

GREEN CONSTITUTION AND SUSTAINABLE DEVELOPMENT IN INDIA

Nazneen¹, Research Scholar

Dr. Shobhna Jeet², Associate Professor

ABSTRACT

The early perception of sustainable development was based on international environmental legislation. Every country in the world has acknowledged that the generally recognized theory of sustainable development for environmental preservation and improvement is a strategy that can satisfy current demands without denying future generations access to the natural resources that are currently available. It clearly suggests that economic development and environmental preservation are interdependent, and that the basic tension between the two can be resolved by leveraging this relationship. One strategy for balancing development efforts for the good of humanity is sustainable development and is therefore "a assurance of the present and leave to the generation,". The notion of sustainable development aims to resolve the conflict between the right to a healthy environment and development, which might be economic, social, or trade-related. Numerous studies have shown that rich countries' environmental concerns are different from those of developing ones; it is a game of money and technology. While one hand is raised in the case of underdeveloped nations due to industrial and scientific advancement, the other hand is raised in the case of underdeveloped nations due to poverty, population growth, and illiteracy. Undoubtedly, it is in a country's socioeconomic best interest to encourage and promote development, but this should not come at the expense of environmental deterioration, since this will not only negatively impact the current generation but also future generations. As a result, it is imperative that environmental conservation and development coexist while maintaining a balance. We'll try to explain the idea of environmental preservation and sustainable development.

Keywords: *Green Constitution, pollution, humankind, and sustainable development.*

INTRODUCTION

Large-scale urbanisation, industrialization, and related environmental change, along with their effects on biodiversity, constitute a threat to human life through the deprivation of fundamental needs, leisure activities, and ecological services. It is clear that pollution, especially industrial pollution, has a negative impact on the environment and is irreversible in nature. This leads to the

¹Nazneen, K.R. Mangalam University, Gurugram

² Dr. Shobhna Jeet, Associate Professor, K.R. Mangalam University, Gurugram

extinction of species and the loss of valuable, unique genetic resources. On the one hand, there are states that are incredibly developed, and on the other, there are states where people cannot access even the most basic essentials of existence.³ Therefore, the right to development has recently taken on significant importance for individuals who lack even the most basic elements of life. However, the majority of states rely on natural resources and energy. Finding a balance between industrial progress and the physical environment is essential if we want to minimise the severity of pollution because many growing economies, like India, are currently going through a transitional period. Because of this, environmental protection cannot be completely disregarded in the process of industrial development. Unfortunately, in less developed nations, a lot of sectors rely on. The term "environment" and, by extension, environmental law, have always been defined broadly from an Indian point of view. Even today, it covers not only the idea of sustainable development but also issues like air and water pollution, protecting our forests and wildlife, noise pollution, and even the preservation of our ancient monuments, which are under a lot of stress as a result of urbanisation and the ensuing environmental pollution. All have an impact on how much we enjoy and value our lives. It is hard to believe that our modern environmental jurisprudence is only a little over three decades old given the level of awareness about the environment and, in particular, issues connected to pollution that has been, shall we say, "reborn." But throughout the years, the law has advanced with such speed and certainty, as this document illustrates. This article focuses on the idea of sustainable development and emphasises its significance, particularly in emerging economies. It also covers many laws that have been passed to safeguard the environment and control growth in a sustainable manner. The Indian judiciary has been extremely important in developing the environmental laws, policies, and regulations in this nation.

CONCEPT OF SUSTAINABLE DEVELOPMENT AND ITS KEY CONCEPTS.

The concept of sustainable development represents the core principle of international endeavour towards integration between environment and development. The concept of sustainable development was contained in the Stockholm Declaration of 1972.⁴ The concept was further popularised by the Brundtland report. Its importance was reiterated again in the document *Caring for the Earth*. The Brundtland report defines sustainable development as:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs..... Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life”.

³Arvind Agarwal, Globalisation, Development and Environment degradation: A Human Rights Perspective, 86-100, (Bharat Law Publications, New Delhi, edn., 1st, 2007).

⁴Declaration of the United Nations Conference on the Human Environment, available at: on 20th oct , 2022.

The Brundtland report transformed sustainable development from an ecologically focussed notion to a human-centred approach by establishing a link between social, economic and environmental issues.

