

SUSTAINABLE DEVELOPMENT: A HARMONIOUS CONCEPT BETWEEN ENVIRONMENT AND DEVELOPMENT

**ThusharaUllas,
Assistant Professor,
Bhavan's PALSAR**

INTRODUCTION

India is a developing country. A country is said to be developing when it seeks to advance economically and socially. The development of a country mostly depends on industries, which are the backbone of economy. For industrial development, we exploit our natural resources indiscriminately. The over exploitation of natural resources and pollution caused by industries results in environmental degradation. This state of crisis emerging from environmental pollution violates the right to life guaranteed under Article 21¹ of the Constitution of India. Being the soul of fundamental rights, Article 21 includes the right to live in a healthy environment, which means an environment that is free from health hazards arising from environmental pollution. As environment includes water, air, land and the inter-relationship which exists among and between water, air, land, human beings, other living creatures, plants, micro organisms and property², the adverse impact on any of these components in turn affects the quality of environment.

The right to healthy environment is an inalienable human right and at the same time, right to development is also imperative. Every human is entitled to economic, social, cultural and political development. Even if right to healthy environment and right to development are traditionally paradoxical, both are essential for the survival and well being of mankind. So we need a balancing concept which never compromises either economic development or the quality of environment. Both development and environment should go hand in hand .There should not be development at the cost of environment and vice versa. But there should be development while taking due care and ensuring the protection of environment³.Sustainable development is a balancing concept between environment and development. It is a strategy for continued development without causing harm to the environment. In *Vellore Citizens Welfare Forum v. Union of India*⁴, the Supreme Court pointed out that the traditional concept that development and ecology are opposed to each other is no longer acceptable. Sustainable development is the answer. Sustainable development is a balancing concept between environment and development.

¹ No person shall be deprived of his life or personal liberty except according to the procedure established by law

²S.2(a) of The Environment (Protection) Act, 1986

³Indian Council for Enviro Legal Action v. Union of India , (1996) 5 S.C.C. 281

⁴ A.I.R. 1996 S.C. 2715

THE CONCEPT OF SUSTAINABILITY

Sustainability means the ability to maintain a certain state. In ecological context, sustainability is the ability of an ecosystem to maintain ecological process, their functions, biodiversity and productivity for a long time⁵. Since environment and development are antithetical aspects, development must be within environmental sustainability. That means we have to bring development without over exploitation of natural resources. Environmental sustainability, economic sustainability and socio-political sustainability are the 'three pillars' of sustainability. Simply sustainability is improving the quality of human life while living within the carrying capacity of supporting eco-systems. The earth and its resources are meant not only for the present generation, but also for the generations to come. So development should be within the carrying capacity of the environment.

ENVIRONMENT v. DEVELOPMENT

Sustainable development is a policy for continued development without affecting the quality of environment. It indicates how development should be brought without jeopardising environmental interest. The right to exploit environment is not confined to the past and present generations, the future generation is also entitled to the resources gifted by nature. Hence, while exploiting resources, we should ensure their availability to the future generations. While enjoying the right to development, we should take into account of the same right of future generations also. For protecting the right of future generations, the present generation should be modest in their exploitation of natural resources. This idea has found widespread international approval since the Maltese Proposal at the UN General Assembly, in 1967. United Nations Conference on Human Environment held at Stockholm from 5th to 16th June 1972 was a turning point in the history of the concept of sustainable development. Stockholm Conference has been described as the "Magna Carta of our environment". In the UN Conference on Human Environment, the two conflicting concepts; protection of environment and socio economic development were taken into consideration. In the Conference these two contradictory concepts were synchronized by the evolution of a new concept that environmental protection is an essential element of social and economic development.

The term 'sustainable development' was coined for the first time in 1980. It was in the World Conservation Strategy of the International Union for the Conservation of Nature⁶. World Conservation Strategy addressed the reality of resource limitation and the carrying capacity of ecosystem. Maintenance of essential ecological processes and life-support systems, preservation of genetic diversity, sustainable utilization of species and ecosystems were the objectives emphasised by World Conservation Strategy.

The World Conservation Strategy was followed by the World Commission on Environment and Development commonly known as Brundtland Commission⁷. Brundtland Commission in its report "Our

⁵Pratibha Singh, Anoop Singh, PiyushMalaviya, *Text Book of Environment and Ecology*, ACME Learning Pvt.Ltd. ,1st Edition, 2009, p.50

⁶ <http://www.e-ir.info/2011/07/27/the-concept-of-sustainable-development/> visited on 24-12-2016 at 12.35 pm

⁷ <http://www.un-documents.net/our-common-future.pdf> accessed on 25-12-2016 at 12.50 pm.

Common Future” gave a definite shape to the concept of sustainable development in 1987. The commission set out the modern definition of sustainable development. It defines sustainable development as “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. This definition was given by the Norwegian Prime Minister G.H Brundtland who was the director of World health Organisation. In 1991 World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature jointly produced a document called “Caring For the Earth: A Strategy for Sustainable Living” which defined ‘sustainability’ as a state that can be maintained indefinitely, whereas ‘development’ is defined as the increasing capacity to meet human needs and improve the quality of human life.

Inspired by Brundtland Report, United Nations Conference on Environment and Development was held in June, 1992 at Rio de Janeiro, Brazil which put the world on the path of sustainable development. More than 150 governments participated in this conference and which was one of the largest gatherings of the governments, heads of state and non-governmental organisations. It is also known as Rio Summit or Earth Summit. Rio summit is noted as the “Parliament of the Planet”. Rio Conference reaffirmed that the implementation of the concept of sustainable development is the true mode of achievement of development. One of the notable achievements of Rio conference was the signing of two Conventions. They are United Nations Framework Convention on Climate Change and The United Nations Convention on Biological Diversity. The delegates approved three non binding documents which are Statement on Forestry Principles, The Rio Declaration on Environment and Development and Agenda 21- a programme of action.

