



JUDICIARY - PROTECTION OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

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ABSTRACT

India is one of the developing countries in the world and it is the matter of fact that changes occur in all the forms. In this process environment is being affected adversely. Unless certain laws are formulated and amended, there cannot be any check to the further deterioration. This paper focus on the judiciary aspects in order to protect the environment, so that the future generations should not be deprived of the resources. It deals with various cases that are examined, so that the suggestions and recommendations are further exemplified in judicial perspective. However, sustainable development is the pre-requisite while harmonising the development and environmental protection.

(Key-words: environment, judiciary, sustainable development, protection etc.)

INTRODUCTION;

In India, like any other developing country, there has been environmental degradation due to over exploitation of resources, depletion of traditional resources, industrialisation, urbanisation and population explosion. However, India has never been oblivious of this fact. In fact, India has always been in the fore-front of taking all possible steps for the protection and improvement of the environment and aiming at sustainable development. Since, man is the creator and moulder of his environment, his conduct can be regulated through the instrument of law. Thus, it can be seen that in India, there has been a regular development of the law regarding the protection of the environment. However, neither the law nor the environment can remain static. Both are dynamic in nature. The changing pace of the environment is so fast that in order to keep the law on the same wave-length either laws have to be amended quite frequently to meet the new challenges or it has to be given new direction by the judicial interpretation. This becomes all the more important in view of the ever increasing scientific and technological development and advancement which the man has made. India has enacted various laws at almost regular intervals to deal with the problems of environmental degradation. At the same time the judiciary in India has played a pivotal role in interpreting the laws in such a manner which not only helped in protecting environment but also in promoting sustainable development. In fact, the judiciary in India has created a new "environmental jurisprudence".

It is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with environment,



as otherwise there would be development but no environment, which would result in total devastation. In fact, there has to be a proper balance between the development and environment so that both can co-exist without affecting the other.

On the wake of the 21st century it is neither feasible nor practicable to have negative approach to the development process of the country or of the society, but that does not mean, without any consideration for the environment. The society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of development of the society. Thus, sustainable development is the only answer and administrative actions ought to proceed in accordance therewith and not d h'ors the same.

The problem of environmental degradation is a social problem. Considering the growing awareness and the impact of this problem on the society in regard thereto, law courts should also rise upto to the occasion to deal with the situation as it demands in the present day context. Law courts have a social duty since it is a part of the society and as such, must always function having due regard to the present day problems which the society faces. It is now a well-settled principle of law that socio-economic conditions of the country cannot be ignored by a court of law because the benefit of the society ought to be the prime consideration of law courts. Thus, the courts must take cognizance of the environmental problems. However, law courts ought not to put an embargo to any development project which may be in the offing. The courts are required to strike a balance between the development and ecology and there should be no compromise with each other. In other words, the courts, while dealing with the problem of environmental degradation, must apply the principles of sustainable development.

It may be relevant to mention here that *Principle 10* of the *Rio Declaration* of 1992 specifically provides for "effective access to judicial and administrative proceedings, including redress and remedy".

The judiciary in India has played a very important role in the environmental protection and has applied the principles of sustainable development while deciding the cases. There are number of cases on this point and, therefore, it will be necessary to study and analyse a few important cases in this area. It is also worthwhile to mention here that most of the environmental cases have come before the courts through "**Public Interest Litigations**" (PIL).

QUARRYING, MINING, STONE CRUSHING, TREE FELLING AND SUSTAINABLE DEVELOPMENT

People have responded well to the environmental crisis caused by indiscriminate quarrying, mining, stone crushing near the populated area or near the National Highways and felling of trees resulting in the deforestation and other environmental degradation.



R.L. & E. Kendra, Dehradun v. State of U.P. (popularly known as Doon Valley Case) was the first case of its kind the country involving issues relating to environment and ecological balance which brought into sharp focus the conflict between development and conservation and the court emphasized the need for reconciling the two in the larger interest the country. Mining which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water which fed many rivers and springs in the river valley. The Court appointed an expert committee the bench on the technical issues and on the basis of the report of the committee, the court ordered the closure of number of limestone quarries.

In *R.L. and E. Kendrav. State of U.P.*, the Court took note of the fact that mining activity has to be permitted to the extent it is necessary in the economic and defence interests of the country as also "for safe guarding of the foreign exchange position. The Court directed the government to file affidavit of responsible authority as to whether keeping the principles of ecology, environmental protection and safeguards and anti-pollution measures, it is in the interest of the society that the economic and defence requirements should be met by import or by tapping other alternate indigenous sources or mining activity in the area should be permitted to limited extent.

