

THE AVATAR OF INDIAN JUDICIAL ACTIVISM ON ENVIRONMENT AND SUSTAINBLE DEVELOPMENT – AN EMPRICAL STUDY

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Abstract

The nature of the research is to explore and formulate the approach of the Supreme Court, which is found widely scattered in innumerable judgments over a period of 30 years on environment. Many of the environmental cases came to the Supreme Court by way of Public Interest Litigation. The views on environment and methods adopted by the Court to protect environment are found in bits and pieces and it is necessary to collect, compile and edit them in an organized way. In this part of the article the Supreme Court's views on environment, the necessity to protect it forms part of the analysis. In the course of dealing with environmental cases, the Supreme Court began to analyze the nature of judicial functions. It realized that it was neither purely adjudicatory, nor to act as a mere umpire. The Court strongly felt that unless it passed affirmative actions to remedy and restore the environment, environmental rights would slowly fade into the pages of history and become supine and lifeless.

Key words: Sustainable Development, Right to Development, Environmental Protection, Harmonization and Hyper-active

I. Introduction

Earth, the green planet is the only heavenly body known and capable of sustaining living beings including Homo sapiens. Man, the rational animal by using his sixth sense has been steadily and deliberately making all necessary comforts for better living. The comforts that he facilitates to advance his life are known as civilization. The history of known civilization is just about 10,000 years.² When it is compared with the age of earth, the age of civilization is very negligible. Man's activities during this very negligible period of human civilization and caused man made catastrophes, which is hurting the very existence of earth and thereby the existence of all living beings including man. Advancement of civilization was at the cost of causing damage to the

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² Justice Ashok A. Desai, Environmental Jurisprudence, (Allahabad: Modern Law House, 2002), pp.130-132.

environment. In spite of the existence of three spheres in the earth, namely hydrosphere, atmosphere, and lithosphere, all these are part of one integral environment wherein the biosphere is sustained.³ This one and only environment is cyclical in nature and it has the inherent sustainability by maintaining its equilibrium. But man's greedy nature along with the advancement of science and technology and their corresponding impact on industry and urbanization is now striking at the very roots of environment's equilibrium.

In the name of development, there is a ruthless exploitation of natural resources. This is causing havoc to environment by destabilizing the fragile eco-balance. As the environment is an integrated one, if one sphere is affected, the other spheres are also affected either directly or indirectly. The solid wastes including hazardous wastes that are disposed, fumes that are released into the air and effluents that are discharged into water bodies, disturb and damage the quality of environment.⁴ In short in the name of development, mankind has destabilized nature to an extent where the whole sustainability of the environment has become a big question now.

Developed countries were the first countries to turn industrial. They can be considered as the initiators of this burial attack on the environment. In this modern world industrialization has become ubiquitous in nature, whether a country is developed or developing, it is necessary to pursue industrialization. It certainly leads to urbanization. Such developed countries, the forerunners of the large-scale attack on nature are also the first to realize the significance and necessity of maintaining pollution free environment. Though this realization dawned after a considerable damage had already been done to the environment, yet by organizing international conventions at regular intervals, the developed countries have been taking efforts to create international laws on environment and thereby foster sustainable development at the cost of developing countries. Though these forums, the less developed countries and developing

³ R.G. Chaturvedu, "Bio-Diversity and Extinction of Species", in Satish C. Shastri (ed), Human Rights Development and Environmental Law – An Athology, (Jaipur, Bharat Law Publications, 2007)

⁴ N.R. Madhava Menon, "Right to Development, Clean environment and work", Cochin University Law Review, Vol.21, pp.1-36.

countries, which are presently in the active part of industrialization, are forced to understand the importance of sustainable development for the sustenance of human race and civilization.⁵

In the international arena, starting from UN Conference on Human Environment at Stockholm herein after called Stockholm Summit of 1972, comities of nations are periodically coming together to deliberate on various issues affecting environment. Waking up to the horrors of living in a pollution ridden environment, they are formulating international environment norms and values to minimize pollution. And efforts are being made to incorporate such norms and values into the corpus of national laws.