Agenda 21 which is one of the key documents of Earth summit suggests a number of measures to uphold the principles of sustainable development. Agenda 21 lays emphasis on the international cooperation for achieving the goal of sustainable development. It addresses the burning problems of today and aims to prepare the world to face the challenges of tomorrow.

United Nations Commission on Sustainable Development was set up on 16th February 1993 in pursuance of article 68 of the UN Charter. This Commission is a functional Commission of the United Nations Economic and Social Council. The main task of the Commission is to ensure the effective follow up of Rio Conference as well as to enhance international cooperation and rationalising the inter-governmental decision making capacity for the integration of environment and development issues. It examines the progress of the implementation of Agenda 21 at the national, regional and international level.

United Nations organised a ten day World summit on Sustainable Development in Johannesburg, South Africa from 26th August to 4th September, 2002. Johannesburg Conference required a firm action to solve the problems identified at Earth Summit, 1992 and reaffirmed the member’s commitment to sustainable development.

Rio Summit 2012 hosted by Brazil in Rio de Janeiro from 13th to 25th June 2012 was the third international conference on sustainable development. It was a 20 year follow up to the 1992 earth Summit.⁸ It is also

⁸ <http://www.environment.gov.au/about-us/international/rio-20> visited on 25-12- 2016 at 1.10 pm

known as Rio 2012 or Rio+20. The outcome of the 2012 Summit was a non-binding document, “The Future We Want” and it reaffirmed the Rio principles and action plans. It reaffirmed the idea that economic development and conservation of environment must go hand in hand and presented a framework for the creation of a green economy in the context of sustainable development and poverty eradication.

PRINCIPLES OF SUSTAINABLE DEVELOPMENT

Sustainable development is a balancing concept between environment and development. By adopting the principles of sustainable development, the present generation can satisfy their needs without affecting the availability of resources. So the well being of the generations to come will never be in peril. In *Vellore Citizens Welfare Forum v. Union of India (Tamil Nadu Tanneries Case)*⁹, the Supreme Court summed up the principles of sustainable development. They are-

- Intergenerational equity
- Use and conservation of natural resources
- Environmental protection
- Precautionary principle
- Polluter pays principle
- Obligation to assist and cooperate
- Eradication of poverty
- Financial assistance to developing countries

INTERGENERATIONAL EQUITY- The natural resources are permanent assets of mankind and are not intended to be exhausted in one generation¹⁰. The principle of intergenerational equity lays emphasis on the right of each generation of human beings to benefit from the cultural and natural inheritance of its past generations. Intergenerational equity is the idea that future generations must have the same access to natural resources as the present generation. The present generation inherited earth from their ancestors, so they have an obligation to pass it on to the next generation with the same quality. In *State of Himachal Pradesh v. Ganesh Wood Products*¹¹, the Supreme Court stated that “the present generation has no right to imperil the safety and well being of the next generation or the generations to come thereafter.” The Indian definition for intergenerational equity is the “concern for the generations to come”.¹² Principle 1 and principle 2¹³ of Stockholm Declaration refers the principle of intergenerational equity.

⁹ (1996) 5 S.C.C. 647

¹⁰ Kinkri Devi v. State, A.I.R. 1988 H.P. 4

¹¹ A.I.R. 1996 S.C. 149

¹² ibid

¹³ Principle 1-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 generations.

Principle 2-the the natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management , as appropriate

In *Kinkri Devi v. State*¹⁴, a PIL was filed alleging that the unscientific and uncontrolled quarrying of the lime stone has caused damage to the Shivalik Hills and was posing danger to the ecology, environment and inhabitants of the area. The Himachal Pradesh High Court pointed out that if a just balance is not struck between development and environment by proper tapping of the natural resources, there will be violation of Articles 14,21,48-A and 51A (g). The Court went on to state 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. The natural resources are permanent assets of mankind and are not intended to be exhausted in one generation. In this case, the court issued an interim direction to the state government to set up a committee to examine the issue of proper granting of mining lease and the necessity of granting lease keeping in view of the protection of environment.

In *K .GuruprasadRao v. State of Karnataka*¹⁵, the Court explained the ambit and scope of intergenerational equity and sustainable development. In this case the appellant filed a PIL praying for the cancellation of a mining lease granted to the respondent and to stop mining within the radius of 1km. from Jambunatheswara Temple. The Court held that sustainable development includes preservation and protection of historical / archaeological monumental wealth for future generations. Right to development includes the right to whole spectrum of civil, cultural, economic, political and social process for the improvement of people's well being and realisation of their full potential.

In *Court on Its Own Motion v. Union of India*¹⁶, the Supreme Court held that intergenerational equity is a part of article 21 of the Constitution of India.

USE AND CONSERVATION OF NATURAL RESOURCES- The use of natural resources must be in a sustainable manner. It does not require that the entire resources must be reserved for future generations. But the resources required for economic growth should be exploited to the minimum. The idea that, for the benefit of future generations, present generation should be modest in their exploitation of natural resources which has found widespread international approval since the Maltese Proposal at the UN General assembly of 1967. To achieve sustainable development and a dignified of life for all people, states should reduce and eliminate unsustainable pattern of production and consumption. Thus use and conservation of natural resources is an essential principle of sustainable development¹⁷.

ENVIRONMENT PROTECTION – The concept of sustainable development can never be achieved without protecting environment. Development is impossible without protection of environment and vice versa. Generally the strategies for the protection of environment boost developmental activities. In India, The Environment (Protection) Act, 1986 is enacted for the protection of environment. To implement the decisions made at the UN Conference on Human Environment, ensuring sustainable development etc. are some of the

¹⁴ A.I.R. 1988 H.P.4

¹⁵(2013) 8 S.C.C. 418

¹⁶SuoMotu Writ Petition (civil) No. 284 of 2012, (2013) 1 MLJ 639 (SC)

¹⁷Principle 8 of Rio declaration

objectives of Environment (Protection) Act, 1986. Since environment and development are complimentary to each other, improvement of one is not possible without paying due attention to the other.

