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HUMAN RIGHTS, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: A CRITICAL ANALYSIS OF ENVIRONMENTAL LAWS IN INDIA

~Farhan Siddiqui

ABSTRACT

Consideration of environmental protection as a human right is among the most significant changes in modern constitutional and international law. In the last 50 years, environmental degradation has been more and more interpreted as the direct challenge to life, dignity, equality and intergenerational justice, as well as the ecological crisis. Judicial interpretation has played the biggest role in effecting this transformation in India, instead of a shortcut through a constitutional amendment that is done textually. The expansive interpretation of the clause of Article 21 of the Constitution of India by the Supreme Court has incorporated the protection of the environment in the right to life and liberty of the individual.

At the same time, international environmental instruments that started with the Stockholm declaration, followed by Rio declaration on environment and development and the final one, the Paris agreement have affected the environment governance system in India. In spite of this normative change, lack of implementation, fragility of institutions, extractive development policy, and a lack of climate governance still hampered environmental justice in India.

This paper is a critical analysis of the connection of human rights, sustainable development and the environmental law in the Indian constitutional framework. The article utilizes a case study of the mining operation in the Bailadila Range through the analysis of the doctrines, statutory analysis and a case study to argue that the environmental constitutionalism in India is normative yet structurally weak. India must undertake institutional reform, participatory

environmental democracy and rights based climate law instead of judicial activism to achieve sustainable development.

Keywords: Environmental Constitutionalism, Right to Environment, Sustainable Development, Climate Justice, Article 21, Environmental Governance.

1. INTRODUCTION

One of the topical issues that are facing the constitutional democracies of the twenty-first century is the problem of environmental degradation. Climate change, loss of biodiversity, water crisis and air pollution are not only very threatening to the ecological systems but also the achievement of basic human rights. The evolution of environmental protection as a regulatory issue to being a right-based necessity can be considered a turning point in the history of legal development in the world.

The first explicit definition of the environment-human rights nexus came with the *Stockholm Conference* held in 1972 into which it is argued that environmental quality is the key to enjoyment of the basic human rights.¹ This has marked the shift in the traditional development paradigm where environmental protection was perceived as a secondary issue to economic growth. Twenty years after the *Rio Declaration* introduced sustainable development as the key guiding principle of reconciling environmental preservation and developmental goals, Principle 1 of the Rio Declaration made it clear that the human being is the central element of the concept of sustainable production, therefore making environmental protection a human-based concept.²

The constitutional order of India did not originally provide explicit rights to the environment. But, with an interpretative innovation, the Supreme Court of India made Article 2³ a potent tool of environmental protection. In *Subhash Kumar v. State of Bihar*,⁴ The Supreme court, in this case, judged that the right to pollution-free water, as well as air, was a part of the right to life and therefore pollution of water and air was a crime against constitutional rights.⁵ Subsequently, in *M.C. Mehta v. Union of India*, The Court formulated the doctrine of absolute

¹Stockholm Declaration on the Human Environment, princ. 1, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

²Rio Declaration on Environment and Development, princ. 1, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (Aug. 12, 1992).

³INDIA CONST. art. 21.

⁴Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598 (India).

⁵Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104.

liability in the, which held a firm responsibility on the hazardous industries towards environmental damages.⁶

These judgments were not single actions but of a larger judicial trend that had been spreading public interest litigation as a system of environmental justice. The active attitude of the Court was an indication of administrative inertia and weakness of regulation. However, institutional balance, democratic legitimacy and long-term viability of environmental governance are also pertinent questions that can be posed in reliance on judicial activism.

India is still struggling with intensive climatic crises in spite of the progressive jurisprudence. There is regular air contamination that supersedes the acceptable levels in big cities. Industrial effluents pollute River systems. Mineral mining in the central region of India has escalated ecological destruction and displacement of the natives. Given that climate change intensifies vulnerabilities, there are more severe cases as to those sensitive economically. The normative environmental constitutionalism incompatible with extractive economic policy is the manifestation of contradiction which predetermines the necessity of structural reform.

According to the argument in this article, the environmental legal framework in India presupposes a paradox. On the positive side, the judicial system has incorporated environmental protection in the basic rights model to conform domestic law to the international environmental standards. Conversely, the weaknesses of enforcing laws, weakening regulations, frictions between environmental Federalism, and development-based policy decisions hamper the transformative capacity of environmental constitutionalism.

The article has gone ahead to discuss the conceptual background of environmental constitutionalism which has been followed by broad literature review, and analysis of constitutional and statutory provisions, judicial doctrines and a case study of a mining region named Bailadila. It finally sees its way out by suggesting a rights-based climate government model in India.

