



RESEARCH ARTICLE

CONCEPT OF SUSTAINABLE DEVELOPMENT: A LEGAL PERSPECTIVE

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ARTICLE INFO

Article History:

Received 20th October, 2020
Received in revised form
28th November, 2020
Accepted 14th December, 2020
Published online 30th January, 2021

Keywords:

Inter-Generational Equity, Sustainable
Development, Environmental Law,
Constitution of India.

ABSTRACT

The concept of Sustainable Development is today becoming the guiding principle in the entire environment versus development debates and is generally seen as solution to this stalemate situation. The concept of sustainable development is structured on two forms of equity i.e. Inter-generational equity and intra-generational equity. This concept of Inter-generational equity initially evolved in the International Environmental law, in its mode of rule and management, today find a place in our Environmental law and its interpretation and decisions as well. This paper is an attempt to analyze the understanding and attitude of the Indian Courts towards this valuable principle.

INTRODUCTION

Sustainable Development or Environmental sustainability is the process of making confirm that the present processes of interaction with the environment are carefully doing with the idea of keeping the environment in its unexploited form as far as possible. And, non-sustainability occurs when wholesomeness of natural resources is used up faster than it can be restored. Sustainable development requires that human activity only uses natural resources at a rate at which they can be restored naturally. Innately the idea of sustainable development is moving around with the concept of carrying capacity. It is experimentally, practically and theoretically proven that the long term result of environmental degradation will be resulting in obvious inability to sustain human life. Such rampant degradation of environment on a global context could be resulting in extinction of human life on this earth. Sustainable development is a methods of using of natural resources which aims to meet the human needs vis-à-vis preserving the wholesome environment so that these needs can not only be met in the present, but also for the next generations to come. The term was first time used by the *Brundtland Commission* in the year 1987 and later on the same became the most quoted definition of the term Sustainable Development as development that “meets the needs of the present without compromising the ability of future generation to meet their own needs”. Legally speaking the very idea of Sustainable Development rests on the foundation of equality whereby meets the requirements of equity and it is structured on two form of equity which is:

-) Inter-Generational Equity.
-) Intra-Generational Equity.

Intra-generational equity is concerned with equity between people of the same generation and aims to assure justice among human beings that are alive today, as reflected in Rio Principle 06, mandating particular priority for the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable. The concept of intra-generational equity provides rights and duties to every person of a single generation to use and take care of the renewable and non-renewable resources moderately among the members of the generations.

METHODOLOGY

The present study is based on doctrinal method of research. A comprehensive review of existing literature, journals, articles, reports, mixed with magazines, newspapers articles are primarily relied in order to get clear updated picture of the current position of the Environmental Protection regime and its conflicts with rapid pace of modern development. Case laws of Supreme Court and High Courts are basically referred.

What is Inter-generational Equity?

The basic principle of intergenerational equity talks about the right of every generation to get same kind of benefit from the natural resources.

Principle 3 of the Rio-Declaration states that “the right to development must be fulfilled so as to equitably meet

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developmental and environmental needs of present and future generations.” The basic idea behind the principle is that the present generation should not use the non-renewable natural resources so much so as to deprive the future generation of its benefit.

The UN Framework Convention on Climate Change (UNFCCC): Recognizes the cardinal role of intergenerational equity in climate change policy. It states “the Parties should protect the climate change system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities”. Referring that Sustainable Development has been described as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. It follows that the principle of Intergenerational Equity is therefore included in the very definition of Sustainable Development though not expressly but impliedly.

Sustainable Development is possible only if we consider our mother Earth and its natural resources not only as an article of exploitation or an opportunity of investment but as a trust, which is passed to us by our ancestors, to be enjoyed and passed on to our progeny for their use. Such a great responsibilities conveys to us both rights and duty. Most essentially, it indicates that next generations too have equal opportunity and rights over natural resources. Although these rights have meaning only if we the present generation give respect. The main propagator of the intergenerational equity have strong basis that we human being hold natural environment of this earth in common with all members of our species, the past generations, the present generation and future generations. We being the members of the present generations hold this Earth in trust for future generations and at the same time we being the beneficiaries are entitled to use and to be benefited out of it.

We have two kinds of relationships with our natural environment which shapes any theory of intergenerational equity which is our relationship with our very own next generations and our relationship to this earth and its natural resources of which we are also one of the components. The human being is immanently connected with the other components of the natural resources; we pollute and are polluted by every activity in the components. Human beings are only components which can analyze what is happening in the environment and has superior kind of responsibility to conserve and protect this mother earth. All generations of human being are naturally connected; there is fundamental relationship between each generation. Earth being common property of all generation the idea of intergenerational equity guaranteed that all generations should have equal rights over the natural environment. There is no sense of preferring any generations in utilizing the mother earth.

