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Critical analysis of modern concept of sustainable development

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Abstract

In today's world, the term "sustainable development" is not a new notion. This term was used in the Stockholm conference in 1972 in an indirect way. "Principle 1 of the declaration states 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 wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generation". In this Principle, the term future generation is inserted it means that we should preserve our natural resources for the future generation. In simple words, we can simply say that using natural resources just and equitable manner without compromising the present generation and also preserving future generations. The term Sustainable development came through the Brundtland commission report in 1987. She defined the term sustainable development. The study aims to critically examine the concept of sustainable development a doctrinal research design has been used to meet the study's aims. The modern concept of sustainable development has been studied using the doctrinal design. Doctrinal research, as we all know, is study based on previously stated principles or premises. It is more based on sources such as library books and resources gathered through access to numerous websites. For the study, the Researcher has collected relevant materials from books on Environmental law and also from various websites. The research has been conducted mostly through the use of books, journals, and numerous articles from various internet sources.

Keywords: Sustainable development, just, equitable and fair use and, Jurisprudence of the Masses

Introduction

Sustainable development is becoming more widely recognized in international and national legal frameworks, but implementation remains a challenge. In recent years, there has been a continuous focus on the role of the higher courts in developing and monitoring pollution control, forest conservation, and wildlife protection policies. Many of these judicial interventions have been sparked by persistent policy incoherence and a lack of capacity-building across executive agencies.

However, in recent years, the judiciary has become increasingly important in environmental protection. "Public Interest Litigation is one of the most important breakthroughs in the Indian judiciary. It is known as Jurisprudence of the Masses," and it is a new branch of law. The Indian Supreme Court's role in resolving environmental disputes has had a significant impact on India's environmental law and principles. The Indian Supreme Court's role in resolving environmental disputes has had a significant impact on India's environmental law and principles. This includes recognizing the right to a healthy environment as a fundamental right, as well as several environmental protection principles. It appears that Indian courts have used international environmental law ideas not just to 'formulate' but also to 'enrich' much of the country's current environmental jurisprudence. This process is still ongoing, and it represents a powerful approach to achieving sustainable development.

Concept of the Right: Article 21 of the Indian Constitution protects the right to a healthy environment as a basic right ^[1]. But, at a time when practically all of Southeast Asia's countries are still in the early stages of development, can the environment be protected? Development occurs as a result of industrialization, which is the primary cause of environmental damage. Experts from around the world have devised a concept known as 'Sustainable Development,' which claims that development and ecological must be balanced in order to solve the problem. "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 pattern of increasing ultraviolet radiation - alter the opportunities available for future generations."

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Origin of the Doctrine

"Sustainable Development" is not a new term. "The theory was first articulated in the Stockholm Declaration in 1972. Principle 1 of the declaration states that ^[2] 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 wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generation" However, the concept was given concrete form in a report titled "Our Common Future" by the "World Commission on Environment. Ms. G.H. Brundtland, then-Prime Minister of Norway, chaired the commission and defined Sustainable Development" as ^[3] Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs".

It's Scope and Applicability in India

The Supreme Court's decision in "*Narmada Bachao Andolan v. Union of India* ^[4]" may hold the key wherein "it was observed that Sustainable development means what type or extent of development can take place, which can be sustained by nature/ecology with or without mitigation. In this context, development primarily meant material or economic progress."

Various Principles of 'Sustainable Development'

The following are some of the basic ideas of 'Sustainable Development,' as defined in the Brundtland report.

(a) "Inter-Generational Equity"

The principle refers to every generation's right to benefit from natural resources. "Principle 3 of the Rio declaration states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations ^[5]." The main purpose of the "principle is to ensure that current generations do not waste non-renewable resources in order to deprive future generations" of their benefits.

(b) "The Precautionary Principle"

This principle is usually regarded as the most significant of the 'Sustainable Development' principles. "Principle 15 the Rio declaration states that in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation ^[6]."

To put it another way, it means:

1. "Environmental actions taken by the state government and municipal governments must anticipate and combat environmental degradation's causes."
2. "When there is a risk of substantial and irreparable damage, lack of scientific certainty should not be used as a justification for delaying environmental protection actions."
3. The actor or developer bears the burden of proof in demonstrating that his conduct is ecologically friendly.

(c) "Polluter Pays Principle"

"Principle 16 of the Rio declaration states that: National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment. It is quite obvious that the object of the above principle was to make the polluter liable not only for the compensation to the victims but also for the cost of restoring of environmental degradation. Once the actor is proved to be guilty, he is liable to compensate for his act irrelevant of the fact that whether he's involved in the development process or not ^[7]."

