

Legislative and Judicial Approach on Environmental Protection and Sustainable Development in India

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ABSTRACT

The environment prevailing on earth is the best boon of nature. The environment is the aspect that has given the pride of the living world to the earth. As a result of the industrial revolution, due to the establishment of factories and large-scale deforestation, the problem of imbalance in the environment has arisen in front of mankind in the form of environmental pollution. There is a lot of pressure on the environment due to this indiscriminate development happening all over the world. In the case of India, greater population density in some regions is putting pressure on natural resources. Reducing poverty and the need to increase the economic growth rate is also the main reason. In this way, there is a strong correlation between the environment and economic development. Whatever policy is adopted to implement social and economic objectives, it has an impact on the environment. Humans have fallen victim to the polluted environment by exploiting natural resources to improve their lifestyle. Sustainable development is the process whereby the basic basis of natural resources is not allowed to deteriorate and per-capita welfare increases over time. Sustainable economic growth without harm to the environment is possible only when the effects on the environment are integrated with economic decisions in the right direction. The Constitution of India also included provisions related to environmental protection and also enforced policies and laws related to the environment, being a party to international conventions. India's judiciary played an important role in environmental protection and issued guidelines regarding sustainable development from time to time.

Introduction

Like or not we are travelling together
On a common Planet
And we have no nation alternative
But to work together, to make an environment
In which we and our children can live a full and peaceful
life

-U. Thantⁱ

The above quotation explains the importance of the environment. Environmental protection is our duty because the environment of the earth is the collective heritage of all of us. Issues related to the environment are related to human beings, we cannot put the responsibility for its protection on the state, it is a personal responsibility. Today, environmental protection is the most burning issue in the world. A healthy environment enhances the personality of every human being. Increasing environmental pollution indicates that humans are compromising their values, greed for excessive exploitation of natural resources, leading them to the path of decline. We have forgotten that a healthy brain lives in a healthy body and for a healthy body we need to live in a healthy environment, but human actions are the major cause of environmental degradation. Human actions and the environment are interrelated on this earth. The environment (Protection) Act, 1986 defined the Environment to mean to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.ⁱⁱ

In ancient India, there was a concern for environment protection and this concern is not only of recent origin. The concern for environment protection in India can be traced back to the period between 321 and 300 B.C. The ancient Indian law to environment protection is found in Kautilya's Arthshastras. In India, there was an ancient tradition of giving constant attention to the protection of the environment. It was the Dharma of every individual to protect and worship nature. Several Puranas and Smritis it is stated that cutting trees is a punishable offence.ⁱⁱⁱ

Sustainable Development:

Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. Seen as the guiding principle for long-term global development, sustainable development consists of three pillars: economic development, social development and environmental protection.^{iv}

The economy and environment have a very close relationship. Whatever policy is implemented for the achievement of social and economic objectives has an impact on the environment. Human society has become a victim of a polluted environment by its exploitation of natural resources to improve its lifestyle. Defects in the environment can not only disrupt the economic sector but can also promote separatism in the social and political fields.

In the name of development, we are exploiting nature for economic benefits due to indiscriminate harvesting of forests, increasing amount of greenhouse gases in the environment, shirking rivers from the construction of dams, increasing pollution due to increasing tourism in hilly areas. In

this universe, we have only this earth to live and we are engaged in destroying it in the name of development. On the other hand, development is also necessary to take human civilization to a new level.

In this way, development should also be done in such a way that there is minimum damage to the environment and we can also compensate it in other ways. At the same time, it also has to protect other species on the earth from environmental pollution and the damage caused by unplanned development.