2. HUMAN RIGHTS AND ENVIRONMENTAL CONSTITUTIONALISM

The inclusion of environmental protection into the language of human rights indicates the changing vision of the concept of the indivisibility of rights. The right to life, health, livelihood, housing, culture and equality are directly affected by environmental damage. Environmental protection, therefore, does not just exist as an element of regulatory compliance but is the precondition of realization of human dignity.

⁶ M.C. Mehta v. Union of India (Oleum Gas Leak Case), (1987) 1 S.C.C. 395 (India).

Environmental constitutionalism denotes the integration of environmental standards in the constitutions. Environmental rights are now acknowledged as explicit or implicit in over 150 constitutions world over. The model of India is a form of interpretative environmental constitutionalism where the judicial interpretation as opposed to textual amendment has reinforced environmental protection to the status of constitutional protection.

In *Vellore Citizens Welfare Forum case*, The Supreme Court brought the precautionary principle and the polluter pays principle into Indian environmental law,⁷ and established an international environmental norm in domestic jurisprudence. Sustainable development was brought in as a moderate doctrine that aimed at bringing ecological conservation and economic growth into balance.

But sustainable development is disagreed upon conceptually. Critics maintain that the doctrine usually conceals distributive inequalities because they present ecological trade-offs in the form of neutral balancing processes. As an actual experience, development projects often focus on monetary benefits at the expense of the environment, especially in places that are occupied by marginalized groups.

The application of intergenerational equity also makes the issue of environmental governance cumbersome. The current generations have the responsibility of ensuring that ecological integrity is maintained by new generations. Climate change puts a stronger emphasis on this ethical aspect that the states should establish future-oriented regulatory frameworks.

Environmental constitutionalism in India should be assessed not according to the doctrines; however, according to distributive justice, rights of indigenous people, and responsibility to climate. These normative commitments are analyzed in the following sections with respect to the alignment of statutory/ institutional framework of India.

3. REVIEW OF LITERATURE

The abstract connection of human rights with the protection of the environment has been widely studied by the global and Indian literature. The early work of Christopher D. Stone on environmental rights has raised the question of whether nature could have a legal personality and this and similar work helped to stimulate the rights based environmental discourse, which regarded environmental degradation as a direct attack on essential human rights, including that of life, health and livelihood.⁸

⁷ *Vellore A' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647 (India).

⁸ Christopher D. Stone, *Should Trees Have Standing?-Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

The incorporation of principles of precautionary principle and the polluter pays principle into Indian environmental jurisprudence has been typified by the depiction of international environmental law which has been shown to be largely weak in implementation into the systemic levels of administrative accountability.⁹

As far as sustainable development is concerned, the literature is aware that it is an ambiguous term. Although the term became popular after the Brundtland Report of 1987,¹⁰ Critics claim that sustainable development is frequently used as a cover to justify environmentally unsustainable projects under the banner of sustainable development, even when it is not explicitly spelled out in a judgement.¹¹

In-order to predict the value of the Forest Rights Act, 2006 and the Panchayats (Extension to Scheduled Areas) Act, 1996 in preserving the autonomy of the indigenous, recent work on tribal rights and environmental governance has anticipated the presence of procedural inefficiencies in securing free, prior and informed consent on mining projects.¹² The Bailadila controversy is no exception in observing the endemic challenges in ensuring procedural efficiency in securing the indigenous autonomy, especially with regard to Gram Sabha consent and forest clear.¹³

4. THE CONSTITUTIONAL FRAMEWORK

The original provisions on environmental rights were not set out in the Indian Constitution. Nonetheless, Article 21, under judicial expansion, has been expanded to include environmental protection. In *Maneka Gandhi v. Union of India*,¹⁴ The Supreme Court, the Supreme Court further extended the meaning of the right to life as not only the existence of the animal, but this opened the way to environmental rights jurisprudence. Later on, the case of *Subhash Kumar v. The State of Bihar*, The right to the right of a pollution-free environment was acknowledged by the Court as part of the Articles 21 .¹⁵

⁹ Philippe Sands & Jacqueline Peel, *Principles of International Environmental Law* 212–15 (4th ed. 2018).

¹⁰ WORLD COMM'N ON ENV'T & DEV., *OUR COMMON FUTURE* 43 (1987).

¹¹ Upendra Baxi, The "Environment" as a Human Right: Some Reflections on the Indian Experience, 2 J. HUM. RTS. & ENV'T 23 (2011).