In the subsequent cases, the Supreme Court directed to totally stop the operation of mining in certain area on the ground of environment protection.

In *R.L. and E. Kendra v. State of U P* the Supreme Court allowed a mine to operate until the expiry of lease as exceptional case on undertaking by the lessee that land taken on lease would be subjected to afforestation by him. Consequently, when it was brought to the notice of the Court that he had made a breach of the undertaking and mining was done in most unscientific and uncontrolled manner causing damage to the area and environment, the Court directed the lessee It is submitted that the order of the Court is based on the principle of "polluter pays" which is one of the essential principle of sustainable development.

In *Kinkri Devi V. State*, a public interest litigation was filed in which it was alleged that the unscientific and uncontrolled quarrying of the limestone has caused damage to the Shivalik Hills and was imposing danger to the ecology, environment and inhabitants of the area. The Himachal Pradesh High Court relied on *Doon Valley* case and pointed out that if a just balance is not struck between development and environment by proper tapping of natural resources, there will be violation of articles 14, 21, 48- and 51A(g) of the Constitution, The Court rightly observed that natural resources have got to be tapped for the purpose of social development but the tapping has to be done with care so that ecology and environment may not be affected in any serious way.



Mining in Reserved Forests

Forests constitute a very important part of the ecology. Certain areas are declared to be "reserve forest" so as to protect the flora and fauna of that area and no such activity should be carried on there which is detrimental to the flora and fauna of the area. Mining activity is one such activity which adversely affects the reserved forest. Whenever any case has been brought before the court regarding the operation of mining in the reserved forest, it has always directed to stop it.

In *Tarun Bharat Sangh v. Union of India*, the petitioner through a public interest litigation (PIL) brought to the notice of the Court that the State Government of Rajasthan, though professing to protect the environment by means of the notifications and declarations, itself permitting the degradation of the environment by authorising mining operations in the area declared as "reserve forest". In order to protect the environment and Wildlife within the protected area, the Supreme Court issued directions that no mining operation of whatever nature shall be carried on within the protected area.

In *State of M.P. v. Krishandas Tikaram*, the respondent were initially granted mining lease to extract limestone in forest area in the year 1966. In 1980, the Forest (Conservation) Act, came into force the object of which is to maintain the ecology and preservation of the forests. Under section 2 of this Act, for any activity in the forest area, prior approval of the Central Government is mandatory. However, in the instant case the State Government decided to renew the lease for 20 years in terms of the original grant in favour of respondent, without obtaining the prior approval of the Central Government. Cancellation of the order of renewal, before it came into effect by registering, was held valid.

In *State of A.P. Vs Anupama Minerals* the authorities had the power to grant the renewal of the mining lease as per the terms of the lease. However, after the coming into operation of Forest (Conservation) Act, 1980, the mining lease fell within the reserved forest area and hence the authorities refused to grant the renewal of the lease. It was held that the refusal by the authorities was proper because exercise of power by public authority is coupled with duty to fulfill the conditions for such exercise.

In *M.C. Mehta v. Union of India*, a public interest litigation (PIL) was filed seeking direction from the Court to stop the mining activities in the vicinity of touring resorts of Badkal lake and Suraj Kund in Haryana. The Haryana Pollution Control Board recommended that mining activities within a radius of 5 KM from the tourist resorts should be stopped. Similar recommendations were also made by the National Environmental Engineering Research Institute (NEEPJ). Having regard to the opinion of two expert bodies, the Court held that mining activities in the vicinity of tourist resorts were bound to cause severe impact on the local ecology and therefore, mining activities should be stopped within 3 Kms of such tourist resorts.



Shifting of Stone-Crushers

Environmental pollution is also caused by the stone-crushing activities and thus affects the right of the citizens to fresh air and to live in pollution free environment.

In *M.C. Mehta v. Union of India*, the Supreme Court issued directions for stopping mechanical stone-crushing activities in and around Delhi Faridabad and Ballabgarh complexes. However, keeping in view the sustainable development, directions were also issued for allotment of sites in the new "crushing zone" set up at village Pali in the State of Haryana to the stone crushers who were directed to stop their activities in Delhi Faridabad and Ballabgarh complexes.