The idea entails "increasing the quality of human life while living within the carrying capacity of supporting ecosystems," according to an ecological definition of the term. Philippe Sands has listed the following as a summary of the various elements of the principle of sustainable development⁵:

- I. The requirement to take into account the needs of both present and future generations (the principle of intergenerational equity).
- II. Acceptance of restrictions placed on the use and exploitation of natural resources due to concerns about environmental protection (the principle of sustainable use).
- III. How equitable principles affect how different states' rights and obligations are distributed (the principle of equitable use or intergenerational equity).
- IV. The necessity of integrating all environmental and developmental components (the "integration principle")⁶.

SUSTAINABLE DEVELOPMENT: AN INDIAN PERSPECTIVE.

India and other emerging nations must prioritise development because democracy demands that everyone live in welfare and happiness. The egalitarian social order that signifies equality, liberty, socioeconomic fairness, and dignity for all is promised by the constitution of India. It is impossible to carry out the mandate of Articles 38 and 39(b) and(c) without establishing and implementing specific socioeconomic goals and bringing about structural change in the society. Rapid socioeconomic transformation is unquestionably necessary to eradicate poverty, ensure fair access to and distribution of natural resources, and advance fundamental human development indicators, welfare standards, and human rights. The only way to solve this issue is to ensure that national development follows sensible, sustainable principles. As a result, industrial development and environmental concerns must be balanced by conducting environmental impact assessments of development projects and programmes. This is necessary to ensure that development projects and programmes do not result in the depletion of our natural resources. The legislative, the executive branch, and the judiciary of this nation have played and continue to play a crucial role in finding a balance between environmental preservation and development. The Legislature has approved numerous Acts to ensure sustainable development. In this context, judicial activism has expanded

⁵Ismail Serageldin, "Making Development Sustainable" 7 *Finance and Development*, IMF and World Bank 30 (1993.)

⁶ Philippe Sands, *PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW*, 198 (Cambridge University Press, London, 1st edn., 1995).

the extent of the right to life under Article 21 of the Constitution, which has been very important in safeguarding the environment⁷.

DEVELOPMENT AND EXPANSION OF ENVIRONMENTAL LAWS IN INDIA

In India's development of environmental policy, the United Nations Conference on Human Environment was a turning point. Apart from the Swedish Prime Minister, only Mrs. Indira Gandhi, the Prime Minister of India, spoke at the conference in Stockholm. It's called for "*Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their post*"⁸ and outlined 26 principles. It claimed that environmental problems in developing nations are a result of underdevelopment. Through a flurry of legislative and administrative action, the Government of India completely embraced the declaratory principles of the UN Conference and reshaped environmental policy.

LEGISLATIONS RELATING TO WILDLIFE AND FOREST

The first of several such laws was introduced by Parliament in September 1972 with the passage of the Wildlife (Protection) Act. The Act was remarkable in that Parliament used its supreme constitutional authority to pass laws on a matter that was the province of the States. The Act remains the cornerstone of efforts to conserve animals. It was forbidden to hunt or kill any of the species listed in the Act's Schedule. There is a licencing process for the allowed species of game hunting. A complex enforcement system was specified along with a mechanism for the proclamation of sanctuaries and national parks to safeguard the animals residing in the designated regions. In 1972, the first tiger population census was carried out. Estimates put the number of tigers in the world at an alarming low number in 1827. The tiger was listed as a protected wildlife species under the Wildlife (Protection) Act, which was notified in 1972. A tiger task group was established when the data on tiger population estimates raised red flags. Out of the Task Force's recommendations⁹, Project Tiger was created. To safeguard the tiger's natural habitat, nine tiger reserves were created. It promoted the organisation of local inhabitants of forests for protection, development and management of forests. The Policy of 1988 brought in a community approach to forestry rights.

LEGISLATION TO CONTROL WATER POLLUTION

The Water (Prevention and Control of Pollution) Act was passed in 1974 as the following piece of legislation. The goal of the law was to avoid the pollution of water resources and the discharge of untreated industrial wastewater. The Act included all types of water bodies, including natural and man-made inland bodies of water as well as rivers, streams, the sea, tidal water, wells, and the sea. To award approvals and execute laws, State Boards and the Central Pollution Control Board were

⁷ Supra note 3, 444-445.

⁸United Nations Conference on the Human Environment, *available at*:
http://en.wikipedia.org/wiki/United_Nations_Conference_on_the_Human_Environment. Visited on 20th October, 2022.

