

Right To Development And Environment Protection In India: Law: Policy And Practice

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ABSTRACT

"What's the use of a fine house if you haven't got a tolerable planet to put it on?"

- Henry David Thoreau, *Familiar Letters*

I RIGHT TO DEVELOPMENT: SIGNIFICANCE IN INDIA

SUSTAINABLE DEVELOPMENT identifies that environmentally destructive economic progress does not produce long-term societal progress. The Vienna Declaration and Programme of Action states in Article 10 that "The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a *universal and inalienable right* and an integral part of fundamental human rights".

In *Indian Council for Enviro-Legal Action v. Union of India* the court held that it had the power to intervene to protect the constitutionally guaranteed right to life by ordering the closure of the plants and by directing the government to determine and recover the cost of remedial measures from the owners of the plants. The court also suggested the strengthening of environmental protection machinery. In effecting the polluter pays principle, the Court looked to the European Community's methods regarding polluting entities, in particular the European Community Treaty.

In *Narmada Bachao Andolan v. Union of India* the Court basically gave the push for the displacement of indigenous and tribal populations which were in the path of the damming. This paper will examine this emerging theory of environment protection which has received a lot of academic attention and has started being recognized within the national spheres.

II PRINCIPLE OF SUSTAINABLE DEVELOPMENT

The Rio Declaration on Environment and Development, also famous as Rio Declaration, identifies the right to development as one of its 27 principles. Principle 3 of the Declaration states that "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". Industrialization and technological revolution added fuel to flames as demand for natural resources increased. The varying times and the tempo of change motivated companies to make the most of natural resources and co-human beings as well. Nevertheless, as this mind-set of companies began to take a toll on the environment, employees and society at large, they came under public scrutiny. Government, media, social and environmental activists, shareholders and many other parties raised their voices against the companies that persuaded hazardous and unethical practices. In

this context, in 1987, the term sustainable development was coined, embracing the three dimensions of sustainability – environmental protection, economic growth and social equity. The central thought behind sustainable development is that the current development must not compromise the ability of future generations to develop. Some of the basic principles of 'Sustainable Development' as described in Brundtland report are as follows: -

- a) Inter-Generational Equity.
- b) The Precautionary Principle.
- c) Polluter Pays Principle

III INDIAN CONSTITUTION: MILIEU OF FORTY SECOND AMENDMENT

Thus, somewhere between respect of the past and excitement of the present the path of safety was found through the forty-second amendment to the Indian Constitution in 1976 introducing the principles of environment protection in an open style into the Constitution dealt under diverse articles. In *Indian Council for Enviro-Legal Action v. Union of India*, the Supreme Court has applied the right to wholesome environment as part of the Right to Life enshrined in Article 21. Thus Right to Life visualized in the Article means something more than survival of animal existence. It includes right of healthy living. The Andhra Pradesh High Court in *MP Rambabu v. Divisional Forest Officer*, has correctly observed- "In terms of Article 21 of the Constitution, a person has a right to a decent life, good environment and maintenance of ecology."

IV ESTABLISHMENT OF ENVIRONMENT GROUPS & PIL

Around the globe, people have shown affirmative reaction and activism for protection of the environment and complete support is given by the judiciary. People cautious of their rights to a healthy and pollution free environment have formed groups and seek directions from the courts to protect the environment and it has been done so by way of Public Interest Litigation like on implementation of the Wild Life (Protection) Act 1972. The groups active in environmental protection have often pressurized the executive to take decisions on certain development projects only after making proper environment-impact assessment. Chipko Movement and Appiko Movement in Karnataka for saving the trees from misuse are examples of ideas taken by public-spirited persons.

V ENVIRONMENTAL SUSTAINABILITY: POSITION AT NATIONAL LEVEL

The genuine doctrinal origin of modern environmental law can be traced in common law principles of Torts. Indian Penal Code has a chapter on offences affecting the public health, safety, convenience. Criminal Procedure Code provides provision for public nuisance relating to environmental pollution. Factories Act was amended and some provisions were incorporated keeping in view several chemical industries dealing in hazardous and toxic substances. Under Wild Life (Protection Act), 1972 every State has to constitute a Wild Life Advisory Board. The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 came into existence with the objectives to provide for the prevention and

control of water and air pollution. The umbrella legislation for environment protection has always been Environment (Protection) Act, 1986. The principle of no-fault liability enforced under the National Environment Tribunal Act of 1995 extends the compensation limits prescribed under the Public Insurance Liability Act 1991. The Act deals with, inter alia, compensation related to accidents concerning toxic substances. The National Environment Appellate Authority Act, 1997 enabled the Union Government to establish the National Environment Appellate Authority. The Authority is empowered to hear appeals against orders granting environmental clearance in designated areas where industrial activity is restricted under the Environment Act. The Tribunal has an exclusive jurisdiction over the claims of compensation in these circumstances.

VI ENVIRONMENTAL SUSTAINABILITY: POSITION AT INTERNATIONAL LEVEL

For the implementation of the concept of Ecologically Sustainable Development five important documents were articulated proposing the programme of action which is signed at the UNCED. Agenda 21 adopted at the 1992 Rio Conference on Environment and Development, is entirely devoted to protecting and promoting human health condition, while the Rio Declaration proclaims that human beings are entitled to a healthy and productive life in harmony with nature. Under the UN Climate Change Conference roadmap recognizes that “deep cuts in global emissions” are required there is an urgent need to reduce greenhouse gases from deforestation. The Copenhagen Conference ended with an agreement by countries to cap the global temperature rise by committing to significant emission reductions and to raise finance to kick start action in the developing world to deal with climate change. The final accord, however failed to achieve anything considerable..