The concept of sustainable development was found in the World Conservation Strategy and later it was incorporated in the Brundtland Report. It has been in the report under the title “Our Common Future”. It is defined as “development that meets the needs of the present generation without compromising the ability of the future generation to meet their own needs.”⁶Pearce and Turner defined Sustainable Development in a theoretical perspective, wherein, “it involves maximizing the net benefits of economic development subject to maintaining the services and the quality of natural resources over time.”⁷

Nature provides two types of resources namely renewable and nonrenewable. Pertaining to renewable natural resources, the concept sustainable development emphasizes that the rate of regeneration of such renewable resources must always be in excess to that of the rate of depletion. In non-renewable resources, it implies that resources ought to be sparingly and responsibly used. Further, in the use of non-renewable resources whenever and wherever possible, alternative resources can be used as a substitute. There are two approaches to sustainable development. One advocates that the process of development must be eco-friendly

⁵ R.A. Malviya, “Sustainable Development as a Principle of Environmental Protection: Some Reflection”, Nyaya Deep, Vol. VII, no.4, pp. 93-112.

⁶ See D.K.Verma, “Social Environment for Sustainable Development - Concepts and Dimensions”, Y.G. Joshi and D.K.Verma (eds) Social Environment For Sustainable Development, (New Delhi, Rawat Publications, 1998), pp.15-34. This concept was used even earlier, but with varied connotations and meanings. This term has been confused with terms ‘sustainable growth’ and ‘sustainable use’. But sustainable growth is different from sustainable development. In the case of the former, it is obvious that nothing physical can grow indefinitely. The concept ‘Sustainable use is applicable only to renewable sources. Accordingly, it means renewable sources at rates within their carrying capacity for renewal.

⁷ Pearce D.W. and R.K,Turner, The Economic of Natural Resources and the Environment, London; Harvester Wheat Sheaf, (1990), pp.126-128.

and inimical to eco-destruction. Hence it is eco-centric. The other, emphasizes on maximization of economic benefits to human beings in a given ecological milieu within its carrying capacity and minimizing the risks and hazards to the environment and it is anthropocentric.

In India, an attempt is made to integrate environmental factors into planning even during the course of the formulation of its Fourth Plan (1969-74), three years ahead of Stockholm summit. The fourth plan document says that, “planning for harmonious development recognizes the unity of nature and man. Such planning is possible only on the basis of a comprehensive appraisal of environmental issues. There are instances in which timely, specialized advice on environmental aspects could have helped in project design and in averting subsequent adverse effect on the environment leading to loss of invested resources. It is necessary, therefore, to introduce the environmental aspects into our planning and development.”⁸ Subsequently, the government of India constituted the National Committee on Environment Planning and Co-ordination (NCEPC) to appraise the development projects, human settlements, planning, and survey of natural ecosystems like wet lands and spread of environment awareness. Corresponding to the Constitution of the National Committee at the State level, environment boards were set up. A separate Union department on environment was set up in 1990 to act as a nodal agency for environmental protection and eco-development. Thus, it is evident that the Indian government was one of the pioneers among developing nations to incorporate environmental issues in its planning.

India a key player in protecting the environment is trying to incorporate the international laws at the national level whenever laws are made at the appropriate levels. It is heartening to note that the Indian judiciary is making amends by trying to harmonize the international laws to the Indian set-up. It has to be gladly to acknowledge that the Indian judiciary is playing an active role in this judicial process and is filling up the gaps left by the legislature and the executive.

II. Research Methodology

It is an ex-post facto research. The cases decided by the Supreme Court from 1993 to 2012 related to “environment” and “Sustainable Development” has been taken for analysis. In this research work process of interpretation by the judiciary has been explored, analyzed and

⁸ See for further details the Fourth Plan Document (1969-74).

formulated only through the cases already decided by the Supreme Court. For this purpose the content analysis is employed for exploring and identifying various Supreme Court decisions on “environment” and “sustainable development” with the use of AIR Infor-tech software and the qualitative analysis technique is applied for analyzing the collected datas.

