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SUSTAINABLE DEVELOPMENT AND ROLE OF INDIAN JUDICIARY

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ABSTRACT

The concept of 'Sustainable Development' is not a new concept. The doctrine had come to be known as early as in 1972 in the Stockholm declaration. It had been stated in the declaration that. "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generation." But the concept was given a definite shape in a report by world commission on environment, which was known as 'our common future'.

India has a comprehensive environmental framework with an extensive set of environmental laws; Statutory mandates, regulatory instruments and institutional frameworks to implement and enforce Environmental policy objectives. The case for establishing an environmental court in India increasingly became an interesting issue; over the last few decades India witnessed huge changes that affect all most every aspect of human life. Apart from the natural fact, political instability in the region which caused many Environmental problems. India is a Democratic country and a big population problem and flexible law of environment creates a slow process to solve major cases. Therefore, protection of the environment is hoped to be on the top of the States priorities to Achieve sustainable development and maintain the natural environmental balance. There are lot of examples such as-Kautilya, the Prime Minister of Magadha, during the regime of Chandra Gupta Maurya, 300 B.C. in his 'Arthshastra' exhaustible dealt with the question of environment protection. He laid down the rule for protection and up gradation of environment minutely, meticulously and with great Details. Mauryan King Ashoka depicted exemplary compassion of wildlife and prohibited killing certain species of creatures. We find the preaching of

compassion towards nature in all religions. “Don’t make mischief in the earth” say holy Quran. Gautama Buddha’s Religion was based on experience and logic. He believed on evolution of man. In the contemporary period Sikhism teaches that the life is made of five basic elements i.e. Earth, air, water, fire and sky. The colonial rule, however, disregarded ancient prudence, cultivated ruthless intelligence to exploit the environment for their material gain. (Environmental Protection Law & Policy in India; Judiciary in India, more precisely, the supreme Court and the High Courts has played an important role in preserving the doctrine of Sustainable Development ‘. Parliament has enacted various laws to deal with the problems of environmental degradation. In such a situation, the superior courts have played a pivotal role in interpreting those laws to suit the doctrine of Sustainable Development’.

It is worthwhile to mention here that principle 10 of Rio declaration, 1992 states that: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities. In their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”It is also to be remembered that most of the environmental cases have come before the court through PIL (public interest litigation) either under Article 32 or under 226 of the constitution.

INTRODUCTION

Sustainable development means that the richness of the earth’s biodiversity would be conserved for future generations by greatly slowing and, if possible, halting extinctions, habitat and ecosystem destruction, and also by not risking significant alternations of the global environment that might – by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation - alter the opportunities available for future generations. Sustainable development needs

to be understood in its many dimensions. There is the temporal aspect – development today cannot beat the expense of development tomorrow. Sustainability also needs to be envisaged in its composite whole, as a dynamic system of interdependent forces economic, social, and environmental.

Climate change can be seen as a part of the larger challenge of sustainable development through a two-fold link.

1. The impacts of climate change can severely hamper development efforts in key

sectors, e.g. increased threat of natural disasters and growing water stress will have to be factored into plans for public health infrastructure.

2. Development choices will themselves influence the capacity to mitigate and adapt to climate change, e.g. policies for forest conservation and sustainable energy will, if correctly targeted and implemented, enhance the resilience of communities and thereby reduce the vulnerability of their livelihoods to climate change.¹.

Figure 1 shows how alternative development pathways can give rise to different levels of greenhouse gas emissions leading to climate change impacts on natural and human systems. It also identifies mitigation and adaptation as the two response strategies to the problem of climate change: by curtailing GHG emissions, the magnitude of temperature rise can be abated; additionally, by increasing community coping capacities and reducing their vulnerability one can adapt to climate change impacts that are already occurring. The IPCC Third Assessment Report emphasizes that as a result of the linkages described above, climate change mitigation and adaptation policies can be more effective when consistently embedded within broader strategies designed to make national and regional development paths more sustainable.

SUSTAINABLE DEVELOPMENT AND JUDICIAL APPROACH:

In 1972, 113 nations of the world gathered in Stockholm, Sweden. They were Concerned, the much-vaunted goal of economic growth had brought prosperity and High standards of living. But it had also brought unwanted spillover effects. The Land, air and waters of the world were being polluted to a dangerous level. The Natural resources were being exploited unsustainably¹.