Understanding and sharing of natural resources between generations is the something given what is actually due; and it is proper to see the human being as a common partner among all generations. Being a component of natural resources it is a bounden duty of human being to realize and preserve the interest and due of every generation. In such sharing nobody knows in advance which generation is actually the present generation, and where the future generation will be settled. But every perspective generation want this Earth in safe position as

it was in any previous generations. In such processes every generation has to pass this Earth in good condition as they had received it and it is everybody’s equitable rights to enjoy same kind of natural resources and the benefits out of it. Hence every subsequent generation has bounden duty to protect this mother Earth and enjoy its equitable share as trustee.

In this continuous process if any of the generation become careless and fails to care these natural resources and unable to keep in the condition what they have received it. The immediate next generation will have a social, moral and legal requirement to restore the damage caused by the preceding generation. However, here also the costs involved in restoring the natural resources can be shared by each generation together by means of revenue bonds and other financial regulations made thereon time to time. While utilizing the natural resources so rampantly and deteriorate it to the extent of restoration may have benefits and have sufficient wealth and passed it to the immediate next generation. That inherited income may be sufficient wealth to conserve and restore the deterioration as effectively as possible for the immediate next generation. Economic development is sine qua non of each generation for alleviating poverty. However, the development should not be done at the cost of the natural resources and there should be balance to achieve both of the goals. Every generations need to develop the desired mechanisms to achieve above goals along with sustainability.

There are universally accepted three principles of intergenerational equity. Firstly every generation has to protect and conserve the multifaceted cultural as well as divergent natural resources. Present generation should not restrict the benefits of utilizing natural resources available to future generations while solving their problems and fulfilling their own needs. This Principle is actually called as ‘Conservation Option’. It is the duty of every generation to maintain the quality of natural resources available to them so that it can be passed on to the next in safe condition as it was priority received. This is the second principle and known as ‘Conservation quality’. The third principle is ‘Conservation Access’ which is that each generation should provide members of their own generation an equitable share and should pass the equal accessibility of those equitable share which they have received from their previous generation to the next generation. These principles intended to recognize the rights in regard to utilization of the mother earth’s natural resources of each generation for their own benefit. But also restrict the actions of the today’s generation in doing rampant pollution. However, in between those restrictions they are not dictating the regulation of managing natural resources. Every generation have their own regulation and with that they take ample benefit out of natural resources and also preserve the equitable share to the future generations.

Intergenerational Equity: Constitutional and Judicial Perspective

The Constitution of India came into force on 26th January, 1950. Originally, the Constitution contains no specific provisions for environmental protection. However, certain specific provisions have been incorporated by the Constitution (42nd Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the very few Constitutions in the world, which provides for specific provisions for the protection and improvement of the Environment.

The Constitution being the fundamental law of the land has a binding force on citizens, non-citizens as well as the State. The Fundamental Rights and the Directive Principles of the State Policies underline our national commitment to protect and improve the environment. The Courts in India have also given a new interpretation to the Constitutional provisions touching the environmental perspective.

Rural Litigation and Entitlement Kendra vs. State of U.P. AIR 1988 SC 2187 (Popularly known as Dehradun Quarrying Case), is the first case of this kind in India, involving issues relating to environment and ecological balance. The *R.L. & E. Kendra* and others in a letter to the Supreme Court complained about illegal/ unauthorized mining in the *Mussorie, Dehradun* belt. As a result, the ecology of the surrounding area was adversely affected and it led to the environmentally disorder. The Supreme Court treated the letter as writ petition under Art. 32 of the Constitution and directed to stop the excavations (illegal mining) under the Environment (Protection) Act, 1986.

In M.C. Mehta vs. Union of India AIR 1987 SC 1086 (popularly known as 'Oleum Gas Leak Case') The Supreme Court's activism has led to the inclusion of several environmental rights within Fundamental Rights such as that of a clean and healthy environment, the Apex Court treated to live in pollution free environment as a part of fundamental right of life under Article 21 of the Constitution. Further the A.P. High Court in *T. Damodar Rao Vs. S.O. Municipal Corporation, Hyderabad*, (AIR 1987 A.P. 171) lay down that right to live in healthy environment was specially declared to be part of Article 21 of the Constitution.

