the care for natural sources. India has an ancient culture of protecting the environment. Most of the ancient sculptures teaches us that it is the Dharma of each individual in any society to protect the nature. The cultural and religious heritage of India shows a serious concern for the protection and preservation of the environment.ⁱⁱ The Vedas, Puranas, Upanishads, and other scriptures of the Hindu religion gave a detailed description of trees, plants and wild life and their importance to the people and about the need of healthy environment. The famous hymn in the World's oldest scripture the Rig-Veda portrays the beauty of morning and worships its glory. It also highlights the potentialities of the nature in controlling the climate, increasing fertility and improvement of human life emphasizing for intimate kinship with nature. Atharva Veda considered trees as above of various Gods and Goddess.ⁱⁱⁱ Yajur Veda emphasized that the relationship with nature, animals should be that of mutual respect and kindness. During these Vedic periods, cutting of trees was prohibited and a punishment was prescribed for such acts.^{iv} For example, Yajnavalkya Smriti, has declared cutting of trees and forests as a punishable offence and has also prescribed a penalty of 20 to 80 anas. Worshipping nature as our deity and recognizing earth as our mother show a kind of environment conservation ethics that comes to us through our history, culture, religion and

Vedic philosophy. Other Dharmgranthas like Matsy Puran, Vishnu Puran etc. also deals in preservation and conservation of environment.^v We found the traces of environment law made in Mauryan period and Gupta period. Thus, the Vedic lifestyle was environmentally ethical.^{vi}

Pre independence, in British India, several laws were enacted which had environmental provisions. These are the Indian Penal Code and the Code of Criminal Procedure to deal with environment under the title “Public Nuisance”, the Police Act for prevention of noise, the Poison Act for pesticide control and the Indian Forest Act for forest and wildlife management. Laws on forests, mines and minerals, water and other common natural resources of mankind were enacted more for their appropriation, privatization and utilization rather than for their protection. Many acts were enacted by British government for protection of environment but these laws remained not responded to fulfil the needs and to solve the problems of the society because of lack of knowledge about it. Urbanization, industrialization and population have enhanced the problem of environment degradation.^{vii}

INTERNATIONAL CONVENTION ON ENVIRONMENT

There are so many attempts were taken at international level to conserve environment and protect the flora and fauna. It became an international view that conservation of flora and fauna is directly related to industrialization and their use in an exploitative manner. This leads to States adopting environmental protection legal framework at national level. Early 19 century was the time where treatise was irregular and not proper to be adopted for conservation of environment. But for better understanding of the global concerns for environmental protection, some of the International Environmental legal documents need to be explained. The main international legal instruments are Stockholm Conference and Rio conference.

Stockholm Conference

In 1968 UNESCO for the first time suggested an idea for declaration on environment. In the year 1972 the very first international conference was held at Stockholm to discuss the issues relating to the environment. The participant countries were adopted the Stockholm declaration having 26 principles relating to the environment and action plan for human environment. The Action Plan contained three main categories: a) Global Environmental Assessment Program

(watch plan); b) Environmental management activities; (c) International measures to support assessment and management activities carried out at the national and international levels. In addition, these categories were broken down into 109 recommendations.^{viii}

Rio Declaration

The United Nations Conference on Environment and development, 1992 which is also known as Earth Summit was held at Rio De Jenerio, Brazil in 1992. The primary and most important objective, with which 179 countries with their political leaders, NGO's and media were gathered, was the interdependency between the social and economic development and the environment and how success in one field will sustained the growth of other over the time. The Rio declaration came with the blue print of international action on environmental issues and development issues for 21st century. ^{ix}

The Earth Summit concluded with the new concept of SUSTAINABLE DEVELOPMENT was ultimate goal for the achievement of human development without any boundaries. These included sustainability, development, sustainable development, economic sustainability, social sustainability, environmental sustainability and sustainable development goals. Development is understood as a social condition within a nation, in which the needs of its population are satisfied by the rational and sustainable use of natural resources and systems. Several theories have been put forward to explain the concept of development.^x