The judiciary is also a crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between Environmental, social and developmental consideration through its judgments and declarations. The role of the legal system to ensure environmental justice is only effective if it is universally accessible. The ability to develop democracy and civil political participation exists where the system of access is fair, and does not directly or indirectly exclude specific individuals, groups or organizations. Thus, there should be a better law for sustainable development, to save our common future³.

The importance of environmental protection in the process of industrial development was realized globally for the first time at United Nations Conference on Human Environment held at Stockholm in 1972. Another mile stone in this respect was Rio Conference held in 1992 in Brazil which

gave concrete shape to the concept of sustainable development which envisages balance between ecological and developmental concerns. At this Conference Rio Declaration was adopted. It spells out the salient features of sustainable development which include intergenerational equity principle, polluter pays principle, precautionary principle, eradication of poverty, international cooperation, conservation of natural resources and integration of environment and development. Brundtland Commission Report defined sustainable development as development that meets the needs of present without compromising the ability of future generations to meet their own needs^{1,4}.

The following features of sustainable development are often applied by the judiciary in environment and development discourse.

(a) INTERGENERATIONAL EQUITY PRINCIPLE: It advocates reasonable or moderate use of natural resources by the present generation so as not to impair the ability of future generations to meet their economic needs. This principle imposes a kind of moral obligation upon the present generation to pass on safer planet to the next generations. It is well accepted that intergenerational equity also includes intra generational equity. Although the concept is not difficult to understand it is certainly

problematic from implementation point of view.

(b) POLLUTER PAYS PRINCIPLE: This principle has origin in the work of OECD. It makes polluting industry absolutely liable to pay the remediation cost. In applying this principle the courts need to take into account financial capacity of the industry and at their discretion may impose exemplary pollution fine. This principle compels the industries to be more concerned about environmental protection while maximizing their profits. This principle has been applied by the judiciary, but there are a number of practical difficulties associated with the principle. It does not clarify who is a polluter. Further it is not clear as to whether the polluter should pay for the damage caused or also for restoring the environment to its unpolluted state? And how long this liability lasts?¹⁰

(c) PRECAUTIONARY PRINCIPLE: According to this principle mere scientific uncertainty cannot be a ground for postponing decisions for environmental protection. This principle stipulates that in case of scientific uncertainty about hazardous effects of an industry upon environment, it is better to err on side of environmental protection. This principle although laudable is certainly vague and may lead to violation of constitutional guarantee of right to freedom of business. It is on the basis of scientific certainty alone that an industry can be prevented from establishing itself else, the

constitutional guarantee will be violated. The judicial invocation of these principles in environmental litigation is quite justified, but these principles need to be examined on the touchstone of scientific accuracy and precision as far as possible. Otherwise, application of such principles may lead to serious miscarriage of justice.

SUSTAINABLE DEVELOPMENT IN INTERNATIONAL LAW:

In international law, the concept of sustainable development has gained some definition over the course of the past two decades. It is not clear that sustainable development has, as yet, the character of a customary norm of international law. But neither is it void of all meaning or normative value in international law. Rather, it can be argued that the concept of sustainable development has a dual nature in international law. It can be considered an interstitial norm, which serves to reconcile other conflicting norms related to the environment, the economy and social development (including human rights), and also simply the object and purpose of many international treaties and legal instruments.

In the recent decisions of international courts and tribunals, the concept of sustainable development facilitates the reconciliation and integration of other norms concerning socio-economic development and protection of the environment. It appears to have played such a role in *Gabcikovo* –

Nagymaros Case at the International Court of Justice⁵:

“Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. *This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.*”

In international treaty law, sustainable development is an agreed objective of many international trade treaties, both at the global and regional levels. As such, sustainable development can be considered part of the ‘object and purpose’ of a growing number of treaties, and therefore directly relevant in the interpretation of their provisions. The concept appears, often as an objective or preambles reference, in most international statements and declarations related to

environmental, social and economic issues since the 1992 Rio de Janeiro Earth Summit. It has also featured as an object and purpose of many international economic, social and environmental treaties involving developed and developing countries, as a concept which guides the decisions of international courts and tribunals, and the holdings of judges in national courts around the world.

