

Industrial Growth And Sustainable Development -Role Of Judiciary In India

Jayareshmi A S

Research Scholar, School of Indian Legal Thought

Mahatma Gandhi University, Kottayam, Kerala

reshmijaya73@gmail.com

Abstract

In the modern world industry is a central point to the financial matter of the state. The impacts of industrial activity creates environmental problems such as air , water and land pollution. If the industrial growth and urbanisation increases the problems of environmental pollution also will be multiplied. Now a days newspaper reports says about the worst situation of environmental degradation in India and the courts have given directives for balancing of industrial growth and environmental pollution .The only solution to this problem is the doctrine of sustainable development that is there must be a balance between development and ecology.

Key words :Environmental protection, Environmental pollution, Environmental impact assessment ,Industry, Sustainable development,

INTRODUCTION

In the modern world industry is an integral part of the financial matters and basic element of development. It is inevitable to the developing countries, for widening their progress and meet the developing needs. Industry not only extracts materials from the natural resources of the earth but also inserts both product and pollutants into the environment. Industries produce huge amount of waste contains toxic elements of pollutants which can cause air, water and land pollution and damage to our environment. Any way the problems of air, water and land pollution have also multiplied by the industrial growth.¹

¹Dr.R.PARAMJIT .S.JASWAL,DR.NISHTA JASWAL,VIBHUTI JASWAL,ENVIRONMENTAL LAW,Allahabad Law Agency, Law Publishers ,Haryana ,2016

The major reasons for environmental degradation in India are over exploitation of resources, depletion of traditional resources, industrialisation ,urbanisation and population explosion etc. Certainly India has been taken all possible steps for protection and improvement of the environment. The main aim of environmental legislation is sustainable development that means the development must be in consonance with the protection of environment. In India ,there has been a regular development of environmental law for the prevention of environmental pollution. To meet the challenges in environmental protection either laws must be revised calm so as to address the new difficulties or it must be provided new guidance by the judiciary. The Parliament of India has enacted several laws to manage the issue of environmental degradation. In the meantime Indian judiciary has played a pivotal role for the protection of environment by applying the principle of sustainable development through various judicial pronouncement. Thus a new environmental jurisprudence has been created by the judiciary in India.²

There must be a balance between the development and the environment. The principle of sustainable development is now a days becoming a constitutional mandate. The facts and circumstances of each case must speak about how much damage to the environment and ecology has been done. Therefore the courts are required to make a balance between development needs and environment protection. It is obligation of the state under the constitution of India that to devise and actualize a sound and coordinate programme to meet the principle of sustainable development.³

In the 21 st century it is not practicable to have negative approach to the development process of the country. But that development process must be in compatible with the protection of environment. Environmental degradation can be reduced only through the principle of sustainable development. Development and ecology are the two sides of the coin.The court must apply the principle of sustainable development while dealing with the problem of environmental degradation or pollution.⁴

²For example,polluter pays principle,precautionary principle,principle of no harm rule,principle of sustainable development etc.

³PARAMJIT ,*Supra note 1*

⁴*Id*,at 149

CONSTITUTIONAL MANDATE FOR ENVIRONMENTAL PROTECTION

The Government of India was one of the state parties to the International Conference on Human Environment 1976 that is also known as Stockholm Convention. State parties to this Convention are obliged to fulfil its promise made at the Stockholm Conference. Therefore the Parliament of India passed the 42nd Amendment to the Constitution of India in 1976 especially for the protection of environment⁵. The Constitution of India not only gives directives to the states for the protection and improvement of the environment but also provides fundamental duty to the citizens to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures.

The Parliament is empowered to make laws for implementation of the principles of International conventions.⁶ Thus The Parliament of India passed several environmental legislation such as Water Prevention and Control of Pollution Act 1974 and the Environment Protection Act 1986 etc, in order to implement the decisions taken at the Stockholm Conference 1972.

THE BASIC ELEMENTS TO THE CONCEPT OF SUSTAINABLE DEVELOPMENT

The concept of sustainable development is established worldwide for the first time in the Stockholm Declaration 1972. It provides not only the responsibility of the man to protect and improve the environment but also the State parties to the Convention for safeguarding natural resources of the earth for the benefit of present and future generations through careful planning and management.⁷ Many of the principles in the Stockholm Declaration are concerned with precaution, especially with the basic concept of sustainability and environmental planning. The Stockholm Declaration established the responsibility for sustainable resource management and preventive planning and took some initial steps toward pollution, prevention and eco management.

⁵ Article 48A and Article 51A (g) of The Constitution of India.

⁶ Article 253 of the Constitution of India empowers parliament to legislate on any matter for implementing the International obligations and the decisions taken at the International conferences, Associations, or other bodies meeting.

⁷ Principles 1 and 2 of the Stockholm Declaration 1972

The Stockholm Declaration thus marked the beginning of International environmental policy and modern International Environmental Law

Again in the Brundtland report provides all human beings have the fundamental right to an environment adequate for their health and well being.⁸ Principle 2 also imposes obligation upon the states to conserve and use natural resources for the benefit of present and future generations. These two principles highlights the significance of the principle of sustainable development given by the Brundtland Report.