Role of Judiciary

The Indian judiciary, including the "Supreme Court and the High Court, has played a key role in upholding the notion of sustainable development." Various legislation has been established by Parliament to address the issues of environmental degradation. In such a context, the superior courts have played a critical role in interpreting such laws in order to conform to the idea of "sustainable development".

It is worthwhile to mention here that principle 10 of Rio declaration, 1999 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. This is new jurisprudence and is called Jurisprudence of Masses ^[8]."

"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's also worth remembering that the bulk of environmental cases have been taken to court through a "PIL (Public Interest Litigation) filed under Article 32 or 226 of the Constitution." The Supreme Court's first application of the 'Sustainable Development' theory was in the case.

"*Vellore Citizen Welfare Forum v. Union of India* ^[9]." In this case, there was a conflict about numerous tanneries in the state of Tamil Nadu. The tanneries' effluents were released into the Palar River, which served as the state's primary source of drinking water. The Hon'ble Supreme Court held that: "We have no hesitation in holding that the precautionary principle and polluter pays principle are part of the environmental law of India. The court also held that: Remediation of the damaged environment is part of the process of 'Sustainable Development and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

However, prior to the "Vellore Citizen's case, the Supreme Court had attempted to strike a balance between ecology and development in a number of instances. In *Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh*, which is also known as Doon valley case ^[10]" In the hilly areas, a disagreement erupted over mining.

“The Supreme Court after much investigation ordered the stopping of mining work and held that: This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and their cattle, homes and agricultural land and undue affection of air, water, and environment.”

However, in 1991, in the “*Rural Litigation and Entitlement Kendra vs. State of U.P*”^[11] As an exceptional case, the Supreme Court allowed a mine to operate until the lease expires on the condition that the developer deforests the area taken on lease. However, after receiving notification that they had broken the condition and were mining in an unprofessional manner, the Supreme Court ordered the lessee to pay a compensation of three lacks to the monitoring committee's fund. This has been based on the 'polluter pays principle.

Likewise, a number of forests have been designated as protected areas. In a precedent-setting case, “*Tarun Bhagat Sangh v. Union of India*”^[12] The petitioner brought to the Supreme Court's attention through a PIL that the state government of Rajasthan, despite having the authority to create laws to safeguard the environment, neglected to do so and instead permitted mining to continue within the forest region. Consequently, “the Supreme Court issued directions that no mining work or operation could continue within the protected area. But it would be unwise to hold that the courts always favorers environment without giving any significance to the development aspect when a dispute arises between environment and development.”

In “*M. C. Mehta vs. Union of India*”^[13] “the Supreme Court issued directions towards the closing of mechanical stone crushing activities in and around Delhi, which was declared by WHO as the third most polluted city in the world. However, it realized the importance of stone crushing and issued directions for allotment of sites in the new 'crushing zone' set up at village Pali in the state of Haryana.”

Challenges of Sustainable Development

How can the Indian legal structure enable economic advancement while avoiding environmental regression? This can be accomplished by enacting appropriate legislation. When it comes to environmental issues, the courts have endeavoured to present a balanced assessment of priorities. Given India's “status as a developing country, certain environmental sacrifices are judged necessary, while keeping in mind the character of the environment in that location and its importance to society. This is to ensure that policies and laws that promote environmental and developmental goals benefit future generations. Sustainable development is the word for this ethical balance, which was accepted by the Supreme Court in the Taj Trapezium”^[14] decision.

In *State of Himachal Pradesh v. Ganesh Wood Products*^[15], “the Supreme Court invalidated a forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development. Thus, it is quite obvious that the courts give equal importance to both ecology and development while dealing with cases of environmental degradation.”

Conclusion

The environment and development are two sides of the same coin. None one of them can be surrendered for the sake of the others. On the contrary, both are critical for our better future. Without a healthy environment, life becomes precarious, and development is a requirement of the modern-day, so citizens and the judiciary share responsibility. As a result, a new jurisprudence is known as "Jurisprudence of the Masses" has emerged. The Indian Supreme Court's role in resolving environmental disputes has had a significant impact on India's environmental law and principles. In the case of *Arjun Gopal & Others v. Union of India & Others*, (2017) 16 SCC 280, the Hon'ble Supreme Court has ordered that all fireworks permits, wholesale and retail, be suspended inside the boundary of the National Capital Region. In addition to the Supreme Court and different High Courts, various environmental courts known as Green Tribunals have been established to deal with these matters with extreme caution. However, public awareness, regular inspection, and environmental education are far more important than legislative force and judicial obligations. Every citizen has a fundamental and moral obligation to conserve the environment; only then will we be able to fulfil our aim of ensuring a pollution-free developed country for our next generation.

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