According to the former prime minister of India Dr Manmohan Singh, "Our people have the right to progress economically and socially and get rid of the widespread catastrophe of poverty. For this, we need to make rapid economic progress. But I believe that sustainable ecological development should not be opposed to our goals of progress. Our concept of development should be comprehensive. This should include quality of life, not just a flood of material goods and services. Our people want a higher standard of living, but at the same time, we need clean water to drink, pure air to breathe and green earth to live."^v

International Efforts on Environment and Sustainable Development

The history of sustainable development in the United Nations dates back to the United Nations Conference on the Human Environment, held in Stockholm, Sweden, in 1972. The United Nations Conference on the Human Environment was the UN's first major conference on the issue of the environment.^{vi}

Twenty years later in 1992, the Earth Summit was held in Rio de Janeiro, Brazil. Representatives of 172 countries participated in this conference and through this, the role of the environment in world politics was shaped. The declaration was an agreement between the responsibilities of industrialized countries and the developmental needs of developing countries. Agenda-21 was passed on this occasion and the member nations expressed their commitment to maintaining the natural balance, preventing environmental pollution and adopting the concept of sustainable development. The Earth Summit also produced the Rio Declaration, which has 27 principles. Principle-11 of this declaration, environmental standards should be established at national levels and Principle-16 clearly states that environmental values should be internationalized and pollutants should be paid.

The Johannesburg Declaration on Sustainable Development was adopted which the plan of implementation of the world summit on sustainable development. The Kyoto Protocol, Japan and the 2015 United Nation Climate Change Conference were held in Paris, France. The overarching goal of the treaty and Convention is to reduce greenhouse gas emission to limit the global temperature.

Legislative Approach towards Sustainable Development

India was also involved in whatever international efforts were made for environmental protection development. Therefore, it was natural for international efforts to have an impact on the national law of the country. India's commitment to environmental protection was reflected in India's constitutional law and common law. The Indian economy is developing and its goal is to improve the lifestyle of its citizens

by developing rapidly. Sustainable development and economic activities complement each other. By making an effective law in this regard, the Indian legal system tried to harmonize sustainable development and economic activities so that citizens get the right to a healthy environment.

The Indian Constitution was enacted in 1950 but was not directly linked to the provisions of environmental protection. The 1972 Stockholm Conference drew the attention of the Indian government towards environmental protection. The Government amended the Constitution in 1976 to add two important Articles 48A and 51A (g). Article 48A directs the state government to ensure the protection and improvement of the environment, and protect the forests and wildlife of the country'. Article 51A (g) provides a duty to citizens to protect and promote the natural environment and be kind to all living beings

As it is known that India is a member nation of many international conventions for environmental protection and as a result of this, many Acts & regulations have been passed in the country for environmental protection. India to implement the decisions taken as Stockholm, enacted three Major Acts, namely The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 to provide for prevention and control of pollution and improvement of Environment and other are The Wild Life (Protection) Act, 1972, The National Environment Tribunals Act, 1995, The National Environmental Appellate Authority Act, 1997, The Biodiversity Act 2002 etc. These special acts have supplemented the provisions of the Indian Penal Code, 1860 in Chapter XIV, The criminal Procedure Code, 1973, the Easement Act, The Civil Procedure Code and other such antiquated legislations.

Environmental Jurisprudence and Sustainable Development

The growth of environmental jurisprudence in India was slow but steady. The Indian judiciary started playing its role as an environmental watchdog in the eighties. Through public interest litigation, the court has played an excellent role in environmental protection. First of these cases, which is still the Magna Carta of the environmental jurisprudence for recognition of the public right to decent living was established in **Municipal Council, Ratlam v. Vardhichand**^{vii} by Justice V.R. Krishna Iyer. The beginning of judicial activism in the Environment in India started with this case. The concept of sustainable development posits an important principle that there should be significant harmony between economic development and the environment. There should not be developed at the cost of the environment. The environment is the basis of life on earth. The Supreme Court relied on this principle and ordered the closure of mines that harm the environment in the Doon Valley.^{viii}

In the Intellectuals Forum, Tirupathi v. State of A.P.^{ix}, the court held that the responsibility of the State to protect the environment is now a well-accepted notion in all countries. It is this notion that in International Law gave rise to the principle of State responsibility for pollution emanating within one's territories. This responsibility is enunciated in the United Nations Conference on Human Environment, Stockholm 1972 to which India was a party.