In *Citizen, consumer and Civic Action Group v. Union of India*¹⁸ the Court held that there should be a proper balance between protection of environment and development activities which are essential for progress. There can be no dispute that the society has to prosper, but it shall not be at the expense of environment. In the like vein, the environment shall have to be protected, but not at the cost of development of the society. Both development and environment shall co-exist and go hand-in-hand. Therefore a balance has to be struck and administrative action ought to proceed in accordance there with, and not de-hors the same.

THE PRECAUTIONARY PRINCIPLE – ‘Prevention is better than cure’. The protection of environment can effectively be done by taking adequate precautions against environmental damage. Precautionary principle gives emphasis upon the preventive aspect of environmental protection. Precautionary principle states that any substance or activity posing a threat to the environment is to be prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage¹⁹. Here substance and activity denote substances and activities introduced as a result of human intervention. In the context of municipal law, precautionary principle means –

- Environmental measures by the state government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation
- Where there are threats of serious and irreparable damage, lack of scientific certainty should not be used as a reason for postponing measure to prevent environmental degradation
- The onus of proof is on the actor/ developers / industrialists to show that his action is environmentally benign²⁰.

In short precautionary principle states that any substance or activity causing a threat to the environment is to be prevented from adversely affecting the environment. The government should adopt such measures which anticipate, prevent and attack the causes of environmental degradation. If there are threats of serious and irreparable damage to the environment, the state should adopt measures to prevent environmental degradation even though there is no scientific certainty. The harm can be prevented even on a reasonable suspicion. Here the burden of proof lies on the actor to show that his act is environmentally sound.

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 proposing cost effective measures to prevent environmental degradation. Precautionary principle has been recognised in almost all international documents²¹.

¹⁸ A.I.R. 2002 Mad.298

¹⁹Dr. aparamjith S. Jaswal, Dr.NishthaJaswal, VibhutiJaswal ,*Environmental Law*, Allahabad Law Agency,4th Edn.,2015, P.139

²⁰ibid

²¹Principle 15 of Rio Declaration

In *Andhra Pradesh Pollution Control Board v. M.V Nayudu*²², the Supreme Court traced the origin of precautionary principle. The Court observed that, in initial days the concept was based on ‘assimilative capacity’ which was advanced by principle 6²³ of the Stockholm Declaration of the United Nations Conference on Human Environment.

In *M.C Mehta v. Union of India*²⁴, the Supreme Court applied precautionary principle. In this case a PIL was filed alleging that, due to the use of coal/coke by industries situated within the Taj Trapezium Zone, there is environmental pollution and consequential degradation of TajMahal. The Supreme Court applied precautionary principle in this case and directed that, all industries operating in the Taj Trapezium Zone must use natural gas as a substitute for coal/coke as industrial fuel. The industries which are not in a position to obtain natural gas connection must stop functioning in the Taj Trapezium Zone and they should shift their industries to other industrial area.

In *Research foundation for Science, Technology and Natural Resources Policy v. Union of India and Another*²⁵ the Supreme Court made it clear that the “Precautionary Principle” generally describes an approach to the protection of environment or human health based on precaution even where there is no clear evidence of harm or risk of harm from an activity or substance. It is a part of the principle of sustainable development. It provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced.

POLLUTER PAYS PRINCIPLE- Polluter Pays Principle is one of the basic principles of sustainable development. The supreme court of India interpreted precautionary principle in the case *Vellore Citizens Welfare forum v. Union of India*²⁶. Polluter pays Principle states that the absolute liability for harm to the environment extends not only to compensate the victims of pollution, but also the cost of restoring the environmental degradation. According to this principle, the responsibility to disprove environmental damage is upon the polluter.

What Polluter Pays Principle envisages is that there is an absolute liability for harm to the environment. The person who is responsible for environmental pollution is liable to pay compensation to the victims of pollution. The liability of the polluter extends to bear the cost of restoration of environmental degradation. According to this principle, the responsibility to disprove the environmental damage is upon the polluter. Under this principle, it is not the role of the government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the tax payer²⁷.

²²A.I.R. 1999 S.C. 812

²³ The discharge of toxic substance or of other substance and the release of heat, in such quantities or concentration as to exceed the capacity of environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against should be supported.

²⁴(1997) 2 S.C.C. 353

²⁵(2005) 13 S.C.C. 156

²⁶A.I.R. 1996 S.C.2715

²⁷Dr.Paramjith S. Jaswal, Dr.NishthaJaswal, VibhutiJaswal ,*Environmental Law*, Allahabad Law Agency, 4th Edn.,2015

Polluter Pays Principle has been incorporated in principle 16 of Rio Declaration which provides that national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account 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.

In *Indian Council for Enviro Legal Action v Union of India*²⁸, a PIL was filed alleging environmental pollution caused by private industrial units. The industrial units located in Bichhri in Udaipur, Rajasthan were producing certain chemicals like oleum and H-acid without obtaining necessary clearance. They have not installed any equipment for treatment of highly toxic effluents discharged by them. These toxic substances percolated deep into the bowels of the earth polluting the ground water and making it unfit for drinking by human beings and cattle and for irrigating the land. The soil became unfit for cultivation. The Supreme Court directed the closure of all such industries. The Court further directed the central government to determine the amount required for carrying out remedial measures including the removal of sludge from the sites of the industries and the same shall be paid by the respondent industries. The villagers could claim damages for the loss suffered by them by instituting appropriate suits. In this case the Supreme Court applied Polluter Pays Principle.