⁹Wildlife Conservation Strategies and Management in India: An Overview, *available at*:
http://www.arlis.org/docs/vol1/69415913/hundal_edited_final_march_10.pdf. Visited on 20th October, 2022

established. Without receiving a consent order from the affected party, no industry, operation, or process, and no treatment and disposal of effluent or sewage, could be developed without getting a consent order from the relevant Board, could be established. The Board was given the authority to establish criteria for the release of effluents as well as guidelines for optimum levels of discharge. If toxic substances were discovered to have been released into water bodies as a result of an accident, an unforeseeable event, or for any other reason, the Board could use its emergency powers. In the event that contamination was suspected, there were additional preventive powers available.¹⁰

CONSTITUTIONAL AMENDMENTS RELATING TO ENVIRONMENT

The 42nd Amendment to the Constitution, adopted in 1976¹¹, added Article 48A to the Directive Principles of State Policy, stating that the preservation and improvement of the environment, as well as the preservation of forests and wildlife, would be guiding principles essential to the nation's governance. Although the Constitution expressly prohibited any court from enforcing the Directive Principles, Article 48A was read into the right to life guaranteed under Article 21 as a fundamental right of every citizen by the Courts, setting the stage for judicial activism in environmental issues in the years to come. The amendment gave Parliament concurrent powers by transferring "forests" and "protection of wild animals and birds" from the legislative purview of State Legislatures to the Concurrent List giving Parliament the ability to pass laws on these topics concurrently. To create every citizen preserve and enhance the natural environment, was also incorporated into the 42nd Amendment's chapter on Fundamental Duties. The 42nd Amendment essentially transferred the centre of administrative power from the States to the Union, placing the latter in charge of protecting the environment.

NATIONAL GREEN TRIBUNAL ACT, 2010

The National Green Tribunal Act, 2010 (No. 19 of 2010) (NGT Act) was passed with the intention of creating a National Green Tribunal (NGT) to handle cases involving the protection of the environment, the conservation of forests and other natural resources, as well as the enforcement of any environmental legal rights and the provision of relief and compensation for damages to people and property, as well as matters related thereto.¹² Since the passage of the NGT Act, no civil court may now take on cases involving environmental issues. Additionally, only NGT has the authority to consider any civil matters involving environmental concerns or issues related to the application of the legislation mentioned in Schedule I of the NGT Act. The Water (Prevention and Control of Pollution) Act of 1974, the Water (Prevention and Control of Pollution) Cess Act of 1977, the Forest (Conservation) Act of 1980, the Air (Prevention and Control of Pollution) Act of 1981, the

¹⁰Neelima Rajvaidya and Dilip Kumar Markandey, *Environmental Pollution Control*, 27-30 (A.P.H Publishing Corporation, 1st edn., 2008)

¹¹ 42nd Amendment, 1976, *available at*: <http://indiacode.nic.in/coiweb/amend/amend42.htm>. Visited on 20th October, 2022.

¹²Role of NGT in Environment Protection in India.<https://www.slideshare.net/natioal...> Visited on 20th October, 2022.

Environment (Protection) Act of 1986, the Public Liability Insurance Act of 1991, and the Biological Diversity Act of 2002 are a few examples.

SOCIAL ACTIVISM LEADING TO LEGISLATIVE ACTIONS

In 1973, a group of women in Mandal village, in the hilly regions of Northern India, embraced trees to stop loggers from cutting them down. This action gave rise to the first truly people-led environmental conservation movement, known as Chipko (literally "hugging" in Hindi). A particularly memorable conflict took place in Reni in 1974 when a group of ladies stood between the trees and a lumberjack army while humming ballads about protecting trees and the environment. The non-violent approach used by rural women captured the attention of people both inside and beyond the country. Numerous similar conflicts over the course of the decade attracted attention, which encouraged individuals to get involved in environmental conservation¹³. Following the general elections of 1979, Mrs. Indira Gandhi's government was reinstated, which improved the environment focus¹⁴. In response to the Chipko movement, Environmental established a committee in January 1980 under the leadership of Narayan Dutt Tiwari, a member of the same hilly regions and a former chief minister of Uttar Pradesh. The committee's mandate was to review current environmental laws and suggest appropriate administrative tools for environmental protection. The Tiwari Committee advised the Union Government to establish a Department of Environment and to review some of the current laws. Later that year, the Parliament passed The Forest (Conservation) Act, 1980, which explicitly forbade the States from de-reserving notified reserved forests without the Central Government's prior approval. This act tightened the Central Government's control over reserved forests. Following the 1976 constitutional change, the Act was passed, shifting the focus of the States' control over reserved forests by moving them from the State List in the 7th Schedule to the Concurrent List¹⁵.