¹² Usha Ramanathan, *India's Forest Rights Act: A Critical Appraisal*, 45 ECON. & POL. WKLY. 36 (2010); N.C. Saxena, *Report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India* (Ministry of Tribal Affairs 2014).

¹³ Ministry of Environment, Forest and Climate Change, Forest Clearance for Bailadila Iron Ore Mine (Deposit No. 13), Dantewada District, Chhattisgarh (Stage II Clearance, 2021); see also Supriya Sharma, In Chhattisgarh's Bailadila, Tribals Oppose NMDC Mining Project Citing Forest Rights Act Violations, *The Wire* (June 2019).

¹⁴ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

¹⁵ *Supra note 4*.

The case law in *M.C. Mehta v. The Union of India* (Oleum Gas Leak Case) has laid down the principle of absolute liability of hazardous industries and enhanced the duties of the environment.¹⁶ The precautionary principle and polluter pays principle would subsequently be enshrined in the Indian law by the Court in the case of Vellore Citizens Welfare Forum¹⁷ possessing that they are an integral part of Articles 21 and 48A. The Article 48A(directive principle of State Policy)¹⁸ obliges the State to preserve and enhance the environment and the Article 51A(g) makes it an essential obligation of citizens to preserve the natural environment.¹⁹

This approach to constitutional harmonization is known as the integration of the Directive Principles and Fundamental Rights. The case, *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,²⁰ The Court put more emphasis on environmental priorities rather than on economic concerns by directing to shut down limestone quarries. All these conclusions prove the fact that the issue of environmental protection is not the fringe but the core of constitutional government nowadays.

Nonetheless, there have also been concerns on the aspect of separation of powers with the growth of Article 21. Opponents note that judicial lawmaking can usurp legislative roles, especially in technical environmental countries where the administrative enforcement function lacks effectiveness.

5. ECONOMIC ENVIRONMENTAL FRAMEWORK IN INDIA

The environmental regulatory regime in India includes several laws, which have been passed mainly following the Stockholm Conference. It was in the Water (Prevention and Control of Pollution) Act, 1974 that toiled pollution control boards and pollution control mechanisms.²¹ The Air (Prevention and Control of Pollution) act, 1981, which closely followed the Bhopal gas disaster, extended these controls to air pollution.²² The Environment (Protection) act, 1986 is an umbrella legislation that gives the central government the power to regulate the standards of the environment.²³

¹⁶ *Supra* note 6.

¹⁷ *Supra* note 7.

¹⁸ INDIA CONST. art. 48A.

¹⁹ INDIA CONST. art. 51A(g).

²⁰ *Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh*, 1985 Supp. S.C.C. 79 (India).

²¹ The Water (Prevention and Control of Pollution) Act, 1974, No. 6, Acts of Parliament, 1974 (India).

²² The Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India).

²³ The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

The Forest (Conservation) Act, 1980 limits transfer of forest land to non-forest purposes without central sanction,²⁴ The scheduled tribes act in 2006 governs community forest rights²⁵ and the prior approval of the Gram sabha before land is diverted, and lastly, the PESA Act, 1996²⁶ which provides self-governance in scheduled areas has also been enacted.

These laws provide a full-fledged framework, although implementation is still a problem. Public hearings and the procedures of environmental clearance that come under the Environmental Impact Assessment (EIA)²⁷ notifications in the environment protection act, are under scrutiny though some procedural dilution and post-facto clearances have been criticized.

6. INTERNATIONAL ENVIRONMENTAL LAW AND ITS IMPACT

Indian jurisprudence has been influenced by international environmental law to a great extent. The Stockholm Declaration of 1972²⁸ saw the right to a quality environment where life may be lived with dignity and well being, The precaution and public participation, which was reinforced by the Rio Declaration of 1992, despite being not a binding law, has been judicially called upon in Indian courts.²⁹

The Supreme Court clearly applied the precautionary principle and the principle of polluter pays principle of international law into local law in Vellore Citizens Welfare Forum. Parliament is allowed under Article 253 of the Constitution to enforce international treaties which further strengthens the normative integration.³⁰ This global influence is demonstrated in the recognition of the principle of sustainable development as the balancing principle.

7. SUSTAINABLE DEVELOPMENT, THE JUDICIAL INTERVENTION, AND AMBIGUITY

Sustainable development based in the Brundtland Report as development in a manner that fulfils the current needs without affecting the future generations,³¹ has been emerging as a guideline constitutional value. In *Narmada Bachao Andolan v. Union of India*, Consenting to

²⁴ The Forest (Conservation) Act, 1980, No. 69, Acts of Parliament (India).

²⁵ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 (India).

