

Sustainable Development through 'Environmental Jurisprudence': Indian Experiences

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INTRODUCTION

***"Loka Samastha Sukhino Bhavantu"*
Let entire humanity be happy**

The entire humanity can only be happy when it would be free from the fetters of worldly materialistic things. Ancient civilizations have always kept the environment on the highest citadel clean and a green environment has always been the first priority of humans as it was the way to bring ecstasy in them. The ancient Hindu society is no exception when it comes to protecting our mother nature.

A famous saying of Yajurveda "*yatha pinde tatha brahmande*", it means 'All that is outside you is within you' A clean and clear pious mind can only think of a healthy environment and a dirty mind is that pollutant which will always create hindrance in achieving the good things.

The Indian society in the ancient times was a pagan worshiper having pantheistic views and worshiped almost every form of nature. Clean and green environment has always been a prime priority of people in every stage of life everyone knows that the civilizations existed near water and fertile lands where people could sustain their life. The kings always emphasized on the protection and preservation of the environment traces of which can be witnessed by vernacular songs, folklores, festivals, local customs, indigenous cultures associated with the environment.

The concept of development in today's modern and materialistic world hinders the Environment protection and perseverance. Development is a complex phenomena that leads to modernisation, industrialisation, urbanization as these factors make the country a developed nation. Development in various fields leads the country to be recognised as a progressed nation. The ranking of the country goes up but the price of it is paid by the degradation of the environment and its resources, many of which are on the verge of depletion and extinction, no one realizes that over development can lead to extinction of flora, fauna and the aquamarine habitat.

Sustainable Development - *Protecting Our Mother Earth*

In India the earliest law is from the 3rd Century when Ashoka The Great made law for the protection and conservation of Wildlife and Environment. When in ancient times the environment was kept at the highest altar and the rulers were well aware about protecting the mother earth by implementing strict laws, the moot question today is why did this mad race of development make humans inhumane?

Who doesn't want a clean and green environment, the simplest meaning of environment is all that which surrounds us. The concept of Development is contradictory to environmental protection. We humans are harming our precious environment. Nature or the environment has survived for several years but today the greed and mad race of man is leading the environment into the whirlpool of destruction and devastation. The term 'Sustainable Development' or 'Sustainable use' has acquired legal status as it has its origin in treaties of International level. Law plays a significant role in the field of environment the word "Sustainable" makes the picture crystal clear which emphasizes careful planning, management and conservation of resources and to ensure that the present and the future generation should be able to enjoy and make benefit from the resources, the basic idea is that a future generation should not be devoid of adequate resources which might exhaust or which are on the verge of extinction. The global community has come together to save the environment as they have realized that development is needed but not at the cost of environment. Sustainable development is an adopted law target to be attained through strict Laws and not to disturb the ecology.

Sustainable development and the International Efforts

During the early 70's Major developments were taking place in the international scenario, the attention of many countries was drawn towards deteriorating resources, poverty, hunger, deteriorating environment and many more things. It was felt that in order to save the environment urbanization, industrialisation, haphazard construction and overpopulation needs to be controlled and India was no exception. The following were the steps of activism which were taken for our better future

1. Stockholm declaration 1972
2. Brundtland Commission 1983
3. Earth summit 1992
4. UN Commission on Sustainable development 1993
5. The Kyoto Protocol 1997
6. Johannesburg Declaration on Sustainable development 2002
7. Earth Summit 2012

The Global community showed interest in Environmental Protection and sustainability. Many countries United and started working for the betterment of the future. These International efforts consist of various declarations, treaties, summits, commissions, protocols and agendas and all of them aim at improving, protecting, preserving the environment and the natural resources.

In order to overcome this problem in 1972 Mrs Indira Gandhi participated in the UN conference on environment at Stockholm (Sweden) and emphasized on the eradication of poverty being the integral part of the goal of environmental strategy for the world. Mrs Gandhi remarked “ Of all the pollutants we face, the worst is poverty”.

Sustainable Development and the role of Judiciary

Sustainable development has various goals related to the environment. The Law has a very important role in protecting and conserving the environment and natural resources with active participation of the Judiciary. Judiciary has always been such an active savior in protecting the environment and matters related with it, also played an important role in the progress and development of people and the nations.