Johannesburg Declaration

The Johannesburg Declaration on Sustainable Development sometimes referred as Earth Summit 2002 was held after 10 years of Rio Declaration. It was builds on earlier declarations made at Stockholm in 1972, and the Earth Summit in Rio de Janeiro in 1992. While taking the nations of the world to sustainable development, it also includes substantial mention of multilateralism as the path forward.^{xi} It is an agreement to focus particularly on "the worldwide conditions which is going to be severe threats to the sustainable development of our society, which include: chronic hunger, malnutrition, foreign occupation, armed conflict, illegal drug problems, corruption, natural disasters, illicit arms trafficking, trafficking in persons, terrorism, communicable and chronic diseases, in particular HIV/AIDS, malaria and tuberculosis."^{xii}

THE CONCEPT OF SUSTAINABLE DEVELOPMENT

It was not a new concept for India but was effectively legalized after Stockholm conference to which India was signatory. 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.”^{xiii}

Therefore, after Brundtland report UN called upon Government and people of the world to make common efforts for the preservation and improvement of the human environment. The then Prime Minister of India, Mrs Indira Gandhi, was the first head of the State to address this Conference and voiced her concern about the eco-imbances, environmental degradations and pollution problem. Till now India is one of the signatories of these Conference and to preventing environmental degradation, it has passed various statutes to improve and to protect the environment.^{xiv}

There are four dimensions to sustainable development – society, environment, culture and economy – which are interdependent and not separate. It is nothing but the thinking about the future in which environmental, societal and economic considerations are balanced to meet an improved quality of life. For example, a society wants a healthy environment which provide food and safe drinking water, clean air for its citizens and development.^{xv}

CONSTITUTIONAL ASPECT OF ENVIRONMENTAL LAW

Ultimately it was the need of an hour in post-independence era to enact certain laws to meet the drastic problems endangering the human life. In pursuance of United Nations Conference on Human Environment convened at Stockholm in 1972, several countries have decided to take appropriate steps to protect and improve human environment. In this regard, Indian government bring 42nd Amendment to the Indian constitution and Article 48 A and 51A(g) were inserted.

Article 21 speaks about right to life. Constitution has provided us bundle of right in the name of “Right to Life”. The most significant development in matters relating to environment is the creative interpretation given by the Supreme Court of India for including a ‘right to a clean and healthy environment’ within the ambit of ‘right to life,’ a fundamental right under Article 21

of the Constitution of India.^{xvi} In a case before the Supreme Court itself, it was held that no municipality could put forth lack of money as a ground for not discharging its primary duty of looking after the health and safety of its residents.^{xvii}

The Directive Principles of State Policy (DPSP) contained in part IV of the Constitution set out the aims and objectives to be taken up by the State in the governance of the country. Article 48, 48-A and 49 of DPSP imposes certain obligations on the State to take positive action towards preservation and protection of environment. **Article 48** directs the state to take steps to organize agriculture and animal husbandry on modern scientific lines. In *Usmanbhai Hansobhai v. State*^{xviii}, the court held that prescription of the age of year 16 u/s 5(1A)(c) and (d) of Bombay Animal Preservation Act, 1954 can be said to be reasonable looking to balance which has to be struck between public interest which requires useful animals to be preserved and permitted the petitioners to carry on their trades.

Under **Article 48-A** the state shall endeavor to protect and improve the environment and to safeguard the forest and wild life of the country. In *Pradeep Krishan v. Union of India and Others*^{xix}, the court gave directions to take urgent steps to prevent any destruction and damage to the environment, the flora and fauna and wildlife in those area. The SC directed the MP government to take steps within period of 6 months and expeditiously conclude the rehabilitation of tribal.

Article 49 requires the State to protect every monument or place or object of artistic or historic interest, to be of national importance from spoliation, disfiguration, destruction, removal, disposal or export. In *Taj Trapezium case*^{xx}, the SC gave orders to all industries that they should use gas instead of coal and those which do not use gas should close their units. All shops functioning in Taj premises have been closed down. And number of directions were given to the Government for protection of beauty of Taj-Mahal and declared Agra as heritage city.

