

“Sustainable Development: Constitutional and Judicial Response in India”

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“The traditional concept that development and ecology are opposed to each other is no longer acceptable. ‘Sustainable Development’ is the answer”.

-Justice Kuldeep Singh

ABSTRACT:

Sustainable Development is a modern phrase used frequently in social, economic, legal and political arenas. The concept attempts to balance a delicate equilibrium between the quantity of development and quality of environment, not also for people presently living, but for future generations also.

Sustainable Development is a part of the vision reflected by our constitution makers in various provisions of the constitution. Indian judiciary has also demonstrated exemplary activism to implement the mandate of Sustainable Development and attempting to ensure the accountability of other institutions of government and individuals.

The paper enumerates the various constitutional provisions to protect the environment. It discusses the ambit of Article 21 and the role of PIL and Writ jurisdiction in the Indian legal system.

INTRODUCTION:

“The keys to healthy environment and good governance, as articulated by the United Nations Development Programme, are: Rule of law, participation, and accountability and transparency.”¹

Considering the role of the judiciary in environmental issues, there are two points that need to be considered. The first is- the role the judiciary in interpreting the environmental laws and in law making. The second is the wit of jurists to efficiently interpret the increasingly subsidiary issues brought to their cognizance. For the judiciary, probably the task of implementation is important, as they have to interpret laws as per the Principles of sustainable

development taken at RIO, including- the polluter pays principle, the precautionary principle, inter and intra-generational equity; interpretation of constitutional rights including the right to, life and the right to a healthy environment, etc., but also have to weigh these against economic and political principles.

Indian Constitution is one of the rare constitutions of the world which contains specific provisions relating to environment protection. It puts duty on the ‘state’² as well as ‘citizens’³ to protect and improve the environment. The judicial grammar of interpretation has made the right to live in healthy environment as *sanctum sanctorum* of human rights. Now it is considered as an integral

¹ “Judiciaries in the Arab World”,
[<http://www.pogar.org/themes/judiciary/>]

² Article 48-A, Constitution of India.

³ Article 51-A(g), Constitution of India.

part of right to life under Article 21 of the Constitution.

Article 32 and 226 of the Constitution empowers the Supreme Court and the High Courts, respectively, to issue directions, orders or writs, including writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. The writs of *mandamus*, *prohibition* are generally resorted to environmental matters.

The Indian judiciary has made an extensive use of these constitutional provisions and developed a new “environmental jurisprudence” of India. In India most of the environmental matters have been brought before the judiciary through “Public Interest Litigation” (PIL). Out of all the legal remedies available for the protection of environment, the remedy under the constitution is referred because it is relative Speed, simplicity and cheapness.

The Supreme Court while developing a new environmental jurisprudence has held that the powers of the Supreme Court under Article 32 are not restricted and it could award damages in public interest litigation are writ petition in those cases where there has been any harm or damage to the environment due to the pollution. In addition to the damages, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as deterrent for others not to cause pollution in any manner. The said approach of the Supreme Court is based on “Polluter Pays Principle”.

The Supreme Court of India has thus demonstrated exemplary judicial activism and jumped out of passive shell in environment protection litigations. The Apex Court has given effect to human rights to decent environment by introducing new dimensions for the interpretation of institutional provisions.⁴

⁴GurdipSingh’, Environment Law in India, Mac Millan, 2005, pp. 59-60.

FUNDAMENTAL RIGHT TO LIVE IN A HEALTHY ENVIRONMENT UNDER ARTICLE 21

The right to live in a clean and healthy environment is not a recent concept devised by the judiciary in India. The right has been recognized by the judiciary in particular for over a century or so. The Supreme Court of India and the various High courts read that the right to wholesome environment is a part of the right to life, guaranteed under the Article 21 of the Constitution of India. We can proudly proclaim that Judiciary in India has been ahead of the pack having played a pro-active role in the matters involving environment for over two decades now. The fundamental rights part of the constitution of India does not entail environmental matters within it. Here the Supreme Court played a pivotal role. The Supreme Court, in interpreting Article 21, has emerged the environmental jurisprudence in India. Supreme Court has verily interpreted the in right to life (Article 21), a right to healthy and pollution free environment.

Moreover, environmental degradation has disastrous impact on impact on right to livelihood which is a part of right to life. The right to decent environment and right to life are so intrinsically linked that the two cannot be separated. The contaminated environment will kill human life. Thus, the right to pure and decent environment underlies the right to life which is meaningless in the absence of pure, decent and healthy life supporting ecosystem which sustains life.