This case was relied upon and followed by Punjab and Haryana High Court in *Ishwar Singh v. State of Haryana*. The High Court issued the directions for closing down the stone crushing business of those which were not situated within the identified zone. The Court further directed that those who wanted to carry on their business of stone-crushing, should shift to the identified zones. One of the most important directions given by the High Court was regarding the claim of compensation for those persons who had suffered due to the pollution caused by stone-crusher owners. The Court directed that stone-crusher owners were liable to pay compensation to citizens of the area, who have suffered, within the period of two months failing which their license to carry the business of stone-crushing was to be cancelled.

It is submitted that the above approach of the Court is aimed at protecting the environment and promoting sustainable development.

Protection of Forests and Felling of Trees:

The Supreme Court also has shown its concern for protection and conservation of forests and in different cases issued directions to stop the illegal felling of trees.

In *T.N. Godavarman Thirumulkpad v. Union of India*, the Supreme Court issued interim directions that all the on-going activities within any forest in any state throughout the country, without the permission of the Central Government must be stopped forthwith. Running of saw mills including veneer or plywood mills within the forests was also stopped.

Felling of trees in the State of Arunachal Pradesh was totally banned in certain forests whereas in other forests it was suspended in accordance with "the working plan of the State Government. Movement of cut trees and timber from any of the seven North-Eastern States to any other State was completely banned. The Court issued directions to stop felling of trees in other states such as the State of J&K, Himachal Pradesh and Tamil Nadu, with a view to protect and preserve the forests.



Some of these directions were modified by the Supreme Court subsequently". The Court called for the comprehensive statement of all the states about their past activity and their future programme to tackle the problem of degradation and degeneration of forests.

The perception of the Ministry of Environment and Forests was that even though the proliferation of wood-based industries has been the main cause of degradation of forests in the North-Eastern States, considering the extent of forests (64% of the geographical area) and dependence of the local people on the forest resources in the region it is neither feasible, nor desirable, to ban completely either the timber trade or running of the wood based industries. However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they were also required to be relocated in specified industrial zones. Moreover, the industrial requirements have to be subordinated to the maintenance of environment and ecology as well as bonafide local needs.

The Supreme Court appreciated the perception of the Ministry of Environment and Forests and issued certain further directions for protection and preservation of the forests. It was directed that there shall be complete moratorium on the issue of new licenses by the State Governments or any other authority for the establishment of any new wood-based industry for the next five years after which the situation will be reviewed. Principal Chief Conservator of Forests and Chief Forest Officer would prepare an action plan for forest protection. The Court also stressed on the scientific management of forests. It directed the States to identify ecologically sensitive areas which are totally excluded from any kind of exploitation. The minimum extent of such areas shall be 10% of the total forest area in the State. The State Government was also directed to identify all those forest divisions where significant illegal fellings had taken place and to initiate disciplinary/criminal proceedings against those found responsible. The States were required to ensure that sufficient budgetary provisions were made for the preservation of biodiversity and protection of wildlife.

In *T.N. Godavantmn Thirumulkpad v. Union of India* it was brought to the notice of the Supreme Court that under the garb of removing infected trees in accordance with the orders of the Court, trees having no disease were also cut. The Supreme Court directed the State Government and its functionaries to restrain from cutting any tree/trees till further orders, even if it was found to be diseased tree. The Court took serious note of the State Forest Report of 1997 which indicated that between 1995 and 1997, dense forest to the extent of 17,777 sq. K.M. had been lost to the country. According to the report, the States of Andhra Pradesh, Madhya Pradesh, Assam, Manipur, Nagaland, Orissa and Meghalaya were the main defaulters.

Here, the Supreme Court on the basis of various reports and affidavits noticed that the deforestation and illicit mining has caused immense damage to the environment and ecology. However, the identification of the persons, including



government officials, involved in it had not been clearly disclosed. With a view to get a complete picture of the deforestation and extent of illegal mining done, and damage to the hills and forests and to identify the culprits as also the manner of restitution and reforestation, the Court directed that an independent Commission comprising of a police officer not below the rank of I.G. and Director, Indira Gandhi National Forest Academy, Dehradun be constituted.

CONCLUSION

The natural resources are permanent assets of mankind and are not intended to be exhausted in one generation. If the industrial growth sought to be achieved by reckless mining resulting in loss of life, loss of property, loss of amenities like water supply and creation of ecological imbalance there may ultimately be no real economic growth and no real prosperity. Hence it is the responsibility of every individual to safeguard the environment apart from laws and acts. Protection, preservation and conservation should be the mission to attain sustainable development.

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