Article 51-A(g) imposes duty on every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creature. In *M.C. Mehta v. union of India*^{xxi}, the Court stated that it was the duty of the Central Government to direct all educational institutions throughout India to teach lessons in school for at least one hour per week relating to the protection of the natural environment, including forests, rivers and wildlife, and to distribute text books on the subject free of cost to educational institutions.

Article 32 and **226** are the real source to issue writs in violation of fundamental rights. For the protection of environment from pollution, the courts have taken innumerable measures through their judgement in writ petitions.

Under **Article 253** of the Indian Constitution, the parliament is empowered to make any law for implementing any treaty, agreement or convention with any other country or countries or even any decision made at international conference, association or other body.^{xxii} The broad language of Article 253 suggests that with Stockholm Conference in 1972, Parliament has the power to legislate on all matters linked to the preservation of natural resources. This 42nd Amendment to Indian Constitution and insertion of Article 48-A and 51-A (g) marked the beginning of Environmental jurisprudence in India. Environment Problems in India.

INDIAN LAWS AND SUSTAINABLE DEVELOPMENT

After the Stockholm Conference in 1972, 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 agreed that the U.N. Conference on Human Environment created awareness for environment Protection. It has recognised some principle of sustainable development as Polluter Pay Principle^{xxiii}, Precautionary Principle^{xxiv}, The Public trust Doctrine^{xxv} through its various landmark judgements. In addition, the Indian Law Commission, in its 186th Report^{xxvi}, submitted a proposal for the establishment of the Environmental Court.

NATIONAL GREEN TRIBUNAL (NGT)

Under National Green Tribunal Act, 2010 five regional national green tribunal were set up to decide all environment related disputes. Following the circuit procedure New Delhi is the Principal Place of setting of tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other place of settings of tribunal in India. The tribunal has given all the powers of civil court and criminal court. The NGT is a special fast track court for speedy disposal of environment related cases where it was said that, the tribunal repeals and replaces the earlier National Environment Tribunal Act 1995 and the National Environment Appellate Authority 1997 and all cases pending before them transferred to this tribunal.^{xxvii} The NGT deals with the civil cases under the seven laws related to environment which includes: 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; The Public Liability Insurance Act, 1991; and The Biological Diversity Act, 2002. But NGT has not given power to deal with the cases which comes under The Wildlife Protection Act, 1972 and Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006. The NGT provides a procedure for penalty for non-compliance. It also has provision for imprisonment for a term which may extend to 3 years, fine with may extend to 10 crore rupees, and both fine and imprisonment. Today, NGT is the most consistent and progressive environmental authority in India.^{xxviii}

The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Further, NGT is also not bound by the Indian Evidence Act, 1872.^{xxix} Thus, it has relatively easy and fast dispute resolving machinery. The Tribunal is to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Therefore, it enforces not only the decisions of the International Conferences but also the above said celebrated principles propounded by the Hon'ble Supreme Court of India.

ROLE OF JUDICIARY IN PROTECTING AND PRESERVING ENVIRONMENT IN INDIA

Since the late 1980s, the Supreme Court and High Courts have embarked on complex administrative exercises. The Court widened the concept of locus standi. It issued several guidelines for protecting the environment. Life is not mere vegetative existence but it means much more. Quality of life is most important. Quality of life includes right to a clean, healthy and wholesome environment. This approach of the Supreme Court has led to derive principles to guide the development of environmental jurisprudence.^{xxx}

The major contribution of the Supreme Court to human rights jurisprudence has been enlarging the scope of Article 21 relating to right to life and including within its ambit the right to safe and pollution free environment. The significant decisions handed down by the Supreme Court in favor of a right to environment and the principles established for protection of the environment and human rights of the people affected by environmental degradation.^{xxxi}

In **Vellore Citizen, Welfare Forum v. Union of India**^{xxxii}, the SC held that such industries though are vital importance to the country's development but they cannot be allowed to destroy ecology, degrade the environment and pose a health hazard and cannot be permitted to continue their operations unless they set up pollution control devices. SC further held that Precautionary Principle and Polluter Pay Principle are essential features of Sustainable Development.