Environment Impact Assessment is an instrument to ensure the principle of sustainable development. According to Jane Holder, in his work,⁹

“Environment assessment is an inherently interdisciplinary mechanism which is concerned with the input and quality of information about the likely effects of development. It is a useful tool for examining aspects of the relationship between, law governance and regulation of decision making, which has been central to the development of environmental law.”

Sustainable development contains both substantive and procedural elements. The substantive elements are mainly set out in Principle 3 to 8 of the Rio Declaration. They include sustainable utilisation of natural resources, the integration of environmental protection and economic development, the right to development and the pursuit of equity in the allocation of resources. Both within the present generations and between present and future generations (Intra and Inter generational equity). The principal procedural elements are found in principles 10 and 17 dealing with public participation in decision making and environmental impact assessment.

According to Alan Boyle and David Freestone¹⁰, “The basic element of sustainable development are,

1. Sustainable utilisation

⁸Principle 1 of the Brundtland Report 1987

⁹JANE HOLDER, ENVIRONMENTAL ASSESSMENT-THE Regulation of Decision Making, Oxford University Press, New York 2004.

¹⁰ALAN BOYLE AND DAVID FREESTONE, INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT -Past Achievements and Future Challenges, Oxford University Press, New York 1999

2.The right to development

3.Inter generational equity

4.Intra generational equity

5.Procedural elements.’’

The principle of sustainable development was also recognised by the Supreme Court of India through various judicial pronouncements.

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 a number of cases on this point and that environmental cases have come before the courts through public interest litigation.

In *Rural Litigation and Entitlement Kendra vs State of UP and Others*¹¹,

A Public Interest Litigation was filed by the Rural Litigation and Entitlement Kendra, Dehradun, claiming that unauthorized and illegal mining operations carried on in the Mussorie Hills area adversely affecting the ecology and leading to environmental degradation .The court observed that the Himalayas are the sources of perennial rivers like Ganga ,Yamuna, and Brahmaputhra and also the house of herbs , shrubs and plants. Doonvalley is bounded by Himalayan and Shivalik ranges and the Ganga, Yamuna rivers. In addition to that Mussorie is known as the Queen of the Hills and Dehradun has turned out to be an important place of tourist attraction .But at present the valley is in danger because of erratic, irrational ,uncontrolled quarrying of Limestone.The court ordered to stop all mining quarries which cause environmental degradation in Mussorie Hills.

However the concern of the court towards ecological balance was evident when it observed.

The court observed that, “It is the fact that natural resources are very essential for the purposes of the social development but at the same time the tapping of resources have to be done with requisite caution so that the ecology and environment may not be affected adversely.Depletion of water resources must be controlled through,

¹¹AIR1985SC1699, For critical analyses of this case see Alice Jacob, Responsible Development and ecological balance,27J.I.L.1483-486(1986).See also Nishta Jaswal, Comments on rural litigation and Entitlement Kendra vs State of UP1986 4 SCC (Journal)23-26

long term planning undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation”.¹²

Again in *Banwasi Sewa Ashram vs State of UP*, The Supreme Court acknowledged by observing that it is common knowledge that Adivasis and other backward people living within the jungle had been using jungles around for collecting requirements such as fruits, vegetables, fodder, flower, timber, animals and fuel-wood, for their livelihood. The Supreme court in this case gave detailed directions for safeguarding and protecting the interest of the adivasis and backward people. The court permitted the acquisition of land only after NTPC agreed to provide certain facilities to the ousted forest dwellers. The court also ordered rehabilitation measures for the evictees and provisional compensation for crops and land was directed to be paid to them.

Further in *M C Mehta vs Union of India*¹³ a PIL was filed seeking direction from the court to stop the mining activity in the surrounding area of touring resort of Badkal lake and Suraj Kund in Haryana. The Haryana pollution control board recommended that mining activities within the radius of 5 km, from the tourist resort should be stopped. Similar recommendations were also made by the national environmental engineering research institute. After considering the opinion of two expert bodies, the court held that mining activities should be stopped within 3 kms from such tourist resorts.

¹²<http://www.indiankanoon.org/doc/837514/> accessed on 20th Dec 2018, AIR 1987 SC 364. See also *Kinkri Devi vs State* AIR 1988 HP 4 at 8-9. In this case a petition against limestone quarries was filed by Kinkri Devi and CS Chauhan, residents of village Sangrah in the district Sirmaur. The petition says about danger to the hilly tracts of the Sirmaur district and to its environment, ecology, natural resources and to the wellbeing of the inhabitants and the mines were being worked in an erratic and uncontrolled manner posing a present and potential danger to the soil, agriculture, the forest, the water resources and the water supply schemes, the rivers, streams and nullahs, the flora and fauna, the ecology, the environment, the life and living conditions of people and their property. The court directed to consider remedial measures for the repair of the damage and for treatment of the affected natural wealth and resources. See also *General Public of Saproon Valley vs State* AIR 1993 HP, and *Mukthi Sangarsh Movement vs State of Maharashtra*, 1990 Supp. SCC 37.

