

ISSN 2394-628

CHHATTISGARH LAW JOURNAL



An International Bi Annual Refereed/Peer Reviewed Research Journal

VOL. VIII

ISSUE I

JAN - JUNE 2022



CHHATTISGARH LAW JOURNAL



Chief Editor
Dr. Suresh Mani Tripathi
Assistant Professor (Law)
Chhattisgarh Academy of Administration, Raipur
Chhattisgarh

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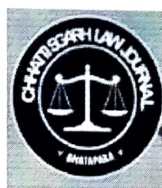
ISSN 2394-5281

Impact Factor (IIJIF):2.142

VOLUME VIII

ISSUE-I

2022



**Indexed in
International Innovative Journal Impact Factor(IIJIF)
&
Directory of Research Journals Indexing(DRJI)**

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CHHATTISGARH LAW JOURNAL
An International Bi-annual Peer Reviewed Research Journal

ISSN 2394-5281

Impact Factor-2.142

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This is to certify that the all research papers of *International Bi-annual Peer Reviewed Research Journal, Chhattisgarh Law Journal*, ISSN 2394-5281 are published by **Peer-Review Process**. This Journal is Indexed in International Innovative Journal Impact Factor(IIJIF) & Directory of Research Journals Indexing(DRJI).



Editor in Chief

Suresh Mani Tripathi
Dr. Suresh Mani Tripathi
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India.

CHHATTISGARH LAW JOURNAL (CLJ) ISSN 2394-5281
An International Bi-annual Refereed/ Peer Reviewed Research Journal

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Sustainable Development & Role of Supreme Court in India

Piyush Kumar Trivedi* & Gyanendra Pratap Singh •

Abstract

Large-scale urbanization, industrialization, and accompanying environmental alteration, as well as their impact on biodiversity, have posed a threat to human life in recent years, necessitating a responsible approach to industrial development. It is achievable thanks to long-term development. Environmental and developmental concerns must be balanced in order for sustainable growth to occur. Through various judicial tools and techniques, the Indian Supreme Court has been proactive in integrating sustainable development principles from international environmental law into Indian law. This article examines the concept of sustainable development and the Indian Supreme Court's role in creating sustainability standards for the government and development advocates.

Keywords: Environmental concerns, Supreme Court, Sustainable development, Common people.

INTRODUCTION: We live in a world full of contradictions today. On the one side, we have highly developed countries, and on the other, we have countries where people lack access to even the most basic essentials of existence. As a result, for people who lack even the most basic essentials of existence, the right to development has become increasingly important in recent years. However, most states' development processes require excessive consumption of energy and natural resources, resulting in environmental damage¹. Large-scale urbanization, industrialization, and accompanying environmental change, as well as their impact on biodiversity, have posed a challenge to human life in recent years, threatening basic necessities, recreation, and ecological functions. It is obvious that pollution from many sources, notably industries, has a negative impact on the ecosystem that is irreversible in nature, resulting in the extinction of species and the loss of valuable genetic resources. For many growing economies, such as India, this is a critical time to find a balance between industrial expansion and the physical environment in order to minimise pollution levels². As a result, industrial development cannot be pursued without respect for environmental conservation. Unfortunately, many companies reliant on environmental resources have sprouted in developing countries, jeopardizing the natural resource base. What is required is a responsible approach to industrial development. It is feasible due to long-term development.

CONCEPT OF SUSTAINABLE DEVELOPMENT: At the United Nations Conference on Human Environment in Stockholm in 1972, the necessity of environmental protection in the process of industrial development was recognized for the first time globally. Another watershed moment in this regard was the 1992 Rio Conference in Brazil, which gave tangible structure to the notion of sustainable development, which entails a balance of environmental and developmental concerns. The Rio Declaration was approved at this conference. It outlines the key characteristics of sustainable development, including the intergenerational equity principle, the polluter pays principle, the precautionary principle, poverty eradication, international cooperation, natural resource conservation, and the integration of environment and development. According to the Brundtland Commission Report, sustainable development is defined as development that meets current demands without jeopardizing future generations' ability to satisfy their own needs³. In environmental and development discourse, the court frequently applies the following aspects of sustainable development.