In *Research foundation for Science, Technology and Natural Resources Policy v. Union of India and Another*²⁹, the Supreme court elucidated that the “Polluter Pays Principle” basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property; it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. However this principle does not mean that the polluter can pollute and pay for it. The nature and extend of cost and the circumstances in which the principle will differ from case to case.

In *Sterlite Industries (India) Ltd. V. Union of India*³⁰, the appellant company operated the plant without renewal of licence and failed to maintain emission and effluent standards, which resulted in air and water pollution. In this case, the Supreme Court applied Polluter Pays Principle. Considering the magnitude, prosperity and capacity of the company, the court directed it to pay compensation of Rs.100 crores.

OBLIGATION TO ASSIST AND CO-OPERATE-The concept of sustainable development can be achieved only through international co-operation. Environmental pollution is a matter of global concern. So it can be handled effectively only with the co-operation of all. Principle 9³¹, principle 10³², principle 12³³ and principle

²⁸(1996) 3 S.C.C. 212

²⁹(2005) 13 S.C.C. 156

³⁰(2013)4 S.C.C. 575

³¹The states should co-operate to strengthen indigenous capacity-building for sustainable development by improving scientific understanding through exchange of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies

³² Environmental issues are best handled with the participation of all concerned citizens, at the relevant level

³³The states should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation

27³⁴ of Rio Declaration emphasises the obligation to assist and co-operate for achieving the goal of sustainable development.

ERADICATION OF POVERTY –we cannot achieve the goal of sustainable development without eradication of poverty. The concept of sustainable development includes environmental sustainability, economic sustainability and socio-political sustainability. Environment, economy and society are the three pillars of sustainability. As these three are interdependent, environmental sustainability can never be attained without social and economic sustainability. Environmental and economic sustainability leads to social sustainability. Brundtland Report pointed out that poverty reduces people's capacity to use resources in a sustainable manner³⁵. So eradication of poverty is one of the principles of sustainable development.

FINANCIAL ASSISTANCE TO DEVELOPING COUNTRIES – When compared to developed countries, the over exploitation of natural resources is higher in developing countries. As the developing countries are not equipped with adequate technology and financial resources to tackle the issue of over exploitation of resources, the goal of sustainable development can be achieved only through the transfer of technology and financial resources. Since the developed countries are self sufficient to satisfy their financial and technological needs, they must offer their helping hands to developing countries to uplift them to the path of sustainable development. International co-operation is needed for achieving the concept of sustainable development.

SUSTAINABLE DEVELOPMENT AND INDIAN CONSTITUTION

Sustainable development seeks to maintain a balance between the protection of environment and developmental activities. It is a strategy which suggests the way in which developmental activities are to be carried on. For sustainable development, the protection of environment is essential. Initially, the constitution of India did not contain any direct provision for the protection and improvement of environment. However the preamble of the constitution provides that India is a socialist³⁶ country. In a socialist country the state is under a duty to pay attention to social issues. In *Calcutta Youth Forum v. State of West Bengal*³⁷, the court emphasised that the problem of environmental degradation is a social problem and under the constitution of India the state is obliged to take this issue with serious concern. In 1972, the then Prime Minister of India, Mrs. Indira Gandhi made a historic representation in the UNCHE (Stockholm Conference). In light of India's international obligations arising from the Stockholm Conference, the Forty-Second Amendment to the Indian Constitution in 1976 introduced explicit provisions for the protection and improvement of environment. The Constitution (Forty Second Amendment) Act, 1976 imposed an obligation on the state as well as the citizen of India to protect our environment. Article 48-A was inserted as part of Directive Principles of State policy and Article 51-A (g) was inserted under fundamental duties. Now the state as well as the citizen is under a duty to protect

³⁴ The people and the states to co-operate in good faith and in spirit of partnership in the further development of international law in the field of sustainable development

³⁵<http://www.un-documents.net/our-common-future.pdf> visied on 30-12-2016 at 10.15 am

³⁶The word socialist was added to the preamble by The Constitution (Forty Second) Amendment Act, 1976.

³⁷1986 (2) C.L.J. 26

and improve the environment. So the state shall endeavour protect and improve the environment and to safeguard the forests and wildlife of the country³⁸.

In *L.K. Koolwal v. State*³⁹, the municipal authority under The Rajasthan Municipal Authority Act, 1959 was charged with the primary duty to clean streets, removing of noxious substances and vegetations and all public nuisances, remove rubbish, odour etc. But the municipality failed to perform its primary duty. In this case Mr. Koolwal moved to the High Court under Article 226 and highlighted that the municipality has failed to discharge its primary duty which resulted in acute sanitation problem in Jaipur. The High Court allowed the writ petition and held that insanitation leads to slow poisoning and adversely affect the life of citizens and hence it falls within the purview of article 21 of the constitution. The Court directed the municipality to remove dirt from the city within a period of 6 months.

The constitution of India also provides that every citizen of India is under a duty to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures⁴⁰.

In *T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad*⁴¹, the court pointed out that in view of articles 48-A and 51A(g), it is clear that protection of environment is not only the duty of every citizen, but it is also the obligation of the State and all other state organs including courts.

In *M.C Mehta v. Union of India*⁴², the Court observed that articles 39(e), 47 and 48-A by themselves and collectively cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment.

In *N.D Jayal v. Union of India*⁴³, the Supreme Court held that sustainable development is to be treated as an integral part of life under article 21 of the Constitution of India. So complying with the principle of sustainable development is a constitutional mandate. The Indian Judiciary played a vital role in balancing the two seemingly opposite concepts; environment and development.

*Rural Litigation and Entitlement Kendra, Dehradun v. Union of India*⁴⁴, was the first case involving the issues relating to environment and ecological balance which brought into sharp focus the conflict between development and conservation. In this case, the indiscriminate mining in the Mussoorie hills and Dehradun belt denuded the Mussoorie hills of trees and forest cover. It 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 to advice the Bench on technical issues and on the basis of the report of the committee, the Court ordered the closure of number of lime stone quarries.