In **M. C. Mehata v. Kamal Nath**^{xxxiii}, a public interest matter was brought before the Supreme Court, wherein a motel was constructed on the banks of the river Beas, resulting in interference in the natural flow of the water. The Court held that the state government, by granting the lease, had breached the Doctrine of Public Trust. The Court quashed the prior approval given by the Government of India for the construction of the motel and applying the 'polluter pays principle', directed the company to pay compensation for the restitution of the environment and ecology of the area. The Court referred to the Public Trust Doctrine and stated that the latter extends to natural resources such as rivers, forests, seashores, and the air, among other things, for the purpose of protecting the ecosystem.

In **Intellectual Forum Tirupati v. State of AP**,^{xxxiv} the SC held under Article 21 and 51A, it is constitutional obligation of the government to protect and preserve the environment. The

tanks are important for the protection of environment and supply of water to those areas. The government is responsible to protect and preserve historical tank on the basis of sustainable development and public trust under Article 21, 48A and 51A.

In **Arjun Gopal v. Union of India**^{xxxv}, the SC as an interim relief directed the central government in public interest to suspend all license s which permit sale of fire-works in the NCR which would remain in force till further orders of the court as the use of fireworks in NCR was major source of air and noise pollution. It held that the duty to ensure healthy environment not only was of the state government but also of central government.

In **M. C. Mehta v. Union of India**^{xxxvi}, court observes that, gross violation of Article 21 of the Constitution of India took place. The writ was filed against the State Governments, Government of NCT of Delhi and civic bodies, which have miserably failed to discharge their liability as per the directive principles of State Policy which have found statutory expression, they are being made statutory mockery and also the directions of this Court and High Courts in this regard are being violated with impunity. The directions were issued to the Chief Secretary of States, Collectors, Tahsildar, Director General, IG/SP and other police officers of the area of concerned police station and the entire police machinery to ensure that not even a single incident of burning of waste plants in field takes place.

NATIONAL GREEN TRIBUNAL AND SUSTAINABLE DEVELOPMENT

Within such a short time period, the Tribunal has given some landmark judgments that changed the course of environmental law and environmental protection in India.

In **Ms. Betty C. Alvares vs. The State of Goa and Ors.**^{xxxvii}, the NGT laid down that once it is found that any person can file a proceeding related to the environmental dispute. Petitioner's application was maintainable without questioning to her nationality.

In **Almitra H. Patel & Ors. vs. Union of India and Ors.**^{xxxviii} the NGT had given direction of the Tribunal was a complete prohibition on open burning of waste on lands, including at landfills.

In **Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors.**^{xxxix}, the NGT has invoked the principle of no-fault liability and imposed the penalty of Rs. 1,00,000/-.

In **Samir Mehta vs. Union of India and Ors.**^{xl} the NGT has directly relied on the principle of 'polluter pays' and made a private entity liable to pay a compensation, making them subject to a code of environmental jurisprudence.

CONCLUSION

By formulating various doctrines through the landmark judgements, Indian Court has signified a judicial awareness on the need for reconciliation of the developmental, socio-economic, and ecological conflicts in the present-day Indian society. There is a greater need for the judiciary as a protector of fundamental rights and human rights to ensure that the citizen must get a clean and healthy environment as a basic fundamental human right. The judiciary had evolved innovative methods of access to justice by ordinary citizens and interpreted the existing provisions in the legal system to develop the jurisprudence in the context of environment protection. By going through the above cases, we find that the judiciary has currently extends the various legal provisions relating to the protection of the environment. Judiciary is trying to fill in the gaps when there is a lack of legislation. But improper implementation of these judgements has increasing the environment cases in the country and ratio of degradation of environment is alarming. Hence, there is an urgent need to strengthen the hands of judiciary by making separate environmental courts in each state, with a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more effectively.