The courts may give directions, severe punishments in cases the environment is being harmed for the selfish interest of a few. Judiciary and Law go hand in hand in protecting our Mother Earth. Sustainable Development may be adopted by law to be a target to be attained through the laws, Judiciary has always played a crucial role than the Legislature as legislature being the representative agency of the people it is more concerned with the development of the people and the nation than any other subject. Where as judiciary aims at protecting the environment by implementing various laws and schemes in order to save the environment. Looking at the Indian scenario we see that India is overpopulated and polluted but clean and green environment has always been the priority of the government. But in certain areas we cannot restrict the technical and scientific advancements and developments which are needed for the progress, protection and good ranking of the country. Judiciary's involvement has led to promotion of sustainable development and judiciary in India has come with the new concept of “Environmental Jurisprudence”. The developments only look good till it does not harm the innocent environment. Sustainable development is the only way out where both progress and sustainability are in harmony with each other.

Article 21 Right to Healthy Environment

Article 21 of the Indian Constitution speaks about the right to a healthy environment, many legislations were enacted for the protection of the environment which included National Act 1995, National Environment Appellate Authority Act 1997.

Article 21 provides: “ No person shall be deprived of his right to life and personal liberty except according to procedure established by law.”

*The Ratlam Municipality v Vardhichand*¹ changed the restricted approach of Article 21, the case presented an alibi for the court and gave indication of the right of a wholesome environment. The Supreme court ordered the municipality to take immediate action with regard to contamination and pollution in the streets it was also ordered to provide sanitary facilities and services for its

¹ AIR 1980 SCR(1)97

resident within 6 month period holding that budgetary constraints didn't justify a municipality neglecting its secretary obligation to provide sanitation facilities.

Sustainable Development *the need of the hour*

Environment related issues were increasing day by day some of the issues were of complicated nature which needed swift working but the overburdened courts were not able to solve the problems immediately as a result many litigations were pending in the courts. Some public spirited judicial personalities noticed that the Acts related to Environment were not sufficient as in certain cases the litigation involved the assessment of scientific data which should be handled by the separate expert courts so finally a separate Tribunal was incorporated with the aim of establishing separate environmental courts which could provide swift, effective and less expensive resolution of disputes in environment and matters concerned with environment. Though there were many laws which dealt with the safety and protection of the environment and they were doing exceptionally good, the need of the hour was separate courts or tribunal concerning the environmental problems and issues. Even though common masses realized to the importance of environment and many public spirited people came forward to save the environment the Chipko movement of Uttarakhand and a Apiko movement of Karnataka are the commendable efforts of people who wanted to save their mother earth especially the trees which were the source of their survival and purification of the environment.

The first case filed under the Environment (protection) Act 1986 was related to illegal mining in the vicinity of Dehradun city popularly known as the (Doon Valley case) *Rural Litigation and Entitlement Kendra v State*² This case was related to excavations which were going on and could have created problems for people living in the vicinity of such illegal mines and hindering the Art 21 of the people which says Right to Live in a healthy environment.

Although the Environment(Protection) Act 1986 took the issues and problems related to the environment with great concern and seriousness, but in *A.P.Pollution Control Board vs Prof.M.V Nayudu*³. The Supreme court expressed the need for a separate technical body consisting of judicial and a group of scientific experts to deal with the environmental disputes.

National Green Tribunal (NGT) *epitome of Environmental Jurisprudence*

The National Green Tribunal falls under the Ministry of Environment, Forest and Climate change, Government of India. The National Green Tribunal is the way for the evolution of "environmental jurisprudence". It can also be metaphorized as the voice for the environment and the related issues of the environment such as its protection, conservation of forest and other natural resources. NGT was established on 18th November 2010, under the chairmanship of J.Lokeshwar Singh Pant, the tribunal follows the principle of Natural Justice, works on the pattern of fast track courts with separate rules and without any interference or any boundation of the Civil Procedure Code 1908 and the Indian Evidence Act 1872, it is an alternative dispute resolution mechanism for the protection and conservation of the environment.

² AIR 1985 SC 652

³ (2001) 2 SCC

*Indian Council for environment legal action v Union of India*⁴The opinion of the Supreme Court was that special courts or tribunals for matters dealing with the environment is the need of the hour. By creating environmental courts it would be easier to deal with civil and criminal matters relating with the environment as the ordinary courts take a long time and defeat the purpose of granting the relief to the aggrieved. The Supreme court directed that only trained judicial officers/judges should be allowed for summary proceedings.

National Green Tribunal *encouraging the concept of Go green*

NGT was born as a result of many environmental litigations which were not getting the desired results so a need was felt to establish a separate expert court for effective resolution of environment and problems related with it. National Green Tribunal bill was passed and accepted by both houses of the Parliament and on 2nd June 2010 a separate law dealing with only and only environmental and related matters was incorporated which was named as National Green Tribunal Act 2010.