III. Necessity

There are number of laws aiming at protecting the environment. These laws are in consonance with the international declarations on environment protection. Had these laws been implemented, India would be pollution free country. But contrary to the laws and contemplations, day by day the quantum of pollution is increasing and the polluters are polluting further with impunity and are going scot free. The machineries like the Pollution Control Boards both at the Centre and in the State are apathetic and indolent towards environment.⁹ Due to inefficiency and corruption in the Pollution Control Board, majority of the polluters are not generally brought to book. The few who are brought to book, escape punishment due to procedural and technical difficulties of the court and the ineffectiveness of the administrative machineries. The Supreme Court lamented that even the High courts are very lenient and freed the few polluters who have been punished by the lower courts, by granting bail. Further the ratio of environmental cases filed in the subordinate judiciary and the punishment inflicted on the offenders are negligible. Therefore, it is evident that the Supreme Court came to the conclusion that both the administrative agencies created for the protection of the environment and the subordinate judiciary vested with the power to punish the offenders are highly ill equipped, inefficient, lethargic and indifferent to environmental pollution.

IV. Activism on Environment

The Supreme Court’s views on environment scattered in various cases and they are explored and formulated here. In Rural Litigation & Entitlement Kendra, the Court opined the mind on environment very elaborately, “Air and Water are the most indispensable gifts of nature for preservation of life. Abundant sunshine together with adequate rain keeps nature’s generating

⁹Anupa V. Thapiliyal, “Environment and the Law: Effectiveness of Legal Sanctions”, in S.P.Sathe and Sathyanarayan (ed.), Liberty, Equality and Justice, (Lucknow: EBC Publishing Pvt Ltd., 2003), pp.247-260.

force at work. Human habitations all through the ages have thrived on river banks and in close proximity of water sources. Forests have natural growth of herbs which offers cure for our diseases. Our ancestors knew the trees were friends of mankind and forests were necessary for human existence and civilization to thrive. It is these forests that provide shelter for the rishis and accommodated the ancient 'Gurukulas'. They provided food and nature for our forefathers, who lived as an integral part of nature. That is why there is copious reference to forests in the Vedas and the ancient literature of ours. In ancient times trees were worshipped as gods and prayers for upkeep of the forests were offered to the divine.¹⁰

In Sachidanand Pandey case¹¹ the Court by way of obiter dicta quoted verbatim an engrossing the conversation which is incorporated in the judgment reveals several important facts. Environment is like a web. The earth does not belong to man, but man belongs to the earth. All things are well connected. Man is only a part. Everything is important, whether animate or inanimate. Here White man represents science and technological development and Red man represents natural environment and its conversation would ultimately lead man to a struggle for survival rather than living a healthy life.

Further in S.Jagannath case,¹² the Supreme Court extensively discussed water pollution of coastal zones due to shrimp farming. While doing so the Court gave an account of the physical nature of India's coastal environment and rivers. The coastal land belt girdling Indian's mainland coast has about 3.28 million sq.kms territorial limits. The Court worried that major cause of coastal water pollution is due to the uncontrolled disposal of industry wastes into the seas through rivers. While dealing with the ecosystem of the coastal areas, the court also dealt with mangrove forests and its erosion due to shrimp farming. Mangrove forests are in important component of ecosystems. They thrive in tidal estuaries, salt marshes and muddy coastlines. Conversion of mangrove to shrimp farms significantly reduces the natural protection of wild captured shrimp as well as other fisheries. Moreover, their production role for low lying coastal regions is rapidly diminishing by their replacement by shrimp ponds. Obviously, it can be

¹⁰Rural Litigation and Enlightenment Kendra v. State of U.P. AIR 1988, SC 2187.

¹¹Sachinand Pandey v. State of West Bengal, AIR 1987 SC 1109.