The Judiciary's dynamic interpretation of fundamental rights have regulated into the rights to healthy environment from the following Articles:

-)] **Article 14:** State shall not deny any person equality before the law or the equal protection of the laws within the territory of India.
-)] **Article 19 (6):** State is empowered to make any law imposing in the interests of the general public, reasonable restrictions on the exercise of freedom to practice any profession or to carry on any occupation, trade or business, guaranteed by Article 19 (1) (g).
-)] **Article 21:** No person shall be deprived of his life or personal liberty except according to the procedure established by law.

The importation of the 'due process' clause by the activist approach of the Supreme Court in *Maneka Gandhi case (AIR 1978 S.C. 597)* has revolutionized the ambit and scope of the expression 'right to life' embodied in Article 21 of the Constitution. The right to live in healthy environment is one more golden feather of Article 21. This right connotes that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 embraces the protection and preservation of nature's gift without which life cannot be enjoyed. In the case of *Hinch Lal Tiwari Vs. Kamla Devi (2001) 6 SCC 496*, the Supreme Court declared that material resources of a community like forests, tanks, ponds, hillocks, mountains etc. are Nature's bounty. They maintain a delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality of life which is the essence of the guaranteed right under Article 21 of

the Constitution. It was clarified by the Supreme Court that 'any disturbance of the basic environment elements, namely air, water, forest and soil, which are necessary for 'life', would be hazardous and threat the very existence of human life. The Court observed: it is also violative of the policy document prepared by the National and the State Governments respectively-besides the fact that it is contrary to public interest involved in preserving natural wealth, maintenance of environment and ecology and considerations of sustainable growth and intergenerational equity. After all, the present generation has no right to deplete all the existing natural resources like forests, lands, water, air and other and leave nothing for the next and future generations.

In another case of *Chhetriya Pradhushan Mukti Sangrash Samiti vs. State of U.P. (1990)4 SCC 449*, the Supreme Court declared that "every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by 21 of the Constitution. Anything which endangers or impairs by conduct of anybody, either in violation or in derogation of laws, the quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution". The petitioners wrote a letter to the Supreme Court against *Jhunjhunwala Oil Mills*, based near *Sarnath*, alleging that the mill was causing environmental pollution because of smoke and effluents. The owners were not complying with the statutory provisions of the Air (Prevention & Control of Pollution) Act 1981 and Water (Prevention & Control of Pollution) Act, 1974. The Court dismissed the petition as it was devoid of any merit or principle of public interests and as it was a result of ugly rivalry.

This action was challenged by a Writ Petition under Article 32 of the Constitution. The Supreme Court observed, "A law is usually enacted because the Legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that the Parliament enacted the Anti-Pollution Laws, namely, the Water Act Air Act and the Environment (Protect) Act 1986." As is evident, in both cases, the Supreme Court has only relied on the Right to Intergenerational Equity along with some other entrenched right. Neither case derives its reasoning directly nor solely from the Right to Intergenerational Equity. In *Hinch Lal Tiwari* the Court mentioned the right along with the well settled Principle of Sustainable Development. In the *Chhetriya Pradhushan Mukti Sangrash Samiti* Case, the right was mentioned along with the right to a quality life under Article 21. It is for that this paper refers to right of equally quality life to all and which is very recent evolving principle. It is not yet capable of standing on its own. It has not yet found full judicial acceptance. Further, the principle of "Inter-Generational Equity" has also been adopted while determining cases involving environmental issues. The Supreme Court, in the case of *Vellore Citizens' Welfare Forum vs. Union of India (1996) 5 SCC 647*, held as under:

"The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in Principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of

quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.

Principle 2- the natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management as appropriate.

Conclusion

The Judicial activism to tackle with the problems of environmental pollution has taken a form that it is too difficult to have a setback in this respect. The judiciary has strong tools for setting the things right and so far as justice is concerned, it can do everything desirable, necessary, reasonable and appropriate in the circumstances of a given problem. The litigation which are arising in this matter under Article 32 or under Article 136 or under Article 226 in the High Courts are, in this present study's view, of equal importance as Human Rights' concerns. Constitution gives a right to the citizen to move the Court for the enforcement of the duty imposed on the State to protect and improve the environment. Article 32 of the Constitution of India is of a wide import from where the Supreme Court draws the entire power of administering and dispensing with the justice in cases having bearing on fundamental rights of the people. It is a privilege of countrymen and the judiciary has now come forward to protect the human being from environmental pollution. The High Courts in India under Article 226 of the Constitution entertains much wider power than the Supreme Court under Article 32. Taking a clue from the activism of Supreme Court, all the High Courts throughout the country have been settling the legal proposition and protecting and improving the environment by issuing directions or orders or writs. There is a long list of the remarkable judgments of various High Courts out of which some of the most important judgments of environment protection are discussed here. Several international conventions and treaties like Declaration of the UN Conference on the Human Environment (Stockholm) 1972, the Hague Declaration on the Environment 1989, the Rio Declaration on Environment and Development 1992, the Report of the UNCED 1992 have recognized the above principles of sustainable development and, in fact, several imaginative proposals have been submitted including the *locus standi* of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the right of the future against the present.