The first indication of recognizing the right to live in healthy environment as a part of Article 21 was evident from the case of *R.L. And E. Kendra, Dehradun v State of UP*.⁵In this case, the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens wrote to the

⁵ AIR 1985 so 652 (popularly known as Doon Valley Case).

Supreme Court against the progressive mining which denuded the Mussorie Hills of trees and forest cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley. The court ordered the registry to treat the letter as writ petition under Article 32 of the constitution (epistolary jurisdiction).

It is for the infringement of this right to life, that Supreme Court entertained the petition under Article 32 of the Constitution.⁶ It is the duty of the State to maintain natural resources keeping ecological balance and that every citizen must protect and improve natural environment.

Another very important case in this regard is the *Subhash Kumar v State of Bihar*⁷ it was observed that “Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs life in violation of laws, a citizen is empowered to have recourse to Article 32 of the Constitution”. Through this the Apex Court recognized the right of wholesome environment as part of Article 21. This produced a compulsion to take positive measures to improve the environment.

In *Harish Chander and Ors. V State of Himachal Pradesh and Ors.*⁸ it was held that doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter-pays principle' flow from the core value in Article 21. In *Virender Gaur v State of Haryana*,⁹ the Apex Court confirmed that for every citizen, there exists a constitutional right to healthy environment and further conferred a mandatory

duty on the state to protect and preserve this human right.

Another landmark and revolutionary judgment is *Indian Council for Enviro-Legal Action v Union of India*,¹⁰ in which the Supreme Court has implemented right to wholesome environment as a part of the right to life mentioned in Article 21. Social action litigations (PIL) has been filed under Article 32 of the Constitution on behalf of villagers involves invasion of right to life because of pollution caused by private companies manufacturing hazardous and inherently dangerous chemicals like oleum (concentrated form of sulphuric acid) and H-acid. The toxic substance percolated deep into the bowels of the earth polluting the aquifers and the sub-terranean supply of water. The water in the stream turned dark and dirty, rendering it unfit for human consumption.

The Supreme Court issued directions to the Government of Rajasthan, Rajasthan Pollution Control Board to compel them to perform their statutory duties enjoined under the Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986, on the ground that the failure on their part seriously undermined the right to life of the residents of the affected village in Rajasthan. The court held: “If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of citizens living in the Vicinity, this court has power to intervene and protect the fundamental right of life and liberty of the citizens of the country”.

In *Glanrock Estate (p) Ltd. v. State of Tamil Nadu*,¹¹ the apex court held that forests in India are the important part of the environment. They

⁶ T, Damodhar Rao v S. O. Municipal Corporation, Hyderabad, AIR 1987 AP. 171.

⁷ (1991) 1 SCC 598.

⁸ MANU/HP/2494/2010

⁹ 1995 AIR SCW 306.

¹⁰ AIR 1996 SC 446.

¹¹ (2010) 10 SCC 96.

constitute a national asset and intergenerational equity is also part of Article 21 of the Constitution of India. It also cautioned that if deforestation takes place rampantly then intergenerational equity would stand violated.

In *M C Mehta v Union of India*,¹² the petitioner stated that the boundaries -chemical/hazardous industries and the refineries at Mathura were emitting Sulphur dioxide which when combined with oxygen with the aid of moisture in the atmosphere forms sulphuric acid called 'acid rain' which has a corroding effect on the gleaming white marble of the Taj. The Supreme Court held that the emissions resulted in the violation of the right to life of the people living in the TTZ and also damaged the prestigious monument - the Taj.

In *M C Mehta v Kamal Nath*,¹³ The SC articulated that any disturbance of the basic environment elements, namely air, water and soil, necessary for life, would be hazardous to 'life' within the meaning of Article 21 of the Constitution. The Supreme Court further held that in cases of violation of the right to life guaranteed under Article 21, damages can be awarded not only for the restoration of the ecological balance but also to compensate the victims who have suffered due to the disturbance of any of the basic environmental element.

In *Narmada BachaoAndolan v Union of India*,¹⁴ it was argued that construction of a large dam like Sardar Sarovar Dam would result in ecological disaster and violation of Article 21. Inter-generational equity and sustainable development have come to be firmly embedded in our constitutional jurisprudence as an integral part of the fundamental rights conferred by Article 21 of the Constitution.

FREEDOM TO TRADE VIS-A-VIS ENVIRONMENTAL PROTECTION

¹² AIR 1997 SC 734.

¹³ AIR 2000 SC 1997.