¹² S. Jagannath v. Union of India, AIR 1997 SC 811.

inferred that the Court understands the fact that forests are responsible for air and water cycles. Without forests air would be deficient with life supporting oxygen.¹³

Water is very important for the survival of civilization and that water has to be pure and potable. The Supreme Court was also extremely concerned about this water pollution and expressed its views about that in many a case. In *M.C. Mehta v. Union of India*, popularly called the *Ganga Water Pollution case*, the Supreme Court incorporated the proclamation adopted by the U.N. Conference on Human Environment at Stockholm in 1972, to the highlight the necessity of protecting the environment including water from pollution. Excerpts from the proclamation quoted by the Supreme Court are given here: “Man is both creator and molder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet, a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and man-made, are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself.”¹⁴

Quoting *Fritsch’s* views on ecology in *M. V. Nayudu’s* case, the Supreme Court said, “the basic insight of ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system is web like; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem.”¹⁵

From the observation of the Supreme Court, it is obvious that the Court freely and frequent borrows the views of scientists and scholars on environment and incorporate in the judgments by way of obiter dicta. The Supreme Court may not have independent and distinct views on environment, but as it borrows the views of scientists and scholars on environment, the apex

¹³Ibid. pp.814

¹⁴ AIR 1988 SC 1037

¹⁵A.Fritsch, “Environmental Ethics: Choices For concerned citizens”, *Harvard Environmental Law Review*, Vol.12, 1988, p.313, Quoted in *A.P. Pollution Control Board v. M.V. Nayudu*, AIR 1999 SC 812.

court views on environment are objective and scientific.¹⁶ The Court is also of the opinion that the environment is highly interconnected and cyclical in nature. When one aspect of the environment is affected artificially, it has its repercussion on other aspects of environment. It is like a well knitted web. The biosphere in which human beings are living is very important and any damage to any eco-system would cause irreparable loss to the biosphere including human beings.¹⁷ Having understood the importance of environment, the Supreme Court reiterates the necessity to protect it time and again.

V. Activism on Sustainable Development

In many cases, the Apex Court elaborately discussed the concept sustainable development and the techniques adopted to translate its views on environmental protection and sustainable development into reality.

The Dehradun quarrying Case is the earliest one of this kind, where the controversy between development and ecological balance was discussed as follows: “Over thousands of years; man had been successfully exploiting the ecological system for his sustenance, but with the growth of population, the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with ecology and environment have now come to be realized.¹⁸

Advancing the concept of ‘balance’ under the principle of proportionality applicable in the case of sustainable development, the Supreme Court ruled that a balance has to be made between development and environmental protection. Any and every development will have some adverse effect on the ecology and the environment, but that should not deter one from taking up project of public utility. So, balance of these two alone helps in sustainable development.¹⁹

¹⁶ N.D. Sharma, “Judicial Activism, Public Interest Litigation and Environmental hazard in India”, in Satish C.Shastri (ed.), **Human Rights Development and Environmental Law – An Anthology**, (Jaipur, Bharat law Publications, 2007), pp.249-276.

¹⁷Moolchand Sharma, “Basic Needs In Need of Rights – Based Approach”, in SathishC.Shastri (ed.), *ibid* pp1-18.

¹⁸Rural Litigation and Entitlement Kendra v. State of UP, AIR 1988 SC 2187.

¹⁹ Quoted in Gopal Krishna, “Waster Follows the Path of Least Resistance”, The Hindu, dated 04-11-2009, p.18.