³⁸Article 48-A

³⁹A.I.R. 1988 Raj. 2

⁴⁰Article 51 A (g)

⁴¹A.I.R. 1987 A.P. 171

⁴²(2002) 4 S.C.C. 356

⁴³(2004) 9 S.C.C. 362.

⁴⁴ A.I.R 1985 S.C 652

In *T.N Godavarmanthirumulpad v. Union of India*⁴⁵, the Supreme Court banned mining activity in Aravally hills, especially in that parts which has been regarded as forest area or protected under Environment (Protection) Act, 1986.

CONCLUSION

Development is never adversative to environment. Development and environment are like the two sides of a coin. They are complimentary to each other and are not separable. Right to healthy environment and right to development are the fundamental human rights. We cannot have development without protecting environment and vice versa. So for enjoying the right to development and right to healthy environment simultaneously, we need a policy which harmonises these two contradictory concepts which brings development without jeopardising environmental interests. Implementing the principle of Sustainable Development is the best way of achieving development without causing adverse impact on the environment. For attaining the goal of sustainable development, a change in attitude is required. The consumption of resources should be proportionate to the availability. Developmental activities should be within the carrying capacity of the ecosystem. 3R approach (reduction, recycle and reuse) is a way to achieve sustainable development⁴⁶. Sustainable development is a harmonious concept between environment and development.

BOOKS REFERRED

Arjya B. Majumdar, Debosmitha Nandi, Swayambhu Mukherjee, *Environment and Wildlife Laws in India*, Lexis Nexis, 1st Edn., 2013

Pratibha Singh, Anoop Singh, Piyush Malaviya, *A text Book of environment and Ecology*, Acme Learning, 1st Edn., 2009

Dr. Paramjith S. Jasswal, Dr. Nishitha Jaswal, Vibhuti Jaswal, *Environmental law*, Allahabad Law Agency, 4th Edn., 2015

Indrajith Dube, *Environmental Jurisprudence*, Lexis Nexis Butterwoths, 2007

Syam Divan, Armin Rosencranz, *Environmental Law and Policy in India*, Oxford University Press, 2nd Edn., 2012

P. Leelakrishnan, *Environmental Law in India*, Lexis Nexis, 3rd Edn., 2008

Dr. N. Maheswara Swamy, *A Text Book on Environmental Law*, Asia Law House, 2nd Edn., 2008

LIST OF ABBREVIATIONS

A.I.R. : All India Reporter

A.P. : Andhra Pradesh

⁴⁵ (2009) 17 S.C.C. 764

⁴⁶Pratibha Singh, Anoop Singh, Piyush Malaviya, *Text Book of Environment and Ecology*, ACME Learning Pvt.Ltd, 1st Edition, 2009

C.L.J. : Calcutta Law journal
H.C. : High Court
I.U.C.N. : International Union for Conservation of Nature
PIL : Public Interest Litigation
P.P.P. : Polluter Pays Principle
Raj. : Rajasthan
S.C. : Supreme Court
S.C.C. : Supreme Court Cases
U.N. : United Nations
U.N.C.H.E. : United Nations Commission on Human Environment
W.W.F. : World Wide Fund for Nature

THE PRICE OF POWER GENERATION
(STUDY OF LAND REALLOCATION FOR FLY ASH IN CHHATTISGARH)

-Amit Kumar¹

ABSTRACT

The researcher in this paper is going to discuss the existing scenario of land acquisition and land reallocation for construction of fly ash dam. The paper will focus on the practices taking place in Chhattisgarh. The researcher will try to observe whether they are in accordance with the existing laws and legislation on same topic. Further, there will be a comparison of pros and cons of such reallocation where the highlight will be the degrading environmental conditions in Chhattisgarh. The researcher will give his opinion on this entire issue and will try to give suggestions to improve the situation.

INTRODUCTION

Chhattisgarh is considered as the power hub of our country. Being home to Asia's largest open shaft coal mine, it is obvious that there is abundance of coal in Chhattisgarh. This vicinity to the vital resource, made it economically feasible to establish numerous thermal power plants and many other industries. By beginning of 2016, there were at least 10 thermal power plants in Chhattisgarh.² Out of these 10 power plants, the two power plants namely N.T.P.C. Korba and N.T.P.C. Sipat are considered as super thermal power station and are among the top ten thermal power plants in our country.³ It is true that these power plants are doing good production, they are making good business. They also provide immense employment opportunities and acts as the torch bearers for economic development in these areas.

However, in all these song singings of the 'good' these thermal power plants do, the plight of the local and indigenous people gets unheard. One such cause of the plights is the improper management of waste. The thermal power plants of Chhattisgarh surely do get coal from the mines, but there is one more resource which is needed – that resource is land and reference is not made to the land needed for establishment because that investment is like

¹ Amit Kumar, Year III, B.A.L.L.B. (Hons.), NALSAR University of Law, Hyderabad.

² Envis Centre on Flyash, List of coal based thermal power stations in India up to 2016, <http://cbrienviis.nic.in/Thermal%20Power%20Station%20in%20India%202016.pdf>, (last updated on Dec 9, 2016).

³ *Top Ten Biggest thermal power plants in India*, Power-technology.com, Oct 10, 2013.

sink cost – an investment needed to get the returns. Here, in this paper, the researcher will talk about the land needed to dump harmful waste materials – in specific – fly ash.

Dictionary meaning of fly ash is – *'fine solid particles of ashes, dust, and soot carried out from burning fuel (as coal or oil) by the draft.'*⁴With regard to its impact on human health and environment, fly ash is considered extremely harmful for the health.⁵ Even for environment, fly ash is a threat.⁶ For these and many more reasons, the tribal communities and indigenous people have opposed to creation of fly ash dams and from giving away their land for such construction. But in spite of constant opposition, the government keeps on allotting land for construction of fly ash dams. Also, with time, currently these sites are constructed at very near vicinity of the villages and other residential areas, therefore increasing the threat multiple times.