LEGISLATION ON AIR POLLUTION

The following item of legislation to be created was the Air (Prevention and Control of Pollution) Act, 1981. In its preamble, the Air Act made reference to the UN Conference's agenda in Stockholm and emphasised the need to put those decisions into action "insofar as they pertain to the preservation of air quality and control of air pollution." According to the Act, an air pollutant is any substance that is solid, liquid, or gaseous and is present in concentrations that are harmful to human health, including noise. This definition is as broad as it needs to be to cover all potential scenarios. Under the Air Act, the Pollution Control Boards were given the same authority to

¹³THE CHIPKO ENVIRONMENT CONSERATION OVEMENT IN INDIA, *available at*: <http://www.rareplanet.org/sites/rareplanet.org/files/Singhal%20of%20Social%20Movements%204-7-08.pdf>. Visited on 20th October.

¹⁴Saligram Bhat, *Environment Protection and Sustainable Development*, 67-68 (A.P.H Publishing Corporation, New Delhi, 1st edn., 2008).

¹⁵ Law and the Constitution: Eviction of Forest Communities, *available at*:<https://www.ielrc.org/content/f0401.htm>. Visited on 20 October, 2022.

prevent, control, and enforce mitigation measures for water pollution under the Water Act as they received for air pollution.

The Bhopal Gas tragedy, the worst industrial accident to hit the globe in recent memory, horribly exposed the phase of legislative hyperactivity but administrative ineptitude.

BHOPAL GAS TRAGEDY- LEADING TO FLURRY OF ENVIRONMENTAL LEGISLATIONS

On December 3, 1984, deadly methyl isocyanides gas was discharged into the atmosphere from the Bhopal facility of Union Carbide India Limited (UCIL). Numerous thousands of residents living close to the plant were taken by surprise. There was no alarm, and the effects of the gas discharge were already apparent by the time dawn arrived. The death toll grew significantly over the following few days, eventually exceeding 4000. Over 5,00,000 people were reportedly exposed to the gas, and over 35,000 of those individuals experienced medium- and long-term health effects¹⁶. The incident profoundly altered how the general public would later react to environmental issues. The public outcry following the Bhopal Gas tragedy compelled the government to adopt new policies.

The Environment (Protection) Act, 1986¹⁷, This Act addressed the complex problem of legislative jurisdiction by invoking the provisions of the Constitution, allowing Parliament to legislate for the implementation of a decision made at an international conference with reference to the discussions at the UN Conference in Stockholm. Concern was expressed about in the Act's description of purposes and justifications. "*decline in environmental quality, increasing pollution, loss of vegetative cover and biological diversity, excessive concentration of harmful chemicals in ambient atmosphere, growing risks of environmental accidents and threats of life systems*". According to the Act, "water, air, and land, and the inter-relationship which occurs along and between water, air, and land and human beings, other living creatures, plants, microorganisms, and property" are all included in the definition of environment. The Environment (Protection) Act granted the Central Government a wide range of powers, including the ability to establish environmental standards, grant environmental clearances for all types of businesses and activities, establish safety measures for accident prevention, and notify enforcement agencies. Although the State Pollution Control Boards continued to be the notified enforcement authority due to subordinate legislation under the Act, the States' role in environmental policy was significantly reduced. The three laws that controlled environmental contamination were the Water Act, the Air Act, and the Environment (Protection) Act.

¹⁶Case Study of the Bhopal Incident, Environmental Toxicology and Human Health, <http://www.eolss.net/sample-chapters/c09/e4-12-02-04.pdf>. Visited on 20th October, 2022

¹⁷ The Environment (Protection) Act, 1986, *available at*: <http://envfor.nic.in/legis/env/env1.html>. Visited on 20th October, 2022.

Both the **Bhopal Gas Leak Disaster (Processing of Claims) Act¹⁸** and the **Public Liability Insurance Act of 1991¹⁹** were passed in 1985. The original legislation named the Central Government as the only representative of all victims in any legal problems involving victim compensation with Union Carbide. The U.S. government initially heard the compensation claims. After repeatedly delaying the release of immediate compensatory relief to disaster victims through litigation, the Public Liability Insurance Act of 1991 was passed with the intention of "providing for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to victims." Due to "no fault" liability, which did not call for the proof of carelessness, the installation was not shielded from claims for punitive damages negligence or wrongdoing.

ROLE OF JUDICIARY IN EXPANDING THE HORIZONS OF ENVIRONMENTAL LAWS

Public Interest Litigation further sped up the creation of environmental regulations. PILs were used as a weapon for judicial activism in the area of the environment. Although there are many environmental instances, some of them that have led to the enlargement of environmental legislation have been presented in this paper.