In *M. V. Nayudu* case, the Supreme Court viewed that the environmental concerns are equally important as human rights. In fact, both are to be traced to Article 21 which deals with fundamental rights to life and liberty. While environmental aspect concerns life, human rights aspect concerns liberty.”²⁰Further in *M. C. Mehta v. Union of India*,²¹ the question whether an industry described by the Central Pollution Board as hazardous is essentially to be shifted outside the Union territory of Delhi or allowed within the vicinity of the Indira Gandhi International Airport was raised. The Supreme Court had to reconcile the environment development dilemma. In this case the Supreme Court allowed the setting up of hot mix plants within the safe vicinity of airport, maintaining a distance of 3 kilometers from the populated area taking all the facts into consideration and observed, resurfacing of the airport runways is a work of national importance, which has to be carried out so that Indira Gandhi International Airport is operation and does not cause any operational hazard at the time of landing or take off. The environment problem has to be balanced with the necessity of running an international airport in the capital of India as concern for national importance.

The concept of Sustainable Development, though not mentioned, was the central theme running through in the observation made by the Supreme Court in the Narmada Case. In this case, it is observed that “to feed the increasing population more food grains are required and effort has to be made to provide safe drinking water, which at present is a distant reality for most of the population specifically in the rural areas. Keeping in view the need to augment water supply, it is necessary that water storage capacities have to be increased adequately in order to ward off the difficulties in the event of monsoon failure as well as to meet the demand during dry season. It is estimated that by 2050 the country needs to create storage of at least 600 billion cubic meters against the existing storage of 174 billion cubic meters.”²²

Further in the rehabilitation of the project affected people the court examined that the sustainable development as significant indicator for affected people. The Supreme court found that the project had built in safeguards and it satisfied the goal of sustainable development. It was also found that compared to other similar projects, Narmada had the least ratio of submergence to the

²⁰A.P..Pollution Control Board v. M.V. Nayudu, AIR 1999 SC 812.

²¹AIR 1999 SC 2367.

²²Narmada BachaoAndolanv. Union of India, AIR 2000 SC3751.

area benefited. The project affected people were being resettled with better amenities and healthcare. Rehabilitation agencies were satisfied with the resettlement, when they cleared the dam height in the year 1999. The canal affected people are benefited with more agriculture output. They cannot be equated with project affected people. Resettlement as a community does not mean rehabilitation in homogenous groups or resettlement on the basis of tribes, sub-tribes, groups or subgroups. The objective was to fully integrate the displaced people in the community in which they were resettled in the command area, which is more productive than the affected land. This was what the tribunal awards had stipulated and that should be the final decision according to the Supreme Court.²³

The Supreme Court held that the traditional belief that development and ecology are opposed to each other is no longer acceptable. Sustainable development in fact helps to bring development and ecology on one plank. The Supreme Court tracing the evolution of the concept sustainable development in the Vellore Citizenship case²⁴ said that “Sustainable development” as a concept came to be known for the first time in the international sphere, in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World commission of environment and development in its report called ‘Our Common Future’ ... popularly known as Brundtland Report. In 1991 the World Conservation Union, United Nations Environment Programme and World-Wide Fund for nature jointly came up with a document called ‘caring sustainable living’. The Earth Summit held in June 1992 at Rio...deliberating and charting out a blue print for the survival of the planet.... During the two decades from Stockholm to Rio ‘Sustainable Development’ has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the caring capacity of the supporting eco-systems. Sustainable development as defined by the Brundtland report means ‘development that meets the needs of the present without compromising the ability of the future generations to meet their own needs’.

²³ S.K. Verma and Kusum (eds), **Fifty Years of Supreme Court of India: Its Grasp and Reach** (New Delhi: Oxford University Press, 2000), p.52.

²⁴Vellore Citizen Welfare Forum v. Union of India, AIR 1996 SC 2715

In *Bombay dyeing Case*,²⁵When dealing with sustainable development and planned development, the Supreme Court stated that in the process of encouraging development the environment gets sidelined. However, for the protection of the environment the Climate change, depletion of natural resources, the entropication of water systems and bio-diversity and global warming are the major threats. The protection of the environment is priority, but at the same time it is also necessary to promote development. In regarding sustainable development, the Supreme Court held that “the harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development. Is a process in which development can be sustained over generations...Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and tradeoff?” In emphasizing the sustainable development as a fundamental concept of Indian law, it held that the development of the doctrine of sustainable development is a welcome feature; it balances the impact of the ecology and necessity for the development. It neither ignores inter-generational interest nor the dire need which the society urgently requires.

