

# Sustainable Development and Role of Judiciary: Need for Change in Approach and Implications

## Abstract

Sustainable development is progressively declared in global and national legal settings, yet there is far to go regarding usage. The role of the judiciary is subsequently of the best significance. The judiciary, at a national dimension, looked with the errand of elucidating the law of sustainable development, case by case. Gradually a group of environmental jurisprudence is developing. In playing out this errand, national judiciaries will be helped by the trading of judicial decisions, data and experience between purviews. Along these lines, national judiciaries may profit by one another's information, experience and aptitude. The motivation behind this article is to add to this data sharing objective. The author's argument is that requirements for setting up a special environmental court in India are not accessible, and a full survey for the Indian environmental legislation and judicial structure is required before choosing the issue of building up the special environmental court.

**Keywords:** Sustainable Development, Role of the Judiciary, Environmental Law, Environment Court.

## Introduction

We live today in the world of contradictions. On one hand we have extremely developed states and on the other hand we have states where people cannot get access even to minimum necessities of life. Therefore for those deprived of even basic minimum necessities of life, right to development has assumed great significance in recent times. However the process of development undertaken by most of the states involves hyper-consumption of energy and natural resources leading to environmental degradation. Environment degradation is a burning problem now-a-days, the need of its protection is global issue. Industrialisation, urbanisation, population explosion, poverty over exploitation of resources, depletion of traditional resource of energy and raw material etc. are some of the factors which have contributed to environmental deterioration the world over. It is the basic right of every human being to live in a healthy environment under article 21 of the constitution. The need of hour is the sustainable development.

Sustainable development is increasingly promulgated in international and national legal contexts, but there is a long way to go in terms of implementation. The role of the judiciary is thus of the greatest importance. The judiciary, at a national level, is faced with the task of explicating the law of sustainable development, case by case. This paper tries to put light upon the issue of sustainable development in respect of efforts by legislature and judiciary.

## Aim of the Study

To get to the Frequency, rate and mean of judiciary specialists' assertion for the things identified with specialized environmental courts.

India has not just sanctioned different explicit laws to control environmental pollution yet has likewise consolidated huge arrangements for the protection of the earth into its constitution. Inside the most recent three decades, the development of environmental jurisprudence in India, the constitutional law changes, has been striking as in it has prompted the virtual making of a fundamental right to a spotless situation in Indian law. This structures some portion of people in general law routine built up by the constitution and gives off an impression of being put together not just with respect to current ideas of fundamental human rights yet in addition on indigenous thoughts of social equity, establishing a one of a kind human rights approach embraced through governmental policy regarding

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minorities in society.

The main aim of this research is to break down the unmistakable idea of the extraordinary commitment of Indian judiciary into the development of environmental jurisprudence and its development inside a more extensive constitutional and jurisprudential structure. Truth be told, the developing Indian environmental jurisprudence had depended on three interconnected components.

#### **Review of Literature**

Manual of Environment and Pollution Laws, (2010) by H.K. Bharti and B.K.Dubey, has required a great deal of exertion and research to display the law simplified, bringing out High Court and Supreme Court judgments, choices, headings and rules in appreciation of Environment Pollution law-the greater part of the recorded and milestone judgments revealed in driving law diary AIR, SCC, Cr.LJ, Kar. LJ, All. LJ-have been incorporated into the book to bring into clear help the issue of environmental pollution and protection. The book gives a coordinated way to deal with environmental law.

The book Environmental Law (2008) by S.C.Shastri, Environmental Law ed. 3rd, 2008, Eastern Book Company is worried about the development of environmental law in India. It examinations noteworthy declarations and judgments of the Hon'ble Supreme court and the separate High Courts and talked about the changing aspects of the law to keep pace with new information in the field of environmental law. The development of environmental jurisprudence in the Indian setting has been clarified with the expository and top to bottom exchange on the environmental ethos in Vedas, Puranas and after that in present day India with the assistance of legitimate judiciousness and legal professions.