¹⁴ AIR 2000 SC 3751.

Article 19 (1) (g) of the Constitution provides that all citizens shall have the right to practice any profession, or carry on any occupation, trade or business. Accordingly, in cases involving closure of polluting industrial units, the courts face the task of balancing the environmental imperative with the fundamental right to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution. The fundamental right to carry on any occupation, trade or business is subject to reasonable restrictions which may be imposed in the interest of the general public as provided under Article 19(6) of the Constitution. No one has the right to carry on business in the manner by which the business activity becomes a health hazard to the entire society.

In *Rural Litigation and Entitlement Kendra, Dehradun v State of UP*¹⁵, it was pointed out that as a result of the closure order, the workmen employed in the limestone quarries would be thrown out of employment thereby resulting in the contravention of their fundamental right to profession under Article 19(1)(g) of the Constitution. The court ordered that the workmen thrown out of employment as a consequence of the order be provided employment in the afforestation and soil conservation programmes to be taken up in the said area.

Article 14 of the Constitution enshrines the right to equality before the law and protects the person against arbitrary and unreasonable State actions. Article 14 prohibits arbitrariness because every arbitrary action violates the principle of equality enshrined in it. Article 14 has been invoked in *Kinkri Devi v State*,¹⁶ which involves indiscriminate grant of mining leases and the unchecked and unscientific exploitation

¹⁵ AIR 1985 SC 652.

¹⁶ AIR 1987 HP 4.

of the mines by the lessees, specifically in the hilly tracts and the regions of the Himalaya which in all likelihood, might result in evil consequences having a far reaching and lasting impact on natural wealth, the resources of the country and the local population. It is alleged that the government arbitrarily granted the permission for mining activities amounts to Violation of Article 14.

FUNDAMENTAL DUTY TO PROTECT THE ENVIRONMENT

The Forty Second Amendment in the Constitution of India of 1976 has introduced Articles 48A and 51A (g) in the Constitution which form part of the Directive Principles of State Policy and Fundamental Duties respectively. In Indian jurisprudence, the legal value of Directive Principles has constantly grown. Directive principles are no more mere policy prescriptions that guide State actions but possess the legal status of being complimentary to fundamental rights and impose an obligation on the government including courts to protect the environment. Fundamental duties are social obligations.

The requirement of the time is that we should be real citizens of the country striving towards excellence in all spheres of individual and collective activity including the protection of environment. Hence, Article 51A (g) of the Constitution imposes duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

When these fundamental duties were incorporated in the Constitution in the year 1976, it was considered that the fundamental law of the land reminds the citizens of their constitutional obligations. They couldn't be directly enforced. However, in due course of time the judicial activism provided an impetus to achieve the underlined objectives of the fundamental duties, particularly Article 51A (g) relating to the environment.

In present days the pollution is caused not only by exploiting the "natural environment" but otherwise also. In modern industrialized civilization such a concept may seem to be a misnomer. It is submitted that the world "natural" before environment has to be understood in broad sense. Nature has given us the gift pollution free environment. The fundamental duty of every citizen is not only to "protect" the environment from any kind of pollution but also to "improve" the environment quality if it has been polluted. Thus, the underlined emphasis of this fundamental duty is that every citizen has a duty to make an endeavour to preserve the environment in the same way as nature has gifted it to all of us.

The true scope of Article 51A (g) has been best explained by the Rajasthan High Court in *L.K. Koolwal v State*¹⁷. The brief facts of the case were that the Municipal authority under the Rajasthan Municipalities Act 1959, was charged with "primary duty" to clean public streets, places and sewers and all places, not being private property, which are open to enjoyment of public removing of noxious vegetation and all public nuisance, and to remove filth, rubbish night soil, odor, or any other noxious or offensive matter.

The Court allowed the petition and explained the true scope of Article 51-A, stating that Article 51-A ordinarily is not only a duty of the citizens but in fact it is the right of the citizens as it creates the right in favour of citizens to move to the Court to see that the State performs its duties faithfully and its obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51-A gives a right to the citizens to move the court for the enforcement of the duty cast on State, instrumentalities, agencies, departments,

¹⁷ AIR 1992 Kant. 57.

local bodies and statutory authorities created under the particular of the State.

In *Taj Trapezium case*, the Supreme Court has interpreted Articles 48A and 51A (g) as constitutional mandate to protect and improve the environment. Commenting on the legal value of Articles 48A and 51A (g).