To understand this situation, in the subsequent part, the researcher will discuss the existing laws with regard to fly ash and its management.

EXISTING LAWS AND LEGISLATION

The Government of India in its notification issued on 4th April 2016, gave certain rules and guidelines on hazardous waste management rules be called the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Interestingly, despite of multiple medical research and studies, he order separated fly ash from category of hazardous waste and kept it in separate class of high volume low effect waste. The only relevant point in that notification with respect to fly ash is that fly ash is mentioned in schedule VI an all the entries of schedule VI are banned from import.⁷

In past, there has been notification giving some more insight on issue of fly ash. The government notification of 1999 gives guidelines for fly ash management. The major aim of the guideline was promote reuse and recycle of fly ash. It made usage of fly ash in brick construction mandatory in areas within 50km radius around a thermal power plant. Further it

⁴ Fly Ash, Merriam-Webster, (October 12, 2016), <http://www.merriam-webster.com/dictionary/fly%20ash>.

⁵ Mark Martin, *Coal Communities Fear 'Fly Ash' Poses Deadly Threat*, CBN News, April 14, 2013.

⁶ Barbara Gottlieb, Steven G. Gilbert, Lisa Gollin Evans, *Coal Ash – The toxic threat to health and environment*, PSR.

⁷ Notification, Ministry of Environment, Forests and Climate Change, Jan 25, 2016.

put a dive steps to promote usage of fly ash.⁸ With subsequent amendments, the radius increased from 50km to 100 km and currently in 2016, the radius is 300km.⁹

ARE EXISTING LAWS EFFICIENT?

To understand this part, we look into the Central Electrical Authority's report submitted in October, 2015.

According to this report, out of 34 power plants which achieved fly ash utilization of 100 % or more, there are only two power plants which are situated in Chhattisgarh. Similarly in range of fly ash utilization from 100-75%, there are two more plants. Remaining all six other plants are in range of utilization below 60%. When we go by numbers, these numbers don't appear very poor. This number appears similar to many other states. But, when we start looking into the amount of unutilized fly ash, the picture turns grave. All the power plants which are in range of utilization below 60% are high capacity power plants. They produce enormous amount of fly ash every day. And their utilization is mostly in range of 30-40%.¹⁰ As a result, out of the 20 million tonnes of fly ash being produced annually, around 70% of quantity remains un-utilized. With time, the cumulated amount of fly ash has reached a dangerous level and its management has turned into a nightmare.

This year, National Green Tribunal asked Chhattisgarh state government to look into the issue and to submit a comprehensive report on fly ash utilization in the state. In it observations, the Centre for Science and environment found that a major reason for under utilization is due to disagreements and lack of consensus between N.T.P.C. and S.E.C.L. The body tried to conduct a meeting along with all the big power plants in the area to look into this matter.

The finding of report also helps in understanding why it is turning difficult for Chhattisgarh to increase fly ash utilization, where other states have performed satisfactorily. First reason is that the power generation in Chhattisgarh is much more than the states which managed to reach sustainable level. As a result, in spite of being third highest fly ash utilising state, it lacks behind based on percentage of unutilized fly ash, Secondly, A major utilization of fly ash is brick industry, and currently, consumption level of bricks in Chhattisgarh is much less

⁸ Notification, Ministry of Environment, Forests and Climate Change, Sept 14, 1999.

⁹ *supra* 6.

¹⁰ *supra* 1.

than the supply – in clear figures – CSE claims that 13 million fly ash brick cans be made whereas, demand is only for 5 million.¹¹

For this reason, after the allotted ash ponds are over their capacity, they all start looking for new places to dump the waste. In 2011, a petition was filed by a resident of Churikala village of Korba, against the allocation of land for deposition of fly ash and subsequent establishment of Vandana Power plant in churikala.¹² Subsequently gram Sabhas were conducted according to Panchayat (Extension to Schedule Areas) Act, 1996.¹³ The villagers opposed this in the gram sabha. But, in spite of opposition, the district collector went ahead and went for land acquisition using his special powers under section 17(1) of Land Acquisition Act of 1984.¹⁴ Even after the construction of that power plant, it is not under function because of lack of site for dumping fly ash.

THE QUESTION OF POLLUTION

As a result of unplanned and hasty promotion of industries and power plants all around, Chhattisgarh suffered from high level of pollution. According to Central Pollution Control Board, 2009, Korba was fifth most critically polluted district of India. And in subsequent years, the condition has not improved. Even the 2014-2015 Annual Report of the Union Ministry of Environment & Forest identified Korba as a critically Polluted area (CPAs).¹⁵ This issue of pollution is not just concerning Korba, but the other cities of states are also heavily polluted and the conditions are not getting any better. In 2005, the Central Pollution Control Board (CPCB) declared Raipur as most polluted City.¹⁶ And even Raipur's track record didn't improve with time and it continued to feature on list of most polluted cities of the country in coming years.¹⁷

In response, government did attempt to take certain steps such as prohibiting old vehicles from running on the roads¹⁸, but these steps are not sufficient to deal with this gigantic issue.

¹¹ Anupam Chakravarty, *MoEFCC revises fly ash notification*, Down To Earth, March 18, 2016.

¹² News Agency, *Power plants insulated from protests, villagers shocked*, The Hindu, February 5, 2011.

¹³ *id.*

¹⁴ Section 17(1), Land Acquisition Act, 1984.

¹⁵ Staff reporter, *Korba ranks third in new critically polluted areas*, The Pioneer, Aug 5, 2015, Raipur.

¹⁶ *Raipur: the most polluted city*, Down to Earth, Oct 15, 2005.