Environmental Law in India (2008) by P. Leelakrishnan is worried about the form of development of environmental law in India. It discusses law and practices in antiquated India and investigates the beginning of environmental law and its connection with different laws and furthermore with different orders. It alludes to one of the huge difficulties that the country needs to look during the time spent developing in particular, preservation of backwoods and protection of natural life. The courts stimulated and built up the sleeping law of open aggravation into an amazing organization for environmental protection. It counts and the legitimate controls on seaside zones the executives and other pollution-related laws and its usage in India. It likewise centres on the job of the judiciary in creating environmental law and the execution of global traditions in India. The right to perfect and a solid condition is a noteworthy commitment by the courts to the developing environmental law in India. It followed the job of Indian judiciary in padding the effect of mass debacles like that of Bhopal. It likewise investigated the parameters for PIL and the significance of PIL in the development of Environmental jurisprudence in India. It likewise stresses the requirement for the Environmental Impact appraisal and open interest in Environmental basic leadership in India.

#### **Sustainable Development**

Sustainable development means something which is conducted without depletion of natural resources. The United Nations World Commission on environment and development (WCED) in its 1987's report Our Common future defines sustainable development as "Development that meets the needs of the present without compromising with the future generations to meet their own needs."<sup>1</sup> It is also known as Brundtland Commission Report. It contains within it two key concepts:

1. The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and
2. The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

All definitions of sustainable development require that we see the world as a system—a system that connects space; and a system that connects time. When you think of the world as a system over space, you grow to understand that air pollution from North America affects air quality in Asia and that pesticides sprayed in Argentina could harm fish stocks off the coast of Australia. And when you think of the world as a system over time, you start to realize that the decisions our grandparents made about how to farm the land continue to affect agricultural practice today and the economic policies we endorse today will have an impact on urban poverty when our children are adults. We also understand that quality of life is a system, too. It's good to be physically healthy, but what if you are poor and don't have access to education? It's good to have a secure income, but what if the air in your part of the world is unclean? And it's good to have freedom of religious expression, but what if you can't feed your family? The concept of sustainable development is rooted in this sort of systems thinking. It helps us understand ourselves and our world. Thus the goals of economic and social development must be defined in terms of sustainability in all countries whether developed or developing, marked oriented or centrally planned. Development involves a progressive transformation of economy and society at large. Sustainable Development does not imply absolute limits to growth and it is not a new name of environment protection. It is a new concept of economic growth. It is a process of change, in which economic and fiscal policies, trade and foreign policies, energy, agricultural and industrial policies all aim to induce development paths those are economically, socially and ecologically sustainable.

The importance of environmental protection in the process of industrial development was realized globally for the first time at United Nations Conference on Human Environment held at Stockholm in 1971 Another mile stone in this respect was Rio Conference held in 1992 in Brazil which gave concrete shape to the concept of sustainable development which envisages balance between ecological and developmental concerns. At this Conference Rio Declaration was adopted. It spells out

the salient features of sustainable development which include intergenerational equity principle, polluter pays principle, precautionary principle, eradication of poverty, international cooperation, conservation of natural resources and integration of environment & development.

Pollution often referred to as, environmental pollution is the addition to environment of any substance or energy from (e.g. heat) at the rate faster than the environment can accommodate it by dispersion, break down, recycling or storage in some harmless form. Pollution of natural environment is unintended or an unwarranted consequence of the human activities in manufacturing, transportation, agriculture and waste disposal. "Pollution is a civil wrong, by its very nature, it is a tort committed against the community as a whole. A person therefore has to compensate for the damages for the restoration of environment and ecology." As observed in *MC. Mehta v. Union of India*<sup>2</sup>, science and technology are increasingly employed in producing goods and services calculated to improve the quality of life there is certain element of hazard or risk inherent in the very use of science and technology, and it is to reduce the element of hazard or risk to the community by taking all necessary steps. Locate industries in a manner which pose least risk of danger to the community and which would maximise the safety requirements.