***Rural Litigation and Entitlement Kendra v State of UP*¹⁸**, the court stated that the preservation of the environment and keeping ecological balance unaffected is a task which not only the Governments but also every citizen must undertake. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty as enshrined in Article 51A (g) of the Constitution.

The Supreme Court gave effect to the social obligation to protect the environment and reminded every Indian citizen of his fundamental duty as enshrined in Article 51A (g) to protect the environment.

In *Sitaram Chhaparia v State of Bihar*¹⁹, Patna High Court held that protection of environment is a fundamental duty under Article 52A of the Constitution of India.

Article 51A (g) of the Constitution which contains a special obligation imposes fundamental duty on citizens to protect and improve the environment. It imposes constitutional obligation on the polluter to bear the costs of pollution by compensation the victims of pollution and adoption of the ecological remediation measures. Thus, Article 51A (g) gives effect to the well-known fundamental principle of the international environmental jurisprudence, namely, 'polluter pays principle' by requiring the polluter to bear the costs of pollution. Article 48A treats the State as 'deemed polluter' if it fails to abide by

the mandate of protection and improvement of the environment.

REMEDIES FOR THE ENFORCEMENT AND WRIT JURISDICTION

One of the most innovative parts of the Constitution is that right to enforce the fundamental rights by moving the Supreme Court is itself a fundamental right under Article 32 of the Constitution. Writ jurisdiction is conferred on the Supreme Court under Article 32 and on all the eighteen High Courts under Article 226 of the Constitution. Under these provisions the Supreme Court and the High Courts have the power to issue any directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* whichever is appropriate. The only difference between the writ jurisdictions of the Supreme Court and the High Court is that one can move the Supreme Court only for the enforcement of fundamental rights whereas in High Courts, it may for the enforcement of fundamental rights or for any other purpose. From this point the writ jurisdiction of the High Court is wider in scope.

Generally, environmental law provides for a system of regulation by statutes. However, in India most of the matters of environmental jurisprudence have been developed through writ jurisdiction. Judicial activism and the development of the concept of public interest litigation (PIL) under writ jurisdiction of the Supreme Court and the High Courts have brought a mutational change in procedural jurisdiction and it has played a pivotal role in developing and providing impetus to environmental jurisprudence with Human Rights approach. This remedy is preferred over tort action or public nuisance remedy because it is relatively speedy, cheaper and provides direct approach to the higher judiciary thereby reducing the chances of further appeals. The relaxed rules of *locus standi* and evolution and

¹⁸ AIR 1985 SC 652

¹⁹ AIR 2002 Patna 134.

recognition of epistolary jurisdiction by the Supreme Court and the High Court as further ensured the public participation in matters like environment protection²⁰. The remedy under writ jurisdiction also provides flexibility to the Courts to choose an appropriate relief by issuing orders, directions or writs.

In *Tarun Bharat Sangh v Union of India*, the Supreme Court directed the State Government, in particular, Police Administration to provide police protection to environmental activists against any physical threats by the vested interests and to ensure that none of the activists and workers of the petitioner are subjected to any intimidation and hindrance in their activity. The Court has also encouraged environmentalists by awarding rewards and discouraged the access to writ jurisdiction for satisfying personal grudge or rivalry.

ROLE OF PUBLIC INTEREST LITIGATION IN ENVIRONMENT PROTECTION

Public Interest Litigation has revolutionised the traditional adversary litigation. The mechanism of public interest litigation has enabled the judiciary to shed its traditional passive attitude. The basic aim of public interest litigation is the protection of public interest which lies in the interest of the society or the community or class of people as distinguished from individual interest or private interest.

The term 'public interest litigation' embraces public security, public order and public morality. Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law a seek enforcement of such public duty and observance of such Constitutional or legal provision. In

²⁰ Rajiv Ranjan Sing/1 v State of Bihar, AIR 1992 Pat, 86.

public interest litigation, the courts are asked to deal with public grievances over flagrant violations of human rights by the state or to vindicate the public policies embodied in the statutes or constitutional provisions. Accordingly, in public interest litigation, the Judge plays a very vital and active role in organising and shaping the litigation.

One of the most characteristic features of the Indian environmental law is the important role played by the public interest litigation. The majority of the environment cases in India since 1985 have been brought before the court as writ petitions, normally by individuals acting on pro bono basis.²¹

The public interest litigation is a result of, the relaxation of the *locus standi*' rule. There was departure from the "proof of injury" approach.²² This form is usually more efficient in dealing with environmental cases, for the reason that these cases are "concerned with the rights of the community rather than the individual.