¹³ 1996 8 SCC 462. See also in *M C Mehta vs Union of India* 2004 12 SCC 118, a public interest litigation was filed against mining activity in the area upto 5 km from Delhi Haryana border and also in the Aravalli Hills. The Supreme Court has pointed out that mining operations are hazardous in nature. It adversely affects the people's right to natural resources. The entire process of setting up and functioning of a mining operation requires utmost good faith and honesty on the part of the intending entrepreneurs. The regulatory authorities have to act with utmost care in ensuring compliance with safeguards, standards, norms to be observed by such entrepreneurs.

Later in *M.C. Mehta vs Union of India*¹⁴ the Supreme court observed that Delhi is one of the most populated cities in the world. The lung and respiratory diseases were increased due to air pollution in the city of Delhi. The city has become a vast commercial industrial colonies. The court held that the most vital community need at present is the conservation of the environment and reversal of the environmental degradation. The Supreme court issued suitable directions in regard to the use of land which would become available on account of shifting of hazardous industries in accordance with Master Plan of Delhi. The land must be used for community need.

In *M.C. Mehta vs Union of India*¹⁵ (popularly known as Taj Tapazium case) The Supreme court ordered to stop functioning of industries which have caused acid rain in the surrounding area of Taj Mahal .

Again in *M.C. Mehta vs Union of India*¹⁶ (popularly known as Ganga Water Pollution case) The petition filed by Mr. M C Mehta ,an Advocate of The Supreme court ,for the issuance of a writ in the nature of mandamus against the respondent including the state of UP and municipal corporations of UP. The litigation demanded to restrain the industries from discharging trade effluents into the river Ganga. The court ruled that a tannery which cannot setup a primary treatment plant cannot be permitted to continue to be in existence and also the industry which did not appear before the court should stop functioning.

In a landmark judgment of the Supreme Court in *Vellore Citizens Welfare Forum vs Union of India*¹⁷ (popularly known as T N Tanneries case), where the principle sustainable development has been adopted by the court as a balancing concept. A public interest litigation was filed against enormous discharge of untreated effluents by the tanneries and industries in the State of Tamil Nadu. Due to untreated discharge of effluents, entire surface and subsoil water of river Palar had been polluted .The polluted water in the river Palar resulted in the non availability of portable water to the residence of the area. The court observed that industries are of vital importance, but it has no right to destroy the ecology, degrade the environment and pose as a health hazard. The court also directed that the problem of pollution created by the said industry cannot be permitted.

¹⁴1996 4SCC351

¹⁵1997 2 SCC 353

¹⁶AIR1988SC1037

¹⁷www.indiankanoon.org/ accessed on 21 Dec 2018, 1996 5 SCC647

In Association for Environmental Protection vs State of Kerala¹⁸. The Supreme court once again reiterated the doctrine of public trust and applied it in the case in hand to order demolition of the illegal constructions posing threat to environment and ecology of the area and waterbodies. The court also laid emphasis on the protection of natural resources and the environment.

The doctrine of public trust was once again been followed by the Supreme court in State of WB vs Kesoram industries limited¹⁹, The court held that the holder of a land may have only a right of user cannot take any action against the right of others and the state has a duty to protect ground water against excessive exploitation.

MATERIALS AND METHODS

The present study has been incorporated significant pronouncements of the judiciary in order to analyse the increased rate of environmental degradation out of industrial growth. The recent supreme court cases relating to various environmental pollution such as air, water, and land pollution were analysed separately. The ratio decidendi of each case was observed in the present study for the purpose of finding out the environmental jurisprudence especially the principle of sustainable development and other related information. The study is based on the secondary data as it is a doctrinal study. The secondary sources of data includes the books on the subject, articles from various journals, Supreme court and High court cases etc. and the data collected from this source have helped in testing the problem of the study.

RESULTS

The result of analysis of various judicial pronouncements by the Supreme court relating to environmental pollution proves that increased rate of industrial growth will definitely degrade the environment. But the Indian Judiciary highlighted the significance of the principle of sustainable development as a solution to the problem of environmental degradation out of industrial pollution.

DISCUSSION

To get an idea about the environmental pollution separate case laws were discussed above with facts in detail. To look into the trend of the court towards

¹⁸2013 7 SCC 226

¹⁹2004 10 SCC 201

environmental pollution cases, data obtained from the judgement of various case laws were discussed briefly in the above section. In most of the cases the judiciary upheld the features of the principle of sustainable development, such as precautionary principle, polluter pays principle, public trust doctrine etc. as a remedy to the problem.

CONCLUSION

By the analysis of above mentioned cases relating to environmental problems it is crystal clear that the courts in India have recognised the principle of sustainable development as a solution to environmental degradation out of industrial growth, that is there must be a balance between environmental protection and development activities for the benefit of the present and future generations. In recent years the Judiciary in India has played a pivotal role in protection of environment from industrial pollution to a great extent through the principle of sustainable development.

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