#### **The Ancient Approach**

The value of environment and sustainable development is ingrained in human culture from ancient times and there are a lot of examples such as- Kautilya, the Prime Minister of Magadha, during the regime of Chandra Gupta Maurya, 300 B.C. in his creation 'Arthshastra' exhaustively dealt with the question of environment protection. He laid down the rules for protection and up gradation of environment minutely, meticulously and with great Details. Mauryan King Ashoka depicted exemplary compassion for wildlife and prohibited killing certain species of creatures. We find the preaching of compassion towards nature in all religions. Don't make mischief in the earth" say holy Quran. Gautama Buddha's Religion was based on experience and logic. He believed on evolution of man. in the contemporary period Sikhism teaches that the life is made of five basic elements i.e. Earth, air, water, fire and sky. The colonial rule, however, disregarded ancient prudence, cultivated ruthless intelligence to exploit the environment for their material gain.<sup>3</sup>

Since Vedic time the main motto of our social life was "to live in harmony with nature". The literature of olden times preached in one form or other a worshipful attitude towards plants, trees, mother earth, sky, water, air, animals and to keep benevolent attitude towards them. The basic element of environment according to the indigenous theory mentioned in Upnishads is that universe consists of five basic elements, The nature has maintained a status of balance between and among these elements and living creatures. Many verses in Rigveda and Atharvaveda have been devoted to the praise of Lord Surya (sun) Vayu Devta (Lord of the winds), Agni

Devta (God of fire), Jarun Devta (God of Water) Prithvi Mata (Mother Earth), Vanya Devi (Goddess of forests), etc. Therefore, culling of trees, polluting air, water, land were regarded as sins as elements of nature were to be respected and regarded as Gods and Goddesses. Protection of their purity and wholesomeness was considered to be the duty of everyone Hindu society did not consider it even proper to throw dust on a public path (highway). Rigveda, Manusmriti, Chakrasamhita have emphasised on the purity of water and healing and the medicinal value of water. Because of these injunctions a system of Maryada (code of conduct) developed in the Indian society to keep water clean and wholesome, it is also narrated in the Isa Upnishad (about 4000 years old Hindu scripture that it has roots in an age old Indian environmental ethics) the universe along with its creature belongs to the lord. No creature is superior to another. The eco-centric approach of ancient times stressed upon the intrinsic values of all naturally preset things<sup>4</sup>.

#### **Constitutional Provisions**

Initially, Constitution of India contained no provision relating to Fundamental Duties and protection of environment. Two articles relating to environment were incorporated in the Indian Constitution—Article 48-A and 51-A (g). Article 48 A is a constitutional pointer to the state to protect and improve the environment and Article 51 A (g) confers the duty on the citizen of India to protect and improve the environment and to have compassion for the living creatures. The language used in these articles clearly indicates the principle of equity, coexistence and reverence for nature and non violence has been given the legal recognition. The terms protection and improvement" implies the improvement of the natural environment and the improvement of quality of life. In dealing with the environmental cases, the courts discovered new dimension for a healthy environment under the right to life under article 21 of the Indian Constitution. Old doctrines were chiseled and new ones were created to support the fast changing strides in sustainable development. However, it took long time for the apex court to pronounce explicitly that the right to have a healthy environment, although high courts had gone ahead much earlier. There is a Constitutional imperative on the Central Government and the state governments and the bodies like municipalities, not only to ensure and safeguard proper environment, but also an imperative duty to take adequate measures to promote, protect and improve environment- man made as well as natural environment.

Article 32 and 226 of the constitution empowers the Supreme Court and the High Court's respectively to issue directions, orders or writs, including writs of habeas corpus, mandamus, prohibition quo warranto and certiorari. The writs of mandamus, certiorari and prohibition are generally resorted to in environmental matters. Taking suo motu action Supreme Court of India has imposed exemplary damages on the multinational companies such as coca cola and pepsi for damaging the ecology in the states of Himachal Pradesh and

Jammu and Kashmir by painting advertisements on the rocks. The Supreme Court of India directed the companies to remove the advertisements without further polluting the environment.