(a) **The principle of intergenerational equity:** It argues for the current generation's use of natural resources to be reasonable or moderate so that future generations' ability to meet their economic demands is not harmed. This idea puts on the current generation a moral obligation to leave a safer planet to future generations. Intergenerational equity, as well as

* Assistant Professor: Law (Maa Vaishnavo Devi Law College, Lucknow U.P.)

• Research Scholar (Central University Of Punjab, Centre For Legal Studies)

1 Agarwal Arvind, 'Globalization, Development and Environment degradation: A Human Rights Perspective' in Suresh C. Shastri ed., *Human Rights, Development and Environmental Law – An Anthology*, Bharat Law Publications (2007), pp. 86-100 at p. 87

2 Singh Shailendra, Puja Jain and Abhay Kumar, 'Impact of Industrialization and Environmental Pollution', *The Indian Forester* Vol.135 Issue 9 September, 2009 available at <www.indianforester.co.in/>(Last visited on December 21st 2021)

3 WCED Report 'Our Common Future' (1987)

intragenerational equity, is widely acknowledged. Although the notion is simple to grasp, putting it into practise can be tricky.

(b) **Polluter pays principle:** The OECD's efforts gave birth to this principle. It holds polluted industries fully responsible for the costs of remediation. The courts must consider the industry's financial capacity while adopting this concept, and they may impose an exemplary pollution fine at their discretion. This approach forces businesses to be more environmentally conscious while still increasing revenues. Although the judiciary has adopted this approach, it comes with a number of practical challenges. It makes no distinction between who is a polluter and who is not. Furthermore, it is unclear whether the polluter should pay for the damage he or she has caused as well as the cost of restoring the ecosystem to its pre-pollution state. What is the duration of this liability?⁴

(c) **Precautionary Principle:** This concept states that mere scientific uncertainty cannot be used to postpone environmental protection decisions. This principle states that where there is scientific doubt about an industry's dangerous impacts on the environment, it is preferable to err on the side of environmental protection. Although admirable, this notion is ambiguous and could lead to a breach of the fundamental right to corporate freedom. An industry can only be barred from establishing itself on the basis of scientific certainty; otherwise, the constitutional guarantee will be broken. The use of these concepts by judges in environmental cases is understandable, but they should be scrutinised as closely as possible on the basis of scientific precision and accuracy. Otherwise, the adoption of such principles could result in a major judicial error.

ENVIRONMENTAL IMPACT ASSESSMENT AS A TOOL OF SUSTAINABLE DEVELOPMENT: In order to accomplish the goal of sustainable development, the Rio Declaration encourages the use of environmental impact assessments (EIA). EIA is a multidisciplinary and highly scientific assessment that predicts the potential environmental effects of a development project with greater precision and accuracy. Following receipt of the EIA report, it will be possible to determine whether the development project should go ahead and, if so, whether the project's environmental implications need to be mitigated. Developmental initiatives involving sectors that are likely to have a negative impact on the environment can be avoided using the information acquired from the EIA report. The Environmental Impact Assessment (EIA) was established by the National Environmental Policy Act of 1969 in the United States. The Rio Declaration of 1992 urged member states to conduct environmental impact assessments (EIAs) as a national tool for proposed activities that are likely to have a significant negative impact on the environment.⁵ India had previously used a discretionary EIA model, but after the Bhopal gas tragedy, it shifted to a mandated model. By a 1994 notification, the Ministry of Environment and Forests (MOE&F) of the Government of India made EIA necessary for a total of 29 types of development projects, including industries. However, this notification has undergone significant changes, resulting in a weakening of the EIA process anticipated by the 1994 Notification. Furthermore, under the 2006 Notification, some projects now require approval from the State Environmental Impact Assessment Authority. This is an unpleasant trip from a strong form of sustainability to a weak version. Furthermore, stakeholder participation has become extremely limited, with only residents of the region where the proposed project would be located being allowed to attend public hearings. As a result, more people will be able to participate in the public hearing. Despite a few conceptual issues, sustainable development is the only possible option if we are to fulfil development goals while causing the least amount of environmental damage. If we keep on depleting present natural resources in careless manner we will put our children and grandkids in tremendous jeopardy.

