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The Evolution of the Concept of Inter-Generational Equity under the Indian Environmental Jurisprudence

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Abstract

The concept of sustainable development is today dominating all the environment versus development debates and is generally seen as a solution to this impasse. The concept of sustainable development is structured on two forms of equity, Inter-generational equity and intra-generational equity. This concept of Inter-generational equity initially evolved in the International Environment law regime, today find a place in our Environment law jurisprudence as well. This article is an attempt to analyze the understanding and attitude of the Indian courts towards this valuable principle.

Keywords: Inter-Generational Equity, Constitution of India, Environment law

1. Introduction

Environmental sustainability is the process of making sure that the current processes of interaction with the environment are pursued with the idea of keeping the environment as pristine as naturally possible.

An "*unsustainable situation*" occurs when natural capital (the sum total of nature's resources) is used up faster than it can be replenished. Sustainability requires that human activity only uses nature's resources at a rate at which they can be replenished naturally. Inherently the concept of sustainable development is intertwined with the concept of carrying capacity. Theoretically, the long-term result of environmental degradation is the inability to sustain human life. Such degradation on a global scale could imply extinction for humanity.

Sustainable development (SD) is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.

The term was used by the *Brundtland Commission*^[1] in 1987 which coined what has become the most often-quoted definition of sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."

The concept of sustainable development rests on the foundation of equity and it is structured on two forms of equity:

1. Inter-Generational Equity
2. Intra-Generational Equity

2. The Right to Intergenerational Equity: Defined

The principle talks about the right of every generation to get benefit from the natural resources. Principle 3 of the *Rio Declaration*^[2] states that: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."

The main object behind the principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefit.

The *UN Framework Convention on Climate Change (UNFCCC)*^[3] acknowledges the central role of intergenerational equity in climate change policy. It states:

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.

Given that Sustainable Development has been described as "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*"; it follows that the principle of Intergenerational Equity is therefore implicit in the very definition of Sustainable Development.

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3. *The proposed theory of intergenerational equity*

Sustainability is possible only if we look at the Earth and its resources not only as an investment opportunity but as a trust, passed to us by our ancestors, to be enjoyed and passed on to our descendants for their use. Such a "planetary trust" conveys to us both rights and responsibilities. Most importantly, it implies that future generations too have rights - although to be sure, these rights have meaning only if we the living respect them and if this respect transcends the differences among countries, religions, and cultures.

The theory of intergenerational equity proposed argues that we, the human species, hold the natural environment of our planet in common with all members of our species: past generations, the present generation, and future generations. As members of the present generation, we hold the Earth in trust for future generations. At the same time, we are beneficiaries entitled to use and benefit from it ^[4].

There are two relationships that must shape any theory of intergenerational equity in the context of our natural environment: our relationship to other generations of our own species and our relationship to the natural system of which we are a part. The human species is integrally linked with other parts of the natural system; we affect and are affected by what happens in the system. We alone among all living creatures have the capacity to shape significantly our relationship to the environment. As the most sentient of living creatures, we have a special responsibility to care for the planet ^[5].

The second fundamental relationship is that between different generations of the human species. All generations are inherently linked to other generations, past and future, in using the common patrimony of earth. The theory of intergenerational equity stipulates that all generations have an equal place in relation to the natural system ^[6]. There is no basis for preferring the present generation over future generations in their use of the planet.

Partnership between generations is the corollary to equality. It is appropriate to view the human community as a partnership among all generations. The purpose of human society must be to realize and protect the welfare and well-being of every generation, in relation to the natural system, of which it is a part.

In this partnership, no generation knows beforehand when it will be the living generation, how many members it will have, or even how many generations there will ultimately be. If we take the perspective of a generation that is placed somewhere along the spectrum of time but does not know in advance where it will be located, such a generation would want to inherit the Earth in at least as good condition as it has been in for any previous generation and to have as good access to it as previous generations. This requires each generation to pass the planet on in no worse condition than it received it in and to provide equitable access to its resources and benefits. Each generation is thus both a trustee for the planet with obligations to care for it and a beneficiary with rights to use it ^[7].

If one generation fails to conserve the planet at the level of quality received, succeeding generations have an obligation to repair this damage, even if costly to do so. However, they can distribute the costs across several generations, by means of revenue bonds and other financial measures, so that the benefits and costs of remediation are distributed together. While the generation that allows environmental quality to deteriorate still benefits at the expense of immediate future generations, more distant future generations are protected. Moreover, the generation inflicting the harm may have passed on a sufficiently higher level of income so that immediate

successor generations have sufficient wealth to manage the deterioration effectively.

To be sure, there are instances where the actions needed to protect the health of the planet for future generations may conflict with the need to alleviate poverty as quickly as possible. In these instances, we need to develop appropriate mechanisms and allocate sufficient resources to maximize the ability to advance both goals.

Principles of intergenerational equity

Three principles form the basis of intergenerational equity. First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "*conservation of options*." Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "*conservation of quality*." Third, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "*conservation of access*."

The proposed principles recognize the right of each generation to use the Earth's resources for its own benefit, but constrain the actions of the present generation in doing so. Within these constraints they do not dictate how each generation should manage its resources. They do not require that the present generation predict the preferences of future generations, which would be difficult if not impossible. Rather, they try to ensure a reasonably secure and flexible natural resource base for future generations that they can use to satisfy their own values and preferences. They are generally shared by different cultural traditions and are generally acceptable to different economic and political systems.