²⁶ The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996, No. 40, Acts of Parliament, 1996 (India).

²⁷ Environment Impact Assessment Notification, G.S.R. 1533(E), Gazette of India, Extraordinary, pt. II, § 3(ii) (Sept. 14, 2006) (India).

²⁸ See Stockholm Declaration, *supra* note 1, princ. 1.

²⁹ See Rio Declaration, *supra* note 2, princ. 1.

³⁰ INDIA CONST. art. 253.

³¹ WORLD COMM'N ON ENV'T & DEV., *OUR COMMON FUTURE*, *supra* note 10.

the fact that sustainable development is a balancing doctrine, SC held the Sardar Sarovar Dam as fair.³² Critics however, hold the opinion that these compromises tend to favor economic development at the expense of human rights and the environment.

Sustainable development can be interpreted differently owing to its lack of clarity. Although intergenerational equity is understood in courts, very often, it is exposed to executive discretion in practice. Such tension presents itself in mining and infrastructural development in sensitive and tribal economically sensitive zones.

8. BAILADILA MINING PROJECT CASE STUDY IN CHHATTISGARH

Some of the richest iron ore deposits in India are found in the Dantewada area of the Chhattisgarh state. The primary mining activity involves work of the *National Mineral Development Corporation (NMDC)*, a government corporation, on the expansion and extraction of mining blocks in the area of Bailadila, which has received certain serious resistance by the Adivasi communities, environmental groups and civil societies.

This has been controversial as the suggestion to mine Deposit 13 within the Bailadila range which was deemed to be sacred as well as environmentally sensitive by the local tribal communities divided the debate according to the forecasts under PESA and FRA. The Bailadila case raises the issue of lack of practice of the free, prior and informed consent principles. In as much as statutory requirements satisfy community consultation, procedural adherence might be formalistic but not material. Other issues surrounding the EIA process environmental clearances which are granted on the process are also criticized to lack sufficient evaluation of ecological cumulative effects.³³ There is also concern over the loss of biodiversity, water pollution and cultural disruption among the project.

It has a constitutional aspect of issue of the Bailadila controversy, involving Article 21³⁴ and Article 244,³⁵ and protection of Scheduled Areas in the Fifth Schedule. It challenges the decorum integrity of federalism of environment and tribal sovereignty. The case describes how environmental governance may develop into an arena of struggle between development promoted by the state and rights-oriented opposition.

9. CRITICAL EVALUATION

³² Narmada Bachao Andolan v. Union of India, (2000) 10 S.C.C. 664 (India).

³³ Ministry of Environment, Forest and Climate Change, Government of India, Environmental Clearance for NMDC Bailadila Deposit-13 (South Block Mining Project), F. No. J-11015/190/2007-IA.II (M) (2020) (India).

³⁴ INDIA CONST. art. 21.

³⁵ INDIA CONST. art. 244

The Indian environmental system exhibits institutional weakness but is doctrinally strong. Environmental rights have been extended through judicial activism but the use of courts is a sign of failures in regulation. Sustainable development as a concept is normatively attractive but it has no clear definitions of how to strike a balance between conflicting interests.

The Bailadila case brings out the structural problems of ensuring meaningful participation of the indigenous communities. Getting forest rights in the law does not necessarily result in empowerment in the case of no clear implementation. In addition, there should be more scientific rigor and autonomy in environmental clearance mechanisms.

Enhancement of environmental governance requires institutional change, accountability and participation. The National Green Tribunal has helped in the specialized adjudication,³⁶ but the enforcement capacity needs to be increased. The inclusion of climate change considerations in domestic environmental law is also a must.

10. CONCLUSION

The inter-relationship between human rights, environmental protection and sustainable development in India seems a revolution in constitutionalism history. The concept of Article 21 jurisprudence has incorporated the rights to the environment into the doctrine of fundamental rights. The law safeguards structure and the international environmental principles to guide judicial decisions. Nonetheless, the real-life application is still facing the issue of challenges based on the priorities of the development and administrative discretion.

The Bailadila mining scandal provides a good example of the ongoing conflict between economic development and environmental justice. It proves the point that legal systems, as strong as they are written on paper, need the faithfulness of their implementation in order to live up to the constitutional aspirations. Sustainable development should cease to be rhetoric scrutiny to be operational, based on equity among generations coupled with environmental responsibility and engagement.

Conclusively, growth-rights harmony, empowerment of vulnerable populations and institutional responsibility are ways through which the future of environmental justice in India lies. It is then that the constitutional notion of dignity, equality and balance with nature can be realized.

³⁶ National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).