JUDICIAL STAND ON INDUSTRIAL DEVELOPMENT AND ENVIRONMENTAL PROTECTION IN INDIA: Dealing with environmental and developmental difficulties is far more challenging for the courts than dealing with other legal matters. It is due to the extremely complex nature of the problems involved in such litigation. Courts must be equipped with expert understanding of environmental and socioeconomic issues, as well as the ability to apply relevant evidence and procedure standards. When dealing with pollution-related industrial lawsuits, the courts must have specialist understanding

4 Fisher Elizabeth, Bettina Lange and Eloise Scotford, 'Environmental Law: Text Cases and Materials', (2012), p. 413
5 5 Principle 17

of water and air pollution, effluent treatment plants, chemical processes, and other related topics. The formation of the National Green Tribunal under 2010 legislation is a significant step because it will hear cases involving industrial pollution and environmental challenges. The Indian Supreme Court deserves praise for hastening the establishment of the National Green Tribunal in India. In numerous cases, the Indian Supreme Court has had to cope with competing industrial development and environmental challenges. The Court has already stated that it is unable to deal with complex environmental issues. Nonetheless, the Court has come up with ground-breaking methods for environmental preservation while ensuring that the development process is not slowed excessively.

The Court has used various judicial instruments and tactics to incorporate sustainable development ideas from international environmental law into Indian law without going beyond its legal authority. The following are some of the cases that will be discussed: The Supreme Court established the absolute liability principle in *M.C. Mehta vs. Union of India*⁶, stating that an enterprise engaged in a hazardous or inherently dangerous industry that poses a potential threat to the health and safety of those working in the factory and those living in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm occurs to anyone as a result of the hazardous or inherently dangerous nature of the industry. The enterprise must be held to be under an obligation to ensure that the hazardous or inherently dangerous activity in which it is engaged is conducted with the highest standards of safety, and if any harm occurs as a result of such activity, the enterprise must be held absolutely liable to compensate for such harm, and it should be no defence to the enterprise to claim that it took all reasonable precautions and that the harm occurred without its fault. While upholding the validity of the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act, 1985 in *Charan Lal Sahu vs. Union of India*⁷, the Supreme Court emphasized the importance of laying down certain norms and standards for the government to follow before granting permission or licenses for the operation of industries dealing with materials with dangerous potentialities. The waste discharged from the manufacture of H acid ruined the village of Bicchri, causing disease, death, and disaster, according to *Indian Council for Environmental Legal Action vs. Union of India*⁸. When adopting the polluter pays concept, the Supreme Court stated that the financial expense of preventing or repairing pollution-related damage should be borne by the polluter. Tanneries in the state of Tamil Nadu were found releasing untreated effluents into the river Palar, rendering the water unsafe for consumption and agriculture, according to *Vellore Citizens Welfare Forum vs. Union of India*⁹. The country's environmental law includes the precautionary concept and the polluter pays principle, according to the Supreme Court. The Supreme Court levied a fine on the industries and ordered that the money be credited to the Environment Protection Fund, which will be used to compensate those who have been harmed as well as to restore the environment. The Supreme Court declared in *A.P. Pollution Control Board vs. M.V. Nayudu*¹⁰ that the "principle of precaution" entails anticipating environmental harm and taking steps to avoid it or choosing the least environmentally hazardous activity. The Supreme Court concluded in *M.C. Mehta vs. Union of India*¹¹ that the precautionary principle mandates anticipatory action to avoid harm. Even if there is a reasonable suspicion, the harm can be avoided. It is not always required that there be direct evidence of environmental harm.

CONCLUSION: For a developing country like ours, industrial development is critical. We can primarily overcome problems like unemployment and extreme poverty by focusing on industries. As a result, our economic policies should be pro-business. All clearances, including environmental clearances, must be issued to industries in a timely manner. However, we cannot ignore environmental challenges while fostering industrial expansion. Any industrial development that comes at the expense of the environment is a bad development plan. As a result, we must expand our industries while also considering

6 AIR 1987 SC 1086 at p. 1099

7 AIR 1990 SC 1480

8 AIR 1996 SC 1446

9 AIR 1996 SC 2715

10 AIR 1999 SC 812

11 AIR 2004 SC 4016

the environmental demands of future generations. On the basis of the polluter pays concept, any industry that causes significant environmental pollution will be held responsible for restoring the environment to its pre-polluted state. Massive deforestation for the sake of industrial growth should be prohibited. We must pursue a path of sustainable development based on Gandhian ideas. The Indian Supreme Court has made a significant contribution to the establishment of sustainability guidelines for the government and development advocates in India.