REFERENCES

1. <http://blog.ipleaders.in>
2. <http://lawcommissionofindia.nic.in/>
3. <http://www.goforthelaw.com/>
4. <https://en.unesco.org/>

5. <https://en.wikipedia.org/>
6. <https://lawbhoomi.com/>
7. <https://papers.ssrn.com/>
8. <https://shodhganga.inflibnet.ac.in/>
9. <https://vsktelangana.org/>
10. <https://www.biyanicolleges.org/>
11. <https://www.conservationindia.org/>
12. <https://www.cseindia.org/>
13. <https://www.downtoearth.org.in>
14. <https://www.indiakanoon.org>
15. <https://www.lawctopus.com/>
16. <https://www.onefuturecollective.org/>
17. <https://www.researchgate.net/>
18. <https://www.tandfonline.com/>
19. <https://www.un.org/>
20. <https://www.un.org/en/conferences/environment/>

ENDNOTES

ⁱ Myneni, Dr. S.R.(2017). ENVIRONMENTAL LAW. Hyderabad. Asia Law house. P 1

ⁱⁱ Available at <https://vsktelangana.org/environment-conservation-in-ancient-india>

ⁱⁱⁱ ibid

^{iv} ibid

^v Available at <https://lawbhoomi.com/history-of-environment-protection-ancient-medieval-and-modern-india/>

^{vi} Myneni,Dr.S.R.,(2017)ENVIORNEMENTAL LAW. Asia Law house, Hyderabad. P83-85

^{vii} Ebid, p 86-87

^{viii} Available at <https://www.un.org/en/conferences/environment/stockholm1972>

^{ix} Available at <https://www.un.org/en/conferences/environment/rio1992>

^x Available at <https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1653531>

^{xi} Available at https://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm

^{xii} Available at

https://en.wikipedia.org/wiki/Johannesburg_Declaration#:~:text=The%20Johannesburg%20Declaration%20on%20Sustainable,Development%20was%20also%20agreed%20upon.

^{xiii} Available at <http://www.goforthelaw.com/articles/fromlawstu/article50.htm>

^{xiv} ibid

^{xv} Available at <https://en.unesco.org/themes/education-sustainable-development/what-is-esd/sd#:~:text=The%20concept%20of%20sustainable%20development,to%20meet%20their%20own%20needs.%E2%80%9D>

^{xvi} Pandey, Dr.J.N. (2003) CONSTITUTIONAL LAW OF INDIA. Central law Agency.p234

^{xvii} Municipal Council Ratlam v. Vardhichand AIR 1980 SC 1622

-
- xviii AIR 1981 Guj11
xix AIR 1996 SC 2040 at p 2047
xx AIR 1997 SC 734
xxi (1983)1 SCC 471
xxii Myneni,Dr.S.R.,(2017)ENVIORNEMENTAL LAW. Asia Law house, Hydrabad. P654
xxiii Vellore Citizen, Welfare Forum v. Union of India, (1996) 5 SCC 650
xxiv Ebid
xxv M. C. Mehata v. Kamal Nath (1997) 1 SCC 388
xxvi Available at <http://lawcommissionofindia.nic.in/reports/186th%20report.pdf>
xxvii Available at <https://www.cseindia.org/national-green-tribunal--a-new-beginning-for-environmental-cases-2900#:~:text=The%20bill%20provides%20for%20the,is%20unique%20in%20many%20ways.>
xxviii Available at <https://www.conservationindia.org/resources/ngt#:~:text=The%20NGT%20is%20a%20specialized,protection%20and%20conservation%20of%20forests.&text=Most%20conservationists%20would%20have%20heard,already%20filed%20applications%20before%20it.>
xxix Available at https://en.wikipedia.org/wiki/National_Green_Tribunal_Act
xxx Available at <https://www.jurisedge.com/journal/wp-content/uploads/2016/12/Chinna.pdf>
xxxi Available at http://www.nluassam.ac.in/docs/lex%20terra/Lex%20Terra%20Issue%2032_5.pdf
xxxii (1996) 5 SCC 650
xxxiii (1997) 1 SCC 388
xxxiv AIR 2006 SC 1350
xxxv AIR 2017 SC 173
xxxvi Available at <https://indiankanoon.org/doc/16059052/ order dtd. 13-01-2020>
xxxvii Misc Application No. 32/2014(WZ)
xxxviii MANU/GT/0150/2016
xxxix MANU/GT/0101/2016
xl M. A. no. 557&737 of 2016