In *Susethav. State of Tamil Nadu*,²⁶ the division bench of Supreme Court affirming the observation made in *Bombay Dyeing Case* with reference to the doctrine of Sustainable development said, “the doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not an ipse dixit of the Court.”

Sustainable development is a considered as a balance concept between ecology and development and has been accepted as a customary international law, though its salient features have yet to be finalized by the international law jurists.”²⁷It also added that precautionary principle and the polluter pays principle are essential features of sustainable development.

From the forgoing exploration of cases it is possible to formulate views of the Supreme Court on environmental protection and sustainable development. The apex Court’s keen interest in protecting the environment is crystal clear. From its understanding and interpretation, it also

²⁵*Bombay Dyeing and Manufacturing Co., v. Bombay Environmental Action Group*, AIR 2006 SC 1489.

²⁶AIR 2006 SC 2896.

²⁷*Ibid*, p 2725.

comes to the fore that the Court considers ‘sustainable development’ as the panacea for all environmental development issues. It is also found that there are innumerable enacted laws in the statute books which aim at protecting the environment. The environmental Acts have also created machineries to implement the laws. But these machineries have time and again failed miserably to implement the laws. Similarly, the inability of the judiciary at the lower level further aggravated the problem. Ultimately, the cumulative effect of these factors forced the apex court to assume the mantle to lead and guard the environment from further degradation.

VI. Conclusion:

India, a pioneer in environment protection has been enacting necessary environmental acts from time to time. It is pertinent to note that India is one of very few countries in the world to have given constitutional status to environment protection by adding Article 48A and 51(g). Enabled by the Constitutional provisions, the Supreme Court in the judicial process of adjudication environmental cases ventures to invent and discover innovative techniques, both in the procedural and substantive laws. The Halsbury’s Laws of India, based on the judgments delivered by the Supreme Court from time to time, sums up the implications of the Constitution including fundamental rights on the environment. The Constitution imposes a duty on the state to protect and improve the environment and to safeguard the forests and the wild life of the country. It also imposes a fundamental duty on every citizen to protect and improve the environment. But both of them are not enforceable. Even after various constitutional amendments, protection of the environment remains explicitly a directive principle on the part of the state and a fundamental duty for the citizens. It is the Supreme Court that elevated it to a fundamental right by interpreting Article 21.²⁸ The Halsbury Laws of India further sums up the Apex Court’s views on environment and fundamental right. “The right of every person to a healthy environment has been derived from the fundamental right to life granted by the constitution of India....The Courts in India have explained environmental dimension of the right to life in the following ways (a) the right to life includes the right to enjoy unpolluted air and water; (b) a descent environment with sufficient clean air and water are implicit in the right to life; (c) the right to live with human

²⁸ Article 21 of the Indian Constitution provides that “No person shall be deprived of his life and liberty except according to the procedure established by law.”

dignity encompasses a clean and healthy environment and (d) environment pollution and ecological degradation violate the right to life.”

This approach has led the Supreme Court to derive, adopt and apply a range of principles to guide the development of environmental jurisprudence. Notably amongst the fundamental norms recognized by the courts are:

- Every person enjoys wholesome environment, which is a facet of the right to life,
- Enforcement agencies are under an obligation to strictly enforce environmental laws,
- The polluter pay principle which is a part of the basic environmental laws,
- The precautionary principle requires government authority to anticipate, prevent and attack the causes of environmental pollution,
- Stringent action ought to be taken against contumacious defaulters and persons who carry on industrial or development activity for profit without regard to environmental laws.

Thus, this epic journey traces the transformation of the Supreme Court of India into the ‘Supreme Court for Indian’. Though hyperactive environmental judgments, the ripened wisdom of the Supreme Court is attempting to bless this beloved living world with nature’s bounties, so as to make it a veritable paradise on earth, so that man can live in a lovely spirit.