4. *The evolution of right of intergenerational equity under the Indian constitution*

The Supreme Court of India, realising the tremendous danger posed by environmentally harmful activities, has stepped in to play an activist role. This activism has led to the inclusion of several environmental rights within Fundamental Rights. Rights such as that of a clean and healthy environment, of a wholesome environment and of livelihood have been read into the Right to Life and Personal Liberty under Article 21 of the Constitution. One such right is the evolving right to Intergenerational Equity.

In the following cases, the Supreme Court of India read into Articles 14 and 21 of the Constitution, the right to Intergenerational Equity.

4.1 *State of Himachal Pradesh v Ganesh Wood Products* ^[8]

The issue arose out of a permission granted by the Himachal Pradesh government for the setting up of Katha factories which was derived from Khair trees and which was used in pan masala products. Manufacturers from several states shifted base to the state of Himachal Pradesh after manufacture of Katha was prohibited elsewhere. It had been contended at the High Court by one of the parties that there was a shortage in quantity of Khair trees and hence permission for setting up new factories should not be granted.

The Supreme Court directed the Government to conduct a fresh survey of the availability of trees since the government figures were based upon a survey carried out in 1992. In answering the question of availability of resources, the Court made the following observations.

The Court observed,

“It is also violative of the National Forest Policy and the State Forest policy evolved by the Government of India and the Himachal Pradesh Government respectively - besides the fact that it is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and *considerations of sustainable growth and inter-generational equity. After all, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations.*”

4.2 Enviro-Legal Action v Union of India (The CRZ Notification Case) ^[9]

The CRZ Notification was decided in 1996. In 1991, the Government of India issued a notification under Rule 5(3)(d), of the Environment Protection Rules, 1986. In terms of the notification, land on the coastal areas, 500 meters from the High Tide Line (HTL) on the landward side and the land between the HTL and the Low Tide Line (LTL) was declared as Regulation Zones. These Regulation Zones were made subject to certain prohibitions whereas the permissibles in these areas were to be strictly regulated by the State Governments. Furthermore, the State Governments were required to make Coastal management Plans within one year identifying the Coastal areas and pending formulation of these plans, the State Governments were to enforce the guidelines contained in the Notification. Extensive guidelines with respect to different areas, their classifications and the restrictions placed on development in these areas were laid down in the Notification.

Over the next one year, no state Government took any action whatsoever. No plans were formulated and even the Notification of 1991 was not enforced.

In 1994, another Notification was sought to be passed, purportedly on the recommendations of the Vohra Committee Report relaxing the guidelines of 1991 and rendering the Notification of 1991 ineffectual. This action was challenged by a Writ Petition under Article 32 of the Constitution.

The full Bench of the Supreme Court observed,

“A law is usually enacted because the Legislature feels that it is necessary. *It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life* that the Parliament enacted the Anti-Pollution Laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986.”

As is evident, in both cases, the Supreme Court has only relied on the Right to Intergenerational Equity along with some other entrenched right. Neither case derives its reasoning directly or solely from the Right to Intergenerational Equity. In *Ganesh Wood Products* the Court mentioned the right along with the well settled Principle of Sustainable Development. In the CRZ Notification Case, the right was mentioned along with the right to a quality life under Article 21. It is for this reason that I refer to this right as an evolving one. It is not yet capable of standing on its own. It has not yet found full judicial acceptance.

Neither Court has dwelled into the nitty-gritty's of the right. Neither has sought to reason whether or not it can be read into Article 14. In fact, neither has even clarified, which article of the Constitution, it is to be sourced from.

Further the principle of "Inter-Generational Equity" has also been adopted while determining cases involving environmental issues. The Supreme Court, in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu and Ors.* ^[10] Held as under:

“*The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.*

Principle 1 - Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.

Principle 2 - 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.”

5. Conclusion

Several international conventions and treaties have recognized the above principles of sustainable development and, in fact, several imaginative proposals have been submitted including the *locus standi* of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present.

The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country. Article 48A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the environment governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

6. References

- 1 The Brundtland Commission, formally the World Commission on Environment and Development (WCED), known by the name of its Chair Gro Harlem Brundtland, was convened by the United Nations in 1983. The commission was created to address growing concern "about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development." In establishing the commission, the UN General Assembly recognized that environmental problems were global in nature and determined that it was in the common interest of all nations to establish policies for sustainable development.

- 2 The Rio Declaration on Environment and Development, often shortened to Rio Declaration, was a short document produced at the 1992 United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide future sustainable development around the world.
- 3 The United Nations Framework Convention on Climate Change (UNFCCC or FCCC) is an international environmental treaty produced at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, held in Rio de Janeiro from June 3 to 14, 1992. The objective of the treaty is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
- 4 Norgaard, R. B., "Sustainability as Intergenerational Equity: The Challenge to Economic Thought and Practice", Internal Discussion Paper, Asia Regional Series, Report No. IDP-97, World Bank, June 1991.
- 5 Weiss, Edith Brown "Environmental change and international law: New challenges and dimensions", Tokyo: United Nations University Press, 1992 at p. 154.
- 6 Weiss, Edith Brown, "The Planetary Trust: Conservation and Intergenerational Equity", *Ecology Law Quarterly*, Vol. 11, No. 4, (1984).
- 7 *Ibid.*
- 8 (1995) 3 SCC 363
- 9 (1996) 5 SCC 281
- 10 1999 (2) SCC 718