The Indian judiciary, through its judicial decisions, formulated many environmental principles that led to an unprecedented rise in environmental jurisprudence. Some major doctrines related to environmental protection and sustainable development developed by the Higher Judiciary of India are the following:

1. The doctrine of Absolute Liability (M.C. Mehta v. Union of India)^x

This case proved to be a milestone in Indian judicial jurisprudence through judicial activism. This case transformed the decades-long "doctrine of strict liability" into a "doctrine of absolute liability". The court found that the doctrine of strict liability, which came to light during an English suit in *Rylands v. Fletcher*, 1868, gives companies a variety of leeway in discharging their liability, which often causes companies to behave irresponsibly. The doctrine of absolute liability, on the other hand, does not provide companies with any kind of defence or exemption; Also, it is also a part of Article 21 (Right to Life) of the Constitution.

2. The doctrine of Public Trust (M.C. Mehta v. Kamal Nath)^{xi}

The principle is based on the concept that some resources are reserved for public use, and should be maintained by the government for rational public use. The state is the "trustee" of all-natural resources provided by nature for public use and recreation. In this principle, the Hon'ble Supreme Court noted that the principle of public trust is fundamentally based on the concept that natural resources like air, seawater and forest are very important for the people that the handing over of these resources to private ownership is completely unjust.

3. Polluter Pays Principle (Indian Council for Enviro-Legal Action v. Union of India)^{xii}

This principle implies that the polluter will not only compensate the victim of the pollution for the damage to the environment but also have to bear the costs that will be incurred in restoring the environmental degradation. Thus, under this principle, the polluter has the responsibility to fix the environmental damage.

4. Precautionary Principle (Vellore Citizens Welfare Forum v. Union of India)^{xiii}

According to this principle, any substance or activity that threatens the environment should be prevented from harming the environment. In the case of *Vellore Citizens*, the Hon'ble

Supreme Court has given the meaning of precaution in the context of Municipal Law: -

(i) Environmental measures will be taken by state governments and local authorities based on the principle of precaution to prevent environmental degradation, ie the reasons for which environmental degradation has occurred will be prevented in future.

(ii) Where there is a risk of serious and irreparable damage to the environmental degradation, the lack of scientific certainty will not be allowed to lead to the postponement of preventive measures, i.e., the States will try to save serious damage to the environment by the existing resources. While doing this, scientific certainty will not be awaited by them.

(iii) The burden of proving that the environment has not been damaged by their work or activity shall be-

- (A) the person performing the act, or
- (B) Developer, or
- (C) Industrialist.

Conclusion:

Article 21 of the Constitution of India, which grants the citizens the fundamental right to life and personal liberty, including the right to a healthy environment. This right has been given to the citizens by the Indian judiciary under the interpretation of environmental rights in various cases. India has been a member nation of many international conventions on which the Indian Parliament has also enacted legislation from time to time. India has fulfilled its international obligations through these laws.

India's growth rate is high due to the emerging economy of the world and due to this India is also facing the problem of environmental pollution like other developed and developing countries. The rate of high industrial development is also necessary for the all-round development of the citizens of the country, otherwise, the country may lag behind other countries in terms of development. After the Bhopal gas tragedy, the country realized that environment is more important than development. After this tragedy, India adopted the concept of sustainable development and legislative and judicial activism about the environment increased greatly. In this way, the concept of sustainable development is possible only when we adopt environmental protection as a habit and make the common people aware of environmental laws.

References

ⁱ This was an appeal of U. Thant, the Secretary General, United Nations, In Stockholm Conference and this appeal has been extracted from the Article of Hon'ble Justice, Mr. Sunil Ambwani, *Environmental Justice: Scope and Access*, AIR 2007 Journal 49

ⁱⁱ Section 2(a) of The Environment (Protection) Act, 1986

ⁱⁱⁱ J.J.R. Upadhyaya: *Environmental Law* 2017 edition

^{iv} <https://sustainabledevelopment.un.org/rio20/about>

^v <http://moef.gov.in/wp-content/uploads/2017/08/BioDiversity-OL.pdf> Page 66

^{vi} <https://www.un.org/en/conferences/environment>

^{vii} AIR 1980 SC 1622

^{viii} *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.* AIR 1985 SC 652

^{ix} (2006) 3 SCC 549,552

^x AIR 1987 SC 965

^{xi} (1997)1 SCC 388

^{xii} AIR 1996 SC 1446

^{xiii} AIR 1996 SC 2715