

THE SUPREME COURT AND INTERGENERATIONAL EQUITY IN ENVIRONMENT MATTERS

Written by *Shanta Pandey*

Advocate, Supreme Court of India

The concept of 'Intergenerational Equity' was first propounded in the UN Conference on Human Environment, 1972 at Stockholm as:

“The natural resources of earth, including air, water, land, flora and fauna and especially representative samples of natural ecosystem must be safeguarded for the benefit of the present and future generation through careful planning or management as appropriate.”

The principle of 'Intergenerational Equity' stipulates that the present generation should pass on to future generations enough natural resources and sufficient environmental quality that they can enjoy at least a comparable quality of life and inherit a healthy and sustainable environmental heritage. **(Source: A Dictionary of Environment and Conservation)**

This principle has been repeatedly reaffirmed and reiterated that parties should protect the climate system for the benefit of the present and future generations through various Declarations/ Agreements : World Commission on Environment and Development 1987, Rio Declaration on Environment and Development 1992, UN Framework Convention on Climate Change 1992 and the Paris Climate Agreement 2015 to name a few.

The concept of Intergenerational Equity was established in the concept of 'Development' as Principle 3 in the 1992 Rio Declaration wherein it was *interalia* declared that the '*right to development must be fulfilled so as to equitably meet the developmental and environmental needs of the present and future generations.*' It was further reaffirmed in the Vienna Declaration of 1993. The concept of Sustainable Development brings within its ambit the principle of Intergenerational Equity.

The Supreme Court of India while interpreting Article 21 has held that right to life includes the right to a clean environment and 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 of India. (**Municipal Council Ratlam Vs. Vardhichand & Ors, Subhash Kumar Vs. State of Bihar**)

By enumerating the right to clean environment within the ambit of Article 21 the Apex Court has successfully dealt with matters pertaining to indiscriminate Environmental and ecological degradation and depredation and rampant illegalities associated with it. The Apex Court has repeatedly held that environment and ecology are national assets and are subject to 'intergenerational equity' and that the State is a trustee for the people. The relevant Articles of the Indian Constitution dealing with ownership and control of material resources, conservation of environment are Article 39(b), Article 48-A, Article 51-A(g). In *Samaj Parivartana Samudaya & Ors Vs. State of Karnataka* 2013(8) SCC 154 the Court held that intergenerational equity and sustainable development have been established as an integral part of Article 21 of the Constitution of India.

In **Rural Litigation & Entitlement Kendra Vs. State of U.P. (1985 (2) SCC 431)** the Court addressed the issue of environmental and ecological degradation caused due to indiscriminate quarrying of limestone in Doon Valley the Apex Court prohibited all mining activity in the area and declared the valley an ecological fragile area.

In **State of Himachal Pradesh Vs. Ganesh Wood Products 1995(3) SCC 363** with regard to the issue of availability of natural resources the Court held that the act of the Himachal government besides being contrary to the National Forest Policy and State Forest Policy was also contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and equity. The court further held that the present generation has no right to deplete all existing forest and leave nothing for future generations.

In **K.M. Chinappa, Godavarman Vs. UOI 2002(10) SCC 606** the Court held: "*We owe a duty to future generation and for a bright today, bleak tomorrow cannot be countenanced. We must learn from our experiences of past to make both present and the future brighter. We learn*

from our experiences, mistakes from the past so that they can be rectified for a better present and future.”

In **M.C. Mehta Vs. UOI (Manu/SC/0768/2009)** the Court acting under Article 32 and Article 142 suspended mining operation in the Aravalli Hills after taking cognizance of the fact that indiscriminate mining had resulted in large scale environmental degradation of the Aravalli Range. The Court held:

“45. Environment and ecology are national assets. They are subject to intergenerational equity. Time has now come to suspend all mining in the above area on sustainable development principle which is part of Article 21, 48-A, 51-A(g) of the Constitution.

46. Mining within principle of sustainable development comes within the concept of ‘balancing’ whereas mining beyond the principle of sustainable development comes within the concept of ‘banning’. It is matter of degree. Balancing the mining activity within environmental protection and banning such activity are two sides of the same principle of sustainable development. They are parts of Precautionary Principle.”

N.D. Jayal Vs. UOI 2004 (9) SCC 362

The Court while considering the issue relating to safety and environmental protection arising out of construction of Tehri Dam observed:

“22. ... the balance between environmental protection and developmental activity could only be maintained by strictly following the principle of sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of the upcoming generations to satisfy their needs... it is a guarantee to the present and bequeath to the future..”

Samaj Parivartana Samudaya & Ors Vs. State of Karnataka 2013(8) SCC 154

The Court while dealing with the issue of overexploitation and indiscriminate mining operations being conducted in the State of Karnataka held intergenerational equity and sustainable development have ‘*come to be firmly embedded in our constitutional jurisprudence as an integral part of fundamental rights conferred by Article 21..*’ The Court went on to hold

that the no procedural restraint could be imposed upon it to enforce the rights of the citizens who were bound to suffer because of environmental degradation.

The Court directed the setting up of a Special Purpose Vehicle (SPV) for the purpose of taking various mitigative measures and to ensure socio economic development of the region, conservation and protection of forest etc. Further the Court directed Reclamation & Rehabilitation of the mines in accordance with the guidelines submitted by the CEC.

In **Goa Foundation Vs. UOI 2014 (6) SCC 590** the Apex court, in view of the fact that the mining of iron ore caused significant ecological and environmental damage the Court constituted an Expert Committee to conduct a macro EIA study on the ceiling limit of the annual excavation of iron ore in the State keeping in mind the principle of sustainable development and intergenerational equity and other relevant factors.

The Court further directed the setting up of Goan Iron Ore Permanent Fund for the purpose of intergenerational equity and to make mining sustainable for all times to come, the State Government was directed to frame a comprehensive scheme in consultation with the CEC regarding the same. The Court also directed the State government in the interest of sustainable development and intergenerational equity to permit a maximum annual excavation of 20 million MT from the mining leases on the State until the submission of the report submitted by the Expert Committee; (the report submitted by the Expert committee recommended placing an annual cap between 20 and 27.5 million tonnes on the extraction of iron ore in Goa)

Common Cause Vs. UOI [W.P.(C) No.114/2014]

The Apex Court *inter alia* discussed the principle of Intergenerational rights and obligations stating that the aspect merited serious consideration by the policy and decision makers. The Court however refused to set any cap on the mining activity either by the State of Orissa or the Union of India.

The Court further directed that the National Mineral Policy 2008 needed to be revisited especially with regard to conservation and mineral development. It is pertinent to mention herein that the New Mineral Policy 2019 formulated after the Apex Court's direction, introduces the concept of Intergenerational Equity dealing with the well-being of the present

and the future generation and also seeks to institutionalise the mechanism for ensuring sustainable development in mining.

By bringing the principle of intergenerational equity and sustainable development within the fold of Article 21 the Court has made a significant headway in endorsing, evolving and developing the principle of intergenerational equity and sustainable development. The proactive stance of the Apex Court has enabled the Court to take significant steps to effectively effectuate the abovementioned principle.