Sustainable development law and policy has only begun to be addressed by existing institutions, and not in an adequately integrated way. In public international law, the overarching concept of sustainable development vitiates fragmentation. It inspires cooperation, coherence and innovative governance systems. The CISDL is undertaking research on the necessary principles, rules and policies, in order to make a valuable contribution to the development of this field, assisting scholars, countries and international institutions to formulate international law in a more integrated, principled manner, to address intersections between different international legal regimes and to implement the myriad new international treaties and instruments in the field of sustainable development.

MEASURES NEED TO BE TAKEN FOR PROMOTION AND PROTECTION OF SUSTAINABLE DEVELOPMENT:

Introduction to the need of separate & specialized environment court

The Importance of Environmental Courts as envisaged by the Supreme Court. At this point of time we have 29,315 pending cases in the Supreme Court, 32, 24,144 cases in various High Courts and over 2, 53, 50,570 in various subordinate courts^{1,6}. By the time you finish reading this sentence hundred more would have been filed. Under these tons of various cases it is of utmost importance to treat environmental cases. Considering the fact that the everyday of pendency of the case means greater loss to the ecology.

Hence we are of the opinion that in order to deal with this anomaly the constitution of specialized 'environmental courts' is very essential. To start with this paper in Environmental Law dealing with the need of Specialized Environmental courts to suit the needs of the country. Establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as part of the judicial process.

Why environmental court is necessary?

The debate over the issue of establishing special environmental court in India is getting more serious. Advocates for the environmental courts establish their case on the following legal shortcomings associated with the current situation: Access to environmental justice is not sufficient and sometimes not exists at all because the traditional rules of civil or criminal litigations

prevent interests groups or NGOs from bringing an action against polluters when their activities caused ecological damage per se. Under the Indian Civil Procedures Act, the admissibility of a civil action is to be considered according to certain requirements⁷.

Environmental justice in India

Environmental rights in India do not really exist in written form. They were rather created from lawyers and activists from other available resources. At first, the general provisions should be introduced before examining how the Indian Courts have decided on environmental related grievances. The analysis will be limited on constitutional rights.

Prerequisites for environmental court

Having special courts is not always an advantage; the ordinary judicial system should be the general rule of adjudication, whereas special courts are exceptions that must be justified by necessities. In my opinion, the first step towards setting up a special environmental court is to invest in training and qualifying prosecutors, judges, experts, and lawyers, so as to provide them with basic knowledge and skills which help them to deal effectively with environmental Litigations. In the case of India, I do think that India has to decide the issue of establishing special environmental court after having the following prerequisites:

- Constitutional protection for the environment
- Better environmental legislations
- Improving environmental awareness
- Qualified judges for dealing with environmental litigations

Qualified judges for dealing with environmental litigations

In the current situation, environmental litigation and environmental offenses are to be reviewed by ordinary courts, and mentioned above, judges in these courts have jurisdiction to review all cases of different types. This situation leaves ordinary courts with huge bulk of litigations, and little chance to specialize in a certain type of litigations. For satisfactory and effective environmental litigation, India needs to train a group of judges, lawyer and experts to deal with environmental litigations and offices and to set suitable training programs for this end.

Needless to say that, this task is necessary even in the case that India does not establish special environmental court.

Environmental cases and environmental courts

The opinion of the judiciary experts regarding environmental cases in general, case objectives, judiciary work, strengthening of pollution control board and comparative experience in particular was sought on five point scale: from strongly disagree (1) to strongly agree (5) and is given. The arability

mean for most of the items were high (above 3) and almost all standard deviations were less than 1.00 or around one.

Judiciary experts found such kind of court will be quite motivating and they can solve environmental cases with the help of MOEF (ministry of environment and forests) nodal agency for the co-ordination of the programs throughout the country. Judiciary experts also agreed the need for the inclusion of a specialized court and also to the creation of interactive package to further enhance the understanding and comprehension of the cases given by the courts⁸.

As regards promoting appellate environmental bodies, the majority of experts found this is very useful and opined that this provided a good opportunity for the decision of the environmental cases. However, the lawyers and others are not very much satisfied with the procedure of handling the environmental cases. Judiciary experts advocated for keeping training of distinct judges compulsory, and they found the specialized court is very useful for solving the cases⁹.