#### **Principles of Sustainable Development**

All environment related developmental activities should benefit more people while maintaining the environmental balance. The adherence to the sustainable principle is sine qua non for the maintenance of symbiotic balance between the right to environment and development. The concept of sustainable development has grown since its inception at the international fora and it has acquired different dimension in terms of economic growth, development and environment protection. Some salient principles of sustainable development as culled out from the Bruntland report, other international documents such as Rio Declaration and efforts of our judiciary in respect of Article 21 are as follows:

1. Inter generational equity.
2. Precautionary principle.
3. Polluter Pays Principle.
4. Public Trust Doctrine, and
5. Eradication of poverty.

#### **Intergenerational Equity Principle**

It advocates reasonable or moderate use of natural resources by the present generation so as not to impair the ability of future generations to meet their economic needs. This principle imposes a kind of moral obligation upon the present generation to pass on safer planet to the next generations. It is well accepted that intergenerational equity also includes intra generational equity. Although the concept is not difficult to understand it is certainly problematic from implementation point of view.

#### **Polluter Pays Principle**

This principle has origin in the work of OECD. It makes polluting industry absolutely liable to pay the remediation cost. In applying this principle the courts need to take into account financial capacity of the industry and at their discretion may impose exemplary pollution fine. This principle compels the industries to be more concerned about environmental protection while maximizing their profits. This principle has been applied by the judiciary, but there are a number of practical difficulties associated with the principle. It does not clarify who is a polluter. Further it is not clear as to whether the polluter should pay for the damage caused or also for restoring the environment to its unpolluted state? And how long this liability lasts<sup>5</sup>.

#### **Precautionary Principle**

According to this principle mere scientific uncertainty cannot be a ground for postponing decisions for environmental protection. This principle stipulates that in case of scientific uncertainty about hazardous effects of an industry upon environment, it is better to err on side of environmental protection. This principle although laudable is certainly vague and may lead to violation of constitutional guarantee of right to freedom of business. It is on the basis of scientific certainty alone that an industry can be

prevented from establishing itself else, the constitutional guarantee will be violated.

The judicial invocation of these principles in environmental litigation is quite justified, but these principles need to be examined on the touchstone of scientific accuracy and precision as far as possible. Otherwise, application of such principles may lead to serious miscarriage of justice.

#### **Environmental Impact Assessment (EIA)**

Rio Declaration advocates use of environmental impact assessment (EIA) in order to achieve the goal of sustainable development. EIA is an interdisciplinary and highly scientific study by which the possible effects of a developmental project upon the environment can be predicted with more precision and accuracy. On receiving EIA report it is possible to decide whether the development project should proceed and if so, whether environmental impacts of such project needs to be mitigated. Through the information gathered from EIA report, developmental projects including industries likely to have adverse effect on environment can be avoided. EIA originated in US legislation National Environmental Policy Act, 1969. Rio Declaration, 1992 appealed the signatory states to undertake EIA as a national instrument for proposed activities that are likely to have a significant adverse impact on the environment<sup>6</sup>.

India had earlier followed the discretionary model of EIA, but in the wake of Shopal gas tragedy switched over to mandatory model of EIA. The Ministry of Environment and Forests (MOE&F), Government of India by 1994 Notification introduced mandatory HA for as many as 29 types of developmental projects including industries. But this notification has undergone a substantial change and it has resulted into dilution of EIA mechanism envisaged by 1994 Notification. Further some projects now require the clearance from State Environmental Impact Assessment Authority established under 2006 Notification. This is an unfortunate journey from strong to weak version of sustainability. Further the participation of stakeholder has become very restricted now and only the people residing in the area where proposed project is to be located can participate in public hearing. Hence the broader participation shall be provided at the public hearing. Despite few conceptual problems it must be said that sustainable development is the only viable alternative if we have to achieve development goals with minimum damage to environment. If we keep on plundering present natural resources in reckless manner we will put our children and grandchildren in great peril.

