



UNDERSTANDING SUSTAINABLE DEVELOPMENT THROUGH THE LENS OF N. D. JAYAL VS. UNION OF INDIA

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RESEARCH QUESTION

1. Brief summary of the case of “N. D. Jayal vs. Union of India”
2. What was the cause of action of the suit?
3. What is the nexus between sustainable development and Article 21?
4. What was the impact of this judgment?

STATEMENT OF PROBLEM

The present paper shall be dealing with the research questions as indicated above. As the title goes, this paper is an analysis of the case of “N. D. Jayal vs. Union of India” and therefore it is pertinent to understand the facts of the case along with the governing law, arguments of the parties as well as the ratio decidendi and therefore the summary of the case shall be presented in the paper. It is not enough to understand just the case summary but also the cause of action behind the institution of the suit for a successful, in depth analysis.

At a bear perusal of the judgment of the case, it is apparent that there exists a nexus between sustainable development and Article 21 of the Indian Constitution which was for the first time declared in the present case and therefore it is necessary to understand the link drawn by the Hon’ble adjudicators.

Since this is a landmark judgment that added sustainable development in the ambit of

Article 21 of the Indian Constitution, it set a precedent and had a great impact on the cases concerning similar issues that followed.

RESEARCH OBJECTIVE

The objective of this study is to understand the facts, reasoning and decisions in the case of “N.D. Jayal vs. Union of India.” There is a need for the global industries to adopt plans that are in furtherance of sustainable development for the sustenance, betterment and future development of humanity.

Only when the environment is safeguarded can mankind flourish and as students from the legal fraternity, it is our duty to take legal action against corporations that are destroying nature. The object of this paper is to understand the essence of the verdict passed by the Hon’ble Court in the present case where it was held that “sustainable development is to be treated as an integral part of life as under Article 21 of the Indian Constitution.”

SCOPE

The scope of this paper as what can be understood from the previously research questions and statement of problem can be deduced to be the cause of action, facts, issues, governing law, judgment and impact of “N. D. Jayal vs. Union of India;” as well as the nexus between Article 21 of the Indian Constitution and sustainable development.

RESEARCH METHODOLOGY

“The research methodology followed in this essay is not that of an empirical research but doctrinal research. It shall include a detailed analysis and study of the previously mentioned research questions. The opinions and findings of various jurists and personnel from the legal fraternity shall be taken into



account and an analysis of their work shall be subject to study.”

This essay is purely based upon the existing research and laws and is but observations and personal opinions of the author.

SOURCES OF DATA

The sources of the data incorporated in the present paper are both primary and secondary in nature. The case judgments cited in the paper constitute to be a primary source whereas the other research articles along with the findings and opinions of other jurists are the secondary sources of data that have been incorporated in this paper.

LITERATURE REVIEW

1. **“Sustainable Development: A Harmonious Concept between Environment & Development by Thusara Ullas (Bhavan’s PALSAR)”**

This research article compares and contrasts the right to a healthy environment and the right to development- both of which is necessary for the development of a nation and also states that for the well-being, a middle ground needs to be found. It talks about how sustainable development is the exact balance between environment and development. It also deals with landmark judgments that have changed the face of environmental law.

2. **“Sustainable Development as Environmental Justice: Judicial discourse in India by Nupur Chowdhury (Jawaharlal Nehru University)”**

This research paper talks about how sustainable development is responsible for the evolution of environmental jurisprudence. It also emphasizes on the fact that development has always been the justification for industries to absolve

themselves from causing destruction to the environment. It states that the introduction of the National Green Tribunal Act in 2010 was the most important step that the Indian Legislature took towards bringing a change in public policy.

3. **“Right to Environment and Right to Development: A Judicial Conundrum by Uday Shankar and Saurabh Bindal (Christ University Law Journal)”**

This paper traces the origin of right to environment and right to development in the larger context of the fundamental rights. It critically examines the usefulness of declaration of these rights under the scheme of the Constitution. It argues that the judiciary in its judicial creativity has made unreasonable interference into the matters reserved for the executive which is not in accordance with the basic structure of the Constitution. The paper calls for maintenance of harmony between the two organs of the state.”

INTRODUCTION

Every nation state on the planet is a part of the rat race for development and in turn has compromised the environment, considering it collateral damage. However, over the past decades with the visible degradation of the environment and the drastic effects it has had on this planet, majority of the nations have understood and assumed the responsibility of sustainable development. Countries have swiftly adopted policies that do not disable development but do not enable the destruction of the environment either. “India is an active member of International Organizations concerning environment. Several programmes are going on under UNEP. The Government has recently started emphasizing the combined use of regulatory



and economic instruments for improving environmental quality. There is a need for coordination between government agencies, NGOs and the public for the proper management of environment quality and to achieve sustainable development in the country.”¹