In view of the significant environmental, social, and economic impacts of an increasingly warming world, India needs to channelize and enhance its potential response for mitigation and adaptation in line with the country's overall developmental goals and aspirations.

The existing policies and programs under the 11th Plan have made some headway in terms of addressing climate change, e.g. building adaptive capacity through ongoing development programs, launch of a National Action Plan on Climate Change, and reducing the energy and emissions intensity of the economy and society. However, there is still a considerable potential to enhance the effectiveness of policies and programs to accelerate sustainable development and guide the country along a more proactive path in addressing climate change issues.

12TH FIVE YEARS PLANNING ON SUSTAINABLE DEVELOPMENT:

Approach to the Twelfth five year plan

The statutory and regulatory framework for managing the environment and dealing with related issues to protect the environment was established in India well before most other parts of the developing world. The effectiveness and adequacy of this framework needs to be critically examined. As we achieve the objectives of environmental protection, energy security, requirements of expanding industry, urban centers and transportation also need to be realized. It is self-evident that there will be trade-offs and these require careful balancing and a proactive search for solutions and additional financial allocation for the sector¹¹.

In order to achieve any given objective, one needs information, a framework for action and execution. This applies to environment to an even greater extent than to other areas. It is vital that we preserve and improve water, air and soil quality and at the same time our capacity to monitor, design and make focused intervention. In this task, new space-based technologies are an integral component. Today, we have the resources including satellite imagery, Global Positioning System (GPS), Geographic Information System (GIS) and computational and analytical systems at hand to undertake these tasks. This must be a focus area in the Twelfth Plan so that appropriate compilation of diverse information can permit us to have incisive analysis and, thereby, enable the system to make effective intervention, execution and monitoring.

Several issues have been flagged during the Planning Commission consultations with different stakeholders which deal with land, mining, forest and wildlife management, climate change, waste management, reduction of pollution, conservation of forests and biodiversity etc. These must be viewed in the light of the enormous inter-connections that exist within the broader dynamics of environmental management.

Issues that require focused attention during the Twelfth Plan are:

- Securing ecology of watershed and catchments,
- Cumulative Environmental Impact Assessments (CEIAs) for vulnerable regions.
- Carrying capacity studies in selected river-basins.
- Maintaining acceptable water quality and quantity through pollution control of water resources
- Restoration of wet lands and lakes, and
- Management of waste water discharge from industrial and commercial establishments into major water bodies.

CONCLUSION AND SUGGESTIONS:

Industrial development is immensely important for a developing state like ours. It is mostly through industries that we can overcome problems like unemployment and acute poverty.

Therefore our economic policies should be industry-friendly. Industries need to be given all clearances including environmental clearances in quick time. However while encouraging industrial development we cannot overlook environmental issues. Any industrial development at the expense of environment will be a wrong strategy for development. Therefore we need to develop our industries by keeping in mind environmental needs of our future generations. Any industry causing considerable environmental pollution shall be made liable to restore the environment to unpolluted condition on the basis of polluter pays principle. Massive deforestation for

industrial development ought not to be allowed. We need to adopt the path of sustainable development in tune with Gandhian principles. The Indian Supreme Court has contributed immensely in establishing the norms of sustainability for the government and the development proponents in India.

Therefore, I suggest that the due circumstances for establishing special environmental court in India are not yet demanding, and India must undergo full review for its' environmental legislations and judicial structure before deciding the issue of establishing special courts in general and environmental court in particular. Until then, India may specify certain juries in the existing ordinary courts to review environmental litigation as well as environmental offenses. These juries will certainly alleviate complications associated with environmental litigations, besides that, they will serve as a kernel for any future environmental court.

1. In view of the involvement of complex scientific and specialized issues relating to environment, there is a need to have separate 'Environment Courts' manned only by the persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment.

2. In order to achieve the objectives of accessible, quick and speedy justice, these 'Environment Courts' should be established and constituted by the Union Government in each State.

3. The proposed Environment Court should consist of a Chairperson and at least two other members.

4. The proposed Environment Court shall also have appellate jurisdiction.

5. Global law is necessary to solve the environmental cases and law of principle is helpful for the better judiciary process.

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Figure 1. Climate change: an integrated framework²