¹⁷ Rashmi Droilal, *Chhattisgarh Capital Raipur 7th most polluted in the World: WHO*, The Times of India, May 13, 2016.

¹⁸ PTI, *Chhattisgarh govt. To ban 10 yr old commercial vehicles*, The Hindu, June 24, 2016.

CONCLUSION

The above figures reveal that there is something lacking in these laws and guidelines which lead to such a situation. The notification only provides guidelines for utilization, but there is absence of any penalty or punishment on the industries and power plant in case of non utilization. In such a situation, the law does not have enough strength to control the situation. As a result, the indigenous tribal and villagers are being forced to give up their land in order to make space for fly ash dams.

Further, according to the notifications on utilization of fly ash, the government along with these power plants must establish their own brick making units which utilize fly ash. Currently, the provisions are only to make fly ash available to third party.

Also, the state government must restrict itself from permitting set up of any more power plants. Chhattisgarh is a power sufficient state. Hence it is not a good step to establish more power plants when the level of pollution is already at worst level possible. Therefore it is not fair to make the environment even worse for the citizens of the state by establishing more power plants because economic development on price of hazard for entire population of state is not a good bargain.

Rohit Chaudhary v. Union of India & Ors.¹ – An analysis

-Amrita Jain²

“Tolerating infringement of law is worse than not enacting law at all.”

Introduction

The application filed by a resident of Golaghat district, Assam brings to light the unregulated quarrying and mining activities permitted in and around the area of ‘Kaziranga National Park.’ The case highlights the contempt of law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country’s need for industrialization. Quest of profit has extremely drained them of any feeling for the fellow living beings- for that matter, for anything else. And the law seems to have been helpless. It is such instance, which has led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them - particularly, if they are men with means.

In this case, a resident of village Bokakhat is concerned about the ecology of the area and future of the Indian Rhino, Elephant and wide species of flora and fauna available in the Kaziranga National Park. The National Park harbours the population of the Indian One Horned Rhinoceros and that its survival is critically dependent on the protection of the boundaries of the Kaziranga National Park as well as the adjoining areas including the Karbi-Anglong hills, from pollution. The resident has approached the National Green Tribunal invoking jurisdiction under Section 14(1) of the National Green Tribunal Act, 2010, inter-alia, praying for appropriate directions to the Authorities to safe guard the National Park and its ecology. The unregulated quarrying and mining activities permitted in and around the area of ‘Kaziranga National Park’, not only threatens the Eco-Sensitive Zone, but also the survival and existence of wildlife species.

Analysis

Article 48A (added after 42nd Amendment, 1976) of the Indian Constitution states that

“The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.”

¹ Application No. 38/2011, National Green Tribunal.

² 4th year student of School of Law, Christ University, Bangalore.

Article 51A (g) entitled as 'Fundamental Duties' further imposes a similar responsibility on every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature.

It is thus a constitutional mandate to protect and improve the environment. Further in *Dehradun Quarry's case*³, the Supreme Court entertained complaints alleging that the operations of lime stone quarries in the Mussoorie-Dehradun region resulted in degradation of the environment affecting the fragile ecosystems in the area. In this case, the Supreme Court moving under Article 32 ordered the closure of some of these quarries on the ground that these were upsetting the ecological balance. Though, the judgment did not make a reference to Article 21 but involving of jurisdiction by the court under Article 32 presupposed the violation of Right to life guaranteed under Article 21

Further, through, Environment (Protection) Act, 1986, the power has been conferred upon the Central Government for laying down the standards for the quality of air, water and soil. It is hoped that this will ensure uniformity of standards throughout the country. However, if any issue or dispute arises then of course the constitution has given enough provisions to judiciary under which it can take substantial step.

It is thus reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. The slow poisoning of the environment caused by environmental pollution and spoilation should be regarded as amounting to violation of Article 21 of the Constitution.

Continuous infringement of law and tolerance of violations of law, for the reasons good, bad or indifferent, not only renders legal provisions nugatory but also such tolerance by the Enforcement Authorities encourages lawlessness which cannot be tolerated by any civilised society. And in the present case, non implementation of the notifications both by the Central Government as well as State Government of Assam speaks volumes with regard to their callousness and apathy in protection of ecology of Kaziranga National Park which resulted in causing pollution thereby damaging the environment as well as ecology and eco-sensitive zone.

³ *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*, 1985 SCR (3) 169.

It is well settled that pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages for restoration of environment and ecology.⁴ And thus, the Court, in the issue in hand, had ordered to pay damages for restoring the environment.

When a law is enacted containing some provisions which prohibits certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. Thus, it is concluded that the Court has taken active steps to deal with the situation which has caused immense adverse impact on the environment, wildlife and ecology

⁴ *M.C. Mehta v. Kamalnath*, 1997(1) SCC 388.

HISTORY AND JURISPRUDENTIAL PERSPECTIVE ON ANIMAL SACRIFICE IN INDIA

Minakshi Goswami (LL.M.),
National Law University, Assam.

1. Introduction

Man, though, emphatically the most evolved species of this world have been cruel towards the animals since ages. Animals too have the reason for their own existence. They were not created for us to enjoy, eat or use. But quite often we do treat animals cruelly. Humans and animals share a close bond and we depend on animals for most of our daily affairs. We eat animals for food, wear animal skins for clothes, own animals as pets, use animals for recreation, and experiment on animals to test drugs and consumer products.¹ The history of civilization is closely associated with domestic animals. The human-animal relationship in fact has its positive impacts. Research has shown that pet owners are generally more cheerful than non-pet owners, and they don't suffer nearly the same rates of depression or other mental disorders.² India is a nation of diverse traditions and cultural beliefs. Superstition in India is a deep rooted social evil. Animal sacrifice is an insane practice by human beings. Animal Sacrifice has gone hand in hand with traditional and old religions. Every year millions of animals meet their dark destiny in the name of religious ceremony.³ In Kamakhya temple wide number of duck, pigeon, goat etc. are sacrificed every year.⁴ It is strange that in a progressively developing country like India, the practice of sacrificing animals for religious reasons, in the hope that doing so will please the deities and grant a person's wish is still continuing.⁵

2. HISTORICAL PERSPECTIVE

The *Ashvamedha Yagya*, one of the most important royal rituals of Vedic religion, is a great example of animal sacrifices prevalent during that period. The *Ashvamedha*

1. *World Animal Day: 5 ways Animals Enhance Our Lives*, Animal Health Care P.C., available at <http://animalhealthcarepc.com/world-animal-day-5-ways-animals-enhance-our-lives/>, last accessed on July 5th, 2016.