Union of India v. M.C. Mehta²⁰, the Supreme Court took into account the harm being done to the environment as well as the danger to people's lives and health. The petitioner's arguments of "no responsibility" and "reasonable care" to avoid compensation liability were rejected by the court, which advanced the idea of strict and absolute liability.

The Supreme Court mandated the closure of all lime-stone quarries in the Doon Valley in **Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.²¹**. The Court noted that the area's ecosystem and water springs had suffered as a result of limestone quarries and excavation. In a different PIL, **M.C. Mehta v. Union of India**, the Supreme Court was confronted with the problem of Ganga water pollution brought on by tanneries' trade effluent discharges into the river in Kanpur. In **Pardushan Chhetriya Mukti Sangharsh Samiti v. State of U.P.²²**, the Supreme Court declared that every citizen has a basic right to live in health.

In **Subhash Kumar v. State of Bihar²³**, the court noted that people have a constitutional right to clean water and clear air so they can fully enjoy life. A person has the right to use Article 32 of the

¹⁸The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, *available at*: <http://indiacode.nic.in/fullact1.asp?tfm=198521>. Visited on 20th October, 2022.

¹⁹Public Liability Insurance Act, 1991, *available at*: <http://envfor.nic.in/legis/public/public1.html>. Visited on 20th October, 2022.

²⁰AIR 1987 SC 1086.

²¹ AIR 1988 1 SCC 417.

²² AIR 1990 SC 2060.

²³ AIR 1991 C 420.

Constitution to remove water or air pollution that may be harmful to quality of life if anything threatens or affects that quality of life in violation of the law.

The Supreme Court incorporated the "polluter pays" and "precautionary" principles into environmental law in **Vellore Citizens Welfare Forum v. Union of India**²⁴. The 42nd Amendment's newly added Articles 48A and 51A(g) were seen as being part of the constitutional requirement put on the State to protect and improve the environment.

In the case of **M.C. Mehta v. Kamal Nath**²⁵, the court stated that Articles 48A and 51A (g) must be viewed in the context of Article 21 of the Constitution, which protects the right to life. A Court may award damages not only for the restoration of the ecological balance but also for the victims who have suffered as a result of that disturbance, according to the Court's ruling: "*Any disturbance of the basic environment elements, namely air, water, and soil necessary for life, that could be hazardous to life, would result in abridgement of the right to life.*" This decision was a turning point in the development of environmental law and policy.

CONCLUSION

The 1972 UN Conference on the Human Environment was a significant turning point that irreversibly changed the course of environmental policy. The government's decision to give conservation efforts top priority was immediately influenced by the Indian Prime Minister's attendance and participation in conference talks. Between 1972 and 1980, numerous legislation were passed to safeguard forests, conserve wildlife, and establish a framework for lowering water pollution. Parliament, acting on the Constitution's power to enact laws building a framework for two or more States on matters allocated to States, adopted these laws. New organizations with legal authority were established in the US, such as Pollution Control Boards and Wildlife Wardens. Since the 42nd Amendment to the Constitution was ratified, the Central Government has been in control of environmental policy. After 1976, the elected state governments had limited influence over the creation of environmental policy.

An important turning point in India's environmental history was the Bhopal Gas Leak Disaster. Environmental policy was reshaped as a result of the failure of the governance structure to adequately prevent the disaster, the inability of the legal and administrative systems to provide adequate compensation to the harmed parties, and the raising of public awareness about the dangers posed by environmental negligence. The judiciary had identified the public interest litigation as a tool to deliver fundamental civil rights arising from constitutional provisions in the post-Emergency era.

²⁴ AIR 1996 SC 2715.

²⁵ AIR 1997(1) SCC 388.

SUGGESTIONS

1. The State ought to encourage the use of the green economy because it presents significant chances for gathering natural resources in the direction of low-emission, climate-resilient development pathways.
2. Alternative Dispute Redressal Mechanisms should be used in environmental cases in addition to the standard court process.
3. An intensive programme of environmental sensitization must be carried out at the local and national levels, and environmental awareness must be incorporated into the primary and secondary education systems.
4. It is past time for India to provide the NGT criminal jurisdiction in order to effectively and quickly resolve environmental-related matters.
5. Is it did in the instance of the Art of Living Foundation, NGT should avoid creating new precedents that are incorrect, such as the "pay and pollute principle."
- 6."The North-east states must establish robust Forest Security Squads to defend the wildlife from destroyers, such as wildlife poachers, wood-smugglers, illegal migrants, and militant organisations.