As we all know that NGT is a specialized and expertised judicial body which has been equipped with adjudicating environmental cases of civil nature, the NGT was formed with the sole purpose of environment protection. The NGT has been vested with powers under the following 7 laws which are related to environment which include:

The Water Prevention and Control Pollution act 1974

The Water Prevention and Control of Pollution Cess Act 1977

The Forest Conservation Act 1980

The Air prevention and Control pollution Act 1981

The Environment Protection Act 1986

The Public Liability Insurance Act 1991

The Biological Diversity Act 2002

Working of NGT *towards a better future*

NGT stands on threshold advocating for multidisciplinary issues related to and concerning the environment taking out ways through remedies and redressal to save the environment; the tribunal has proved as an exceptional platform in providing relief, compensation and redressal of any type of matters concerning the environment.

Some commendable features of the NGT are contained in the following sections

Section 17 of the Act speaks about the “*principle of no fault liability*” and also covers the principle of apportionments.

Section 20 of the NGT as a *backbone of the Act*

⁴ AIR 1996 SC 1446

The three principles of NGT on which the NGT breath are as follows:

- a) Sustainable development
- b) the Polluter Pays Principle
- c) the Precautionary Principle

Sustainable Development - it is believed that two contrary demands emerge when we talk about 'Environment', one being saving the environment and the other being developing the environment. Economic development is always welcomed by the people without thinking about the consequences of disruption of natural habitat, congestion traffic, pollution, disruption of natural landscapes. The environment problems and the consequences has led to birth of a new concept of 'sustainability' people realized the importance of natural resources and their conservation and also realized that if today they will not stop their future will stop. Today sustainability is the target challenge for all the Nations to conserve its resources and use them safely before they get exhausted.

Saving our precious environment has become the top priority of almost all the nations of the world and India is no exception. India is one of the countries which is serious about environmental protection and has actively participated in the UN 2030 Agenda to eradicate poverty and achieve sustainable development goals. The aim of NGT is to save the fragile environment from everything which is negatively affecting it. National Green Tribunal, acts as a control mechanism for environmental pollution and fatal effects of it and it has also been noticed that in the name of development a lot of natural resources are being harmed without even thinking about the devastating consequences.

Polluter pays principle-The polluter pays principle is one of the most commendable steps. It means "the act of pollution prevention control and reduction measures are to be borne by the polluter". This principle is contained in Principle 16 of the Rio declaration, it favors the curative approach concerning repairing of damages, it is a principle of international environmental law where the polluting party faces for the damage done to the natural environment. This new principle was a welcome step, it was introduced to curb the menace of pollution and to teach the polluter a lesson that if he will play with the environment then only he will have to mend the ways by paying for his deeds. The compensation process was started under the strict liability principle later shifting it to absolute liability principle followed by Article 32 of the Indian constitution and in the end by the polluter pays principle. Many polluters deface the environment causing land, water, air pollution and along with that even causing visual pollution in certain areas believing it as their right, this polluter pays principle is also for those who think they can do anything with their money, power, political affiliation etc. The basic idea of introducing this principle is to make the polluter liable not only for compensation to the victim but also for the cost of restoring environmental degradation.

Precautionary Principle The precautionary principle is one of the prime principles of NGT the principle proposed guidelines in environmental decision making. The UN conference based upon Environmental Development held in 1992 in Rio de Janeiro states that "In order to protect

the environment the precautionary approach shall be widely applied by States according to their capabilities". This principle speaks about preventive measures and avoiding problems by not doing those activities which can lead to any type of harm. This principle proposes for components i) taking preventive action in the face of uncertainty ii) Shifting the burden of proof to the proponents of an activity iii) Exploring a wide range of alternatives to possibly harmful actions iv) increasing public participation in decision making. In *Vellore Citizens Welfare Forum v Union of India*⁵, attention was drawn towards the activities of tanneries which were causing environmental pollution by discharging untreated wastes from tanneries into the adjoining lands, waterways and even the agricultural fields of the people this menace of the tanneries chemically affecting more than 3,5000 hectares of land leaving it unfit for agriculture even the water sources of the area were affected wear as the potable water was found unfit for drinking by the humans as well as the cattle. The Supreme Court was very well aware that tanneries bring enormous money as the leather products are in great demand in foreign market and major foreign exchange earner for India, along with this the leather industries employ large amount of people. The court remarked that on the verge of employment the environment cannot be kept at stake and the industry has no right to destroy the ecology, degrade the environment or create health hazards. Even in *A.P. Pollution Control Board V Prof M.V. Nayudu*.⁶ The supreme court applied the precautionary principle in considering a petition against development of certain hazardous industries, the court held environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake.