Despite the role of Supreme Court, the High Courts, also being granted this jurisdiction under Article 226 have intervened by passing writs, orders and directions in appropriate cases, thereby giving enhancing environmental jurisprudence in India

PUBLIC INTEREST LITIGATION AND SUSTAINABLE DEVELOPMENT:

Public interest litigation has played significant role in the judicial implementation of sustainable development which insists at the balanced synthesis of developmental and environmental imperatives²³. Sustainable development means development which has environmental content.

²¹ Soli.J. Sorabjee, Law and Justice -An Anthology, Universal Law Publishing Company, New Delhi, 2003, p. 345.

²² SP. Gupta and others. v President of India and Others, AIR 1982 SC 149.

²³ Gurdip Singh, "Legal Status of Sustainable Development", National Capital Law Journal, Vol. 1, 1996, p. 93.

The main focus of sustainable development is that the developmental activities should not imbalance the carrying capacity of the life supporting eco-system. It has been defined as the development which meets the needs of the present generations without compromising on the capability of the future generations to meet their own needs²⁴. It may also be defined as increasing capacity to meet human needs or improving the quality of human life within the carrying capacity of the supporting ecosystem. While hearing public interest litigations filed with a view to protect the environment, the Supreme Court of India embraced judicial activism and has consistently held that sustainable development is a part of the environment law in India.

In *Vellore Citizens Welfare Forum v Union of India*²⁵, a writ petition was filed by way of public interest litigation alleging that the untreated effluents discharged by the tanneries in Tamil Nadu into agricultural fields, roadsides, water-ways finally entered the river and resulted in the pollution of its water. The Supreme Court emphatically held that sustainable development as a balancing concept between ecology and development has been accepted as a part of the customary international law. The Supreme Court further held that the ‘precautionary principle’ and ‘polluter pays principle’ constituted fundamental principles of the international environmental law, and stated that the ‘precautionary principle’, the ‘polluter pays principle’ and the social concept of onus of proof have merged and govern the law of our country as is clear from Articles 47, 48A and 51A(g) of the Constitution and that, in fact, in various environmental statutes, such as Water

(Prevention and Control of Pollution) Act 1974, the Environment (Protection) Act 1986 and other statutes, these concepts are implied. ‘Precautionary principle’ underlies sustainable development and requires that the developmental activity must be stopped and prevented if it poses threat of serious and irreversible environmental damage.² The Supreme Court held that the ‘precautionary principle’ and the ‘polluter pays principle’ are a part of environmental law in India in view of Articles 47, 48A and 51A(g) of the Constitution, Water (Prevention and Control of Pollution) Act 1974, the Environment (Protection) Act 1986 and other environmental statutes. The Supreme Court, in public interest litigation, not only treated the ‘precautionary principle’ and the ‘polluter pays principle’ as a part of the Indian environmental law but also directed the Central Government to establish authority under Section 3(3) of the Environment (Protection) Act, 1986.

*T.N. Godavarman T.hirumulpad Vs. Union of India And Or*²⁶, the apex court, ordered to suspend all mining in the said area on sustainable development principle which is part of Articles 21, 48A and 51-A(g) of the Constitution of India. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of precautionary principle. Thus, judiciary has PIL an effective tool for the cause of environmental protection. But also has shown wisdom in denying false petitions

SUGGESTIONS:

1. Promotions of discussions for enforcement of environment laws by establishing a network among judiciaries, legal professions and

²⁴ The World Commission on Environment and Development, Our Common Future 1987, Brundtland Report, p. 332.

²⁵ AIR 1996 SC 2715.

²⁶ (2009) 6 SCC 142

academicians to share information and data on environmental laws.

2. Regular awareness campaigns to create awareness about environmental conservation activities across all sections of the society.
3. Pollution control through various agencies.
4. Industries should act as per the guidelines made by Pollution control Boards.
5. Establishments of Environments Courts
6. Education for Sustainable Development
7. Citizen's responsibility to encourage environmental awareness.

CONCLUSION:

The concept of Sustainable development rests on the foundation of equity. And rest on the commitment of future generations. Law and philosophy provide a basis for analyzing relationship among generations and the instruments for transforming normative values into rights and obligations. In a democracy, judiciary has a difficult role of considering not only environment but also economic, developmental and political as well as social instruments. Any one of these cannot be sacrificed for the other. Environment and Sustainable development are two sides of the same coin. Thus the responsibility lies on the judiciary to deal with these cases with caution of high degree. Then only, we achieve our goal i.e. to secure a pollution free developed country for our next generation.