2. *Law for other Species*, Lawyers Update, available at <http://lawyersupdate.co.in/LU/6/1161.asp>, last accessed on April 29th, 2015.

3. Harinath Sharma Doloi, *Asamat Sakti-Sadhana Aru Sakta Sahitya*, Padmapriya Library, 1st ed. 1983, p. 95.

4. *'Bali' (Animal Sacrifice) in 21st Century India: the Law (video)*, Jaagruti: An initiative to Inform, Share, Inspire, available at <http://jaagruti.org/2010/06/11/bali-animal-sacrifice-in-21st-century-india/>, last accessed on April 29th, 2016.

could only be conducted by a king. This ritual was performed mainly for the acquisition of power and glory, the sovereignty over neighbouring provinces, and for the general prosperity of the kingdom.⁶ The king performing the *Ashvamedha Yajna* will let a horse free to go anywhere and all the lands that the horse covers would be considered as an integral part of his kingdom. If any king/person stops the horse or refuse to accept the kingship of the king, performing the yajna, need to fight⁷ for that. It was also believed that **one who performs 100 Asvamedha yagyas obtains the position of Indra** in heaven, as Indra was the King of Gods, and was the king of entire Swarga. Hence anyone who performs the *Ashwamedh yajna* 100 times will naturally cover all the earth, and hence will be considered as Indra, as he would be the only King of the Kings on the Earth. So *Indra* tries to create hindrances⁸ in such performances.⁹ *Ashwamedha Yajna* was also done¹⁰ if anyone thinks he had committed any big Mistake or sin in his life and now want to do the Penance for that.¹¹

3. JURISPRUDENTIAL THEORIES APPLICABLE TO THE SUBJECT OF ANIMAL SACRIFICE

3.1 The Divine Command Theory

As per the 'divine command theory' things are right and wrong because of what God commands or forbids.¹² One who accepts the divine command theory cannot question the commands of the deity. The supporters of this theory do not categorise acts as 'good' or 'bad'; but blindly obeys whatever is propounded by

5. Asamiya Biswakosh (Pratham Khanda), Satish Bhattacharyya Secretary Publication Board, Assam, Guwahati, 3rd ed. 1990, pp. 243-244.

6. For example Luv-Kush fought against the army of Lord Rama.

7. One example is the Indra's stealing of King Prthu's horse on his final horse sacrifice. Also, Bali, grandson of Prahlad, tried to perform 100 Aswamedha *yanjas* after which he would have been the king of gods. So Lord Vishnu in the Vaman incarnation hindered his completion of 100 Aswamedha *yanjas* by taking away everything from him.

8. *What is the Significance of Ashwamedha Yajna*, available at <http://hinduism.stackexchange.com/questions/619/what-is-the-significance-of-ashwamedha-yajna>, last accessed on May 3rd, 2016.

9. Lord Rama has done the Ashwamedha yajna to do the Penance for killing a woman (Srihattya of Tarka) and a Brahmin (Bramhahatya) of Ravana.

10. *What is the Significance of Ashwamedha Yajna*, available at <http://hinduism.stackexchange.com/questions/619/what-is-the-significance-of-ashwamedha-yajna>, last accessed on May 3rd, 2016.

11. *God and Morality*, available at http://www.terpconnect.umd.edu/~stairs/papers/God_and_Morality.pdf, last accessed on May 3rd, 2016.

god without questioning its morality. Under this theory rape, child molestation, lies, theft or slaughtering can be good if it is what God commands. Therefore, under the command theory of divinity animal and human sacrifice in the name of religion can be justified.¹³

3.2 Theory of Sovereignty

The theory of Sovereignty propounded by Austin views sovereignty as an essential element of the state without which the state cannot exist. The Sovereign, as per this theory, is not bound to obey anyone's order. His will is supreme. The commands of the sovereign are to be obeyed without any question of right or wrong, just or unjust.¹⁴ As per this theory, the person or group having the authority to control a large group of people should decide what should or should not be done. In our society religious leaders can be regarded as sovereign as they are obeyed by a large majority of the population. Religious leaders also order or advice people to sacrifice animals in the name of deities to please them for luck or fortune. As religious leaders are obeyed by a lot majority of the population and they be considered as sovereign; whatever they orders is right and there is no point in people questioning such an order. Thus, the practice of animal sacrifice can be linked with Austin's theory of Sovereignty.¹⁵

12. *Divine Command Theory and Natural Law Theory*, available at http://www2.sunysuffolk.edu/pecorip/scccweb/INTRO_TEXT/Chapter%208%20Ethics/Natural_Law_Theory.htm, last accessed on June 13th, 2016.

13. *Sovereignty*, available at <https://ballbandoutnotes.wordpress.com/tag/austins-theory-of-sovereignty-monistic-view/>, last accessed on May 14th, 2016.

14. Harsh Bajpai, *Is sacrifice of Animals justified in the name of Religion?*, available at <http://careertoran.com/is-sacrifice-of-animals-justified-in-the-name-of-religion/>, last accessed on July 4th, 2016.