#### **Role of Judiciary**

India is a developing country there has been environmental degradation due to many factors i.e industrialisation, urbanisation, population explosion, poverty, over exploitation of resource, depletion of traditional resource of energy and raw material etc. Since man creator and moulder of his environment, his conduct can be regulated by instrument of law. Thus it can be seen in India, there has been a regular development of the law regarding protection of the

environment. India enacted various laws time to time regarding the protection of environment at the same time judiciary play important role not only help in protecting environment but also promoting sustainable development.

The task of the courts while dealing with environmental and developmental issues is certainly difficult than dealing with other legal issues. It is because of highly intricate nature of issues involved in such litigation. The courts need to be equipped with expert knowledge of environmental and socio-economic issues besides applying rules of evidence and procedure in proper manner. While dealing with industrial litigation concerning pollution also the courts need to have expert knowledge of water and air pollution, effluent treatment plants, chemical processes and so on. The establishment of National Green Tribunal under 2010 legislation is an important development as the matters relating to industrial pollution and environmental issues are to be heard by this special tribunal. The credit for expediting the establishment of National Green Tribunal in India certainly goes to the Indian Supreme Court. The Indian Supreme Court has dealt with competing industrial development and environmental issues in many cases. The Court has sometimes expressed its inability in dealing with intricate environmental issues. Nevertheless, the Court has come up with path breaking solutions for the cause of environmental protection while ensuring at the same time that the development process is not unduly halted. The Court has imported sustainable development principles from international environmental law into the Indian law through different judicial tools and strategies without exceeding much it's legitimate bounds. Some of the cases are analyzed hereinafter:

In *MC. Mehta vs. Union of India*<sup>7</sup>, the Supreme Court evolved absolute liability principle and observed that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity in which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm, and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

In *Chaman Lal Sahu vs. Union of India*<sup>8</sup>, while upholding the validity of Shopal Gas Leak Disaster (Registration and Processing of Claims) Act 1985 the Supreme Court emphasised the need for laying down certain norms and standards for the government to follow before granting permission or licenses for the running of industries dealing with materials which are of dangerous potentialities.

In *Indian Council for Environmental Legal Action vs. Union of India*<sup>9</sup>, the sludge discharged from the manufacture of H acid destroyed the village of Bicchri spreading disease, death and disaster. The Supreme Court while applying the polluter pays principle observed that financial cost of prevention or remedying damage caused by pollution shall lie with the undertaking that causes pollution.

In *W.Hore Citizens Welfare Forum v & Union of India*<sup>10</sup>, the tanneries in state of Tamil Nadu were found discharging untreated effluents which polluted river Palar and rendered the water unfit for consumption and agriculture. The Supreme Court held that precautionary principle and polluter pays principle are part of the environmental law of the country. The Supreme Court imposed fine on the industries and directed that recovered amount shall be credited to Environment Protection Fund which would be utilized for paying compensation to the affected persons and also for restoring damaged environment.

In *AP. Pollution Control Bo&d vs. M. V. Nayudu*<sup>11</sup>, the Supreme Court held that the principle of 'precaution' involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity.

In *M.C. Mehta vs. Union of India*<sup>12</sup>, the Supreme Court held that precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

#### **Conclusion**

Industrial development is immensely important for a developing state like ours, It is mostly through industries that we can overcome problems like unemployment and acute poverty. Therefore our economic policies should be industry-friendly. Industries need to be given all clearances including environmental clearances in quick time. However while encouraging industrial development we cannot overlook environmental issues. Any industrial development at the expense of environment will be a wrong strategy for development. Therefore we need to develop our industries by keeping in mind environmental needs of our future generations. Any industry causing considerable environmental pollution shall be made liable to restore the environment to unpolluted condition on the basis of polluter pays principle. Massive deforestation for industrial development ought not to be allowed. We need to adopt the path of sustainable development in tune with Gandhian principles. The Indian Supreme Court has contributed immensely in establishing the norms of sustainability for the government and the development proponents in India.

Finally it would not amount to exaggeration to remark that it is in-fact the judiciary only which would be looked up to every time when the legislature & the citizens fail to protect the environment and maintain sustainable development.

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