The objective as laid down above and the principles concluded wholly apply for deciding matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country. Article 48 A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51A(g) of the Constitution of India, enjoins that, it shall be the duty of the every citizen of India, *inter alia*, to protect and improve the natural environment including forest, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the environment governance of the country but also it shall be the duty of the

State to apply these Principles in making laws and further these two Articles are to be kept in mind in understanding the scope and purport of the fundamental right guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

REFERENCES

1. Shastri S.C. "Environmental Law" IInd ed. 2005 Eastern Book Company Lucknow
2. Upadhyay Snjay & Upadhyay Videh "Handbook on Environmental Law" 2002, Volumes-1,2 & 3 LexisNexis-Butterworths
3. Vashishth Vikash "Law & Practice of Environmental Laws In India" 1st Edition 1999, Bharat Law House New Delhi
4. Dr. Sridhar Madabhushi "Environmental Empowerment" (Citizen, State & Constitution) 1st Edition 2009 Asia Law House Hyderabad.
5. Hughes David "Environmental Law" 3rd Edition 1996 Butterworths London, Dublin, Edinburgh
6. Dr. Rao Rega Surya "Lectures on Environmental Law" Asia Law House Hyderabad New Edition 2001, Reprint 2014
7. Dr. Srikanth S.V. "Guide to Environmental Law" 1st Edition 2014 United Law Publications
8. Prof. Pithawalla "Environmental Law" (including CRZ Notification of 2011) 2015 C. Jamnadas & Co. Educational & Law Publishers Wadala (East) Mumbai
9. Indian Human Rights Law Review Vol 7 No 2 December 2016 R. Cambay & Co. Private ltd. Kolkotta
10. The Bruntland Commission, formally the World Commission on Environment and Development (WCED), known by the name of its Chair Gro Harlem Bruntland, was convened by the United Nations in 1983. The Commission was created to address growing concern "about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development". In establishing the commission, the UN General Assembly recognized that environmental problems were global in nature and determined that it was in the common interest of all nations to establish policies for sustainable development.
11. The Rio-Declaration on Environment and Development, often shortened to Rio-Declaration, was a short document produced at the 1992 United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit the Rio Declaration consisted of 27 Principles intended to guide future sustainable development around the world.
12. The United Nations Framework Convention on Climate Change (UNFCCC or FCCC) is an international environmental treaty produced at the United Nations Conference on Environment and Development (UNCED). Informally known as the Earth Summit, held in Rio de Janeiro from June 03 to 14, 1992. The objective of the treaty is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

13. Norgaard, R.B. "Sustainability as Intergenerational Equity: Internal Discussion Paper", Asia Regional Series, Report No. IDP-97, World Bank June 1991.
14. Weiss, Edith Brown "" Environmental Change and International Law: New challenges and dimensions." Tokyo: United Nations University Press 1992 at P 154.
15. Weiss Edith Brown. "The Planetary Trust: Conservation and Intergenerational Equity". Ecology Law Quarterly, Vol. 11. No. 4(1984)
16. State of Himachal Pradesh Vs. Ganesh Wood Products (1995) 3 SCC 363
17. Enviro-Legal Action Vs. Union of India (1996) 5 SCC 281
18. A.P. Pollution Control Board Vs. Prof. M.V. Nayudu and Ors, 1999 (2) SCC 718
19. Taniya Malik: The Evolution of the Concept of Inter-Generational Equity under the Indian Environmental Jurisprudence" International Journal of Multidisciplinary Research and Development. Vol. 2, Issue: 10. 184-187 Oct-2015.
20. Oxford Handbook of International Environmental Law, Chapter 1- Equity, D. Shelton, 2008.
21. The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority, International actions in the field of environment and development should also address the interests and needs of all countries. (Rio Principle 06).
22. R. Rambousky et al., "Structural Relaxation and Viscous Flow in Amorphous Zr. AICu Above and Below the Glass Transition Temperature, in MSF, vol-225-227, 1996, 83-88.