VII FIVE YEAR PLANS: IMPACT IN INDIA

The matter of establishing accord between environment and economic development started becoming fraction of Indian thoughts, when it was emphasized in the fifth five year plan that the pursuit of development goals is less likely to cause a reduction in the quality of life, if a link and balance between developments, planning and environment management is maintained. Major thrust of the seventh five year plan was to highlight sustainable development in which an attempt was made to reconcile the needs of development with the environmental concerns. That is why the seventh plan highlighted that the nation's planning for economic growth and social well-being in each sector must always take note of the need to protect environmental resources and where possible must work to secure improvement in environmental quality.

VIII SUSTAINABLE DEVELOPMENT: EVOLUTION IN INDIA

What has been India's position on environmental protection? In 1972, the then Prime Minister of India, Mrs. Indira Gandhi emphasized, at the UN Conference on Human Environment at Stockholm, that the removal of poverty is an integral part of the goal of an environmental strategy for the world. Various acts have been passed down the years, too innumerable to be put down here. The Ministry of Environment and Forests has been established with pious objectives.

Through the years, the ministry has passed innumerable laws to help them in their task of environmental protection. Miserably, all the regulations and acts have not done adequate to protect the environment. Most leaders of industry, too, have been lacking in a social ethics. They have misused our country's resources and polluted our earth, water and air. Community lethargy has not helped either. We, as citizens of this country have not made our voices heard. The opening up of our economy and globalization has put a bigger pressure on our resources, further vitiating our weak eco-system. It is also to be remembered that most of the environmental cases have come before the court through public interest litigation either under Article 32 or under 226 of the constitution. Indian Judiciary is playing a remarkable role in maintaining sustainable development and curbing the uncontrolled increase of industrialization. The judiciary has contributed to environmental protection in India in two means. It has introduced *procedural innovations* to provide much wider access to justice. And it has, by a *constructive and extensive interpretation of the 'right to life'* enshrined in Article 21 of the Constitution, included within its ambit a 'right to a healthy environment'. As pointed out above, the Indian constitution does not provide a distinct fundamental 'right to environment'. Environment finds mention only in the Directive Principles and Fundamental Duties. Nevertheless, the Indian judiciary, starting from the 1980s, has adopted an increasingly environment-friendly posture and has imparted an interpretative link between a clean environment and the 'right to life'. The judiciary, in different cases has held that the basic requirement of a decent quality of life is to live in a healthy environment. The right to environment was given judicial recognition in the Dehradun Lime Quarries Case (*Rural Litigation and Entitlements Kendra v. State of Uttar Pradesh, 1987*) and reaffirmed in the Sriram Gas Leak Case (*MC Mehta v. Union of India, 1987*).

The earliest case on which the apex court had applied the doctrine of 'Sustainable Development' was *Vellore Citizen Welfare Forum v. Union of India*. The Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of Sustainable Development has to be adopted as the balancing concept. Precautionary Principle and Polluter Pays Principle has been accepted as a part of the law of the country. In *Subhash Kumar v. State of Bihar* the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life. In *M. C. Mehta v. Union of India & Ors.* the Supreme Court established a new concept of managerial liability – 'absolute and non-delegable' – for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not.

IX CONCLUSIONS & SUGGESTIONS

Since the 1980s sustainability has been used more in the sense of human sustainability on planet Earth and this has resulted in the most widely quoted definition of sustainability and

sustainability development, that of the Brundtland Commission of the United Nations on March 20, 1987. Increasingly, environmental misconduct is treated as a crime.

Paul Bigelow Sears said, "How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves." There are two major ways of managing human impact on ecosystem services. One approach is environmental management; this approach is based largely on information gained from earth science, environmental science, and conservation biology. Another approach is management of consumption of resources, which is based largely on information gained from economics. At the 2005 World Summit it was noted that this requires the reconciliation of environmental, social and economic demands - the three pillars of sustainability. The present ecological era began at the end of the 1960s, after post-World War II reconstruction led to unprecedented global economic development. Sustainable economic development is important for economic growth, because it does not take into consideration the pleasure of present generation alone but it also takes into consideration the requirements of future generation. Environmental problems stem from two main categories of human activities. We know that the stock of natural resources, like fossil fuels are limited. The growth of countries will be endangered if the limited resources are completely exhausted. It also results in pollution. Sustainable development stresses to adopt a strategy of economic growth, which is environment friendly.

The author humbly submits that a strategy for environmental protection in India could be adopted on the following lines:

- (i) Population control- because less people will put less pressure on natural resources;
- (ii) Maximum use of renewable sources in energy, agriculture and industry
- (iii) Mobilization of public opinion to educate and update the people about the environmental protection and sustainable development.

Generally, polluters should pay for the cost of pollution control measures, such as the construction and operation of anti-pollution installations, investment in anti-pollution equipment and new processes, so that a necessary environmental quality objective is achieved. Other means of ensuring the polluter pays principle are through taxes and charges. Experience and scientific expertise demonstrate that prevention must be the Best Rule for the environment, for both ecological and economic reasons.

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