Landmark judgment of National Green Tribunal

The National Green Tribunal has proved as a relief giver tribunal and taken the appellants out of the blue in providing justice working at par with the Fastrack courts keeping the principle of sustainable development in view at every step, without giving any liberty to the miscreants. NGT and Sec 21 of the Act it speaks about the binding decision of the majority of the members if the member if there is difference of the opinion.

*N.Chellamuthu v. The District Collector*⁷ In this case an application was filed for protection of the environment by the power looms running in the residential area. Respondent file was believed to cause pollution by running 3 power looms in the area causing noise pollution and dust pollution which was beyond a particular limit it was also said that the respondent did not take any measures to reduce the noise and the dust coming from the looms. The tribunal ordered the local authority to inspect the area and record the sound level created by these three power looms. Taking the problem seriously the tribunal held that the district and the district environmental engineering executive officer shall be at liberty to take appropriate steps as per law after issue notice after concerned acts. The environment set aside the clearance granted two Municipal solids based processing plants for providing false information in the environment impact assessment report.

⁵ (1996) 5 SCC

⁶ AIR 1999 SC 812

⁷ Original Application No. 20/2011 (Principal Bench, New Delhi)

*Vardhman Kaushik and others v Union of India*⁸This is also one of the exemplary cases of NGT. The matter was brought before the Supreme Court about the menace created by the old diesel vehicles causing environmental pollution which was a matter of great concern when it comes to the environment. The Supreme Court directed that more than 10 years old diesel vehicles are not permitted on the roads of NCR, Delhi. Showing concern for the environment the court further directed that petrol vehicles which are more than 15 years old And diesel vehicles that are more than 10 years old would not be registered in the NCR Delhi.

Success story of National Green Tribunal

The NGT has proved itself as the savior of the environment. It has protected vast acres of land from getting polluted along with this it has haunted the polluting constructions and other activities which were harming the environment in small, big and even Metro terms. The Entity has been allowed to deal with 7 subjects of the environment and it works on the pattern of Fast Track courts in providing justice to the aggrieved. The entity provides relief and compensation for damages to people as well as to the property. NGT faces challenges like Limited regional benches, it is only limited to cities. The Entity has been successful in dealing with environment related cases in the last 5 years it has received 15132 cases and disposed of 16042 cases. It deals with civil cases and has been vested with powers under 7 laws related to the environment and it has been given the status of specialized Quasi judicial body which is equipped with expertise for educated environmental cases in the country and creating a new breed of legal Practitioners.

Conclusion

Mother Earth is in bounty with everything but the mad race of humans for comfort and development has left the clean and green environment wounded. Though development is necessary for a country's ranking, this development is of no use if the environment is getting badly affected by it. The concept of Sustainable development was a welcome step by many countries, to keep a halt on growing population, poverty, hunger, malnutrition, haphazard construction deteriorating environment and dearth of resources, these factors became an alarming cause of concern for the leaders of the countries and they started looking for alternative ways to deal with these problems which can serve the purpose of progress also and simultaneously save the deteriorating environment. The Stockholm declaration never spoke about sustainability directly but it showed its concern towards poverty, hunger, pollution which needs to be stopped if we want our future generation to survive in a good and healthy environment. Sustainable development is the only way out which can solve the purpose as we all know that development cannot be stopped permanently but the resources can be saved by handling with care so that the future generations can also enjoy the benefits and do not face the dearth of such resources.

⁸ Lex Witness, National green tribunal, Vol.17, Nov .2015, p.8.

Sustainable development has proved as a welcome step at global level, and almost all the nations of the world have realized in order to survive their need to be proper handling of the environment and the resources around. India is not lagging behind and has become an active member when it comes to the saving and protecting of environment and natural resources by implementing strict laws and swear punishments. India has shown that the miscreants will not be spared if they try to harm our mother earth. Many laws were created concerning environmental issues, this was the beginning of environmental jurisprudence and it was a welcome step by the judiciary. With the passage of time it was noticed that though there were adequate complete laws for the environmental problems but the working of the courts on regular basis was making the justice process slow, the need was felt to incorporate specialized bodies /tribunal with expert advocates, scientists and other technical experts related to environmental problems as some of the cases involved special advises of the scientists and technical teams related with environmental problems all this led to the birth of National Green Tribunal and the beauty of it is that it aims at providing effective and expeditious remedy in cases relating to environmental protection, conservation of forests and other natural resources and enforcement of legal rights relating to environment.

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