For instance, the Government of the United Kingdom has adopted a “One Planet Living Framework”. “It uses 10 easy to understand principles that inform and empower people to become more sustainable, living within their fair share of Earth's resources, them being- (a) Zero Carbon, (b) Zero Waste, (c) Sustainable Transport, (d) Sustainable materials, (e) Local & Sustainable Food, (f) Sustainable water, (g) Land use and Wildlife, (h) Culture and Community, (i) Equity and Local Economy and (j) Health and Happiness.”² This was adopted in 2017 and the Gov. of UK aims to use these principles to achieve sustainable development by 2025. Similarly, the country of Brazil has a **Minimum Agenda for Sustainable Development for 2030** wherein they have listed seventeen (17) Sustainable Development Goals (SDGs) for their country, some of them are- “eradicating poverty, ending hunger, ensuring a healthy life for people of all ages, gender equality, access to modern sustainable energy, ensure sustainable standards for production and consumption”³, among others.

India has also developed policies for sustainable development and the Indian Judiciary along with the Legislative is actively participating in the introduction of Green policies. The present research paper is dealing with one such verdict passed by the Indian Judiciary that is a step towards creating harmony between environment and development- the case of “**N. D. Jayal v/s Union of India**”.⁴

CASE SUMMARY

The cause of action of the suit arose due to the safety risks of the Tehri Dam. It was the second instance where a law suit had reached the Hon'ble Supreme Court concerning this dam. The Petitioners in this case sought safety tests to be conducted of the dam and also contended that the respective authorities had not complied with the Environmental Clearance conditions that had been laid upon them for ensuring the safety of the dam back in 1990. The Petitioners prayed to the Hon'ble Court to halt the project till all the guidelines had been complied with and also requested their indulgence in the rehabilitation aspect of the Tehri Dam.

The construction of the Tehri Dam was in controversy for two (2) decades. By the year 1986, an expense of Rs. 206 Crores had been incurred in its initial development/ construction and testing but even after that the Report by the Ministry of Environment and Forestry declared that the damage caused

¹ Ramakrishna B. M & Jayasheela, "Environmental Problems and Sustainable Development: With Special Reference to India Issues and Challenges," Journal of Global Economy, Research Centre for Social Sciences, Mumbai, India, vol. 6(2), pages 95-104, April, 2010.

² Unknown, “One Planet Living”, Middlesborough-Gov. of UK, (22nd February, 2021, 3:26pm),

<https://www.middlesbrough.gov.uk/environment-and-public-protection/one-planet-living>

³ Government of Brazil, “Brazil Agenda 2030,” 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT SPOTLIGHT REPORT SYNTHESIS IV, (22nd February, 4:44pm),

https://brasilnaagenda2030.files.wordpress.com/2020/07/en_osd_2020_vs_2_mari_singlepage.pdf

⁴ N. D. Jayal v/s Union of India [AIR 2003 SC 3014].



by the Construction of the Dam would be so severe that it would be impossible to remedy it. Yet, somehow even after the clearance was denied in February, 1990, the developers, i.e. Tehri Hydro Development Corporation Limited (THDC) obtained the clearance in June, 1990 and resumed the project.

The Hon'ble Supreme Court in the present case referred to the landmark judgment of "**Narmada Bachao Andolan v/s Union of India**"⁵, **Sardar Sarovar Project case**, "**BALCO Employees' Union (Regd.) v. Union of India**"⁶ where the Court discussed the role that it could possibly play in the present case where the SC was of the opinion that when a Gov. body has been appointed to carry on certain tasks then the only role the judiciary can play is to ensure that the respective Gov. body functions the way it was envisaged to.

At the same time, the Hon'ble SC dealt with the safety factors involved in the construction of the dam where they contended that although the right to a clean environment is a guaranteed fundamental right, at the same time, right to development is also protected under Article 21 of the India Constitution, as was held in the case of "**Samata v. State of Andhra Pradesh**"⁷ and in "**Madhu Kishore v. State of Bihar**"⁸.

After hearing both sides at length, the Hon'ble Supreme Court issued the following directions:

That the Central Government shall constitute an Expert Committee for Environmental

Impact Assessment of not already done so, for the purpose of investigating, ascertaining and reporting whether the authorities have abided by the conditions that were previously laid down for the clearance of this Project. That the committee shall furnish a report every three months apprising the relevant authorities with the necessary information about the fulfillment of the conditions for the clearance of the Project, in the absence of which the Committee shall make recommendations with respect to how the conditions can be fulfilled. This expert committee shall consist of representatives of various Non-Governmental Organizations who are most suitable for undertaking such duties. That the safety aspect is taken care of until certain safety analysis has not been conducted and the result of such analysis is further assessed by the Central Government. "The Expert Committee for environment Impact Assessment constituted under Schedule III of Notification dated 27th January 1994 will also look into and submit status report on the progress of resettlement and rehabilitation measures. There will be no impoundment of the Reservoir until resettlement and rehabilitation work is fully completed in all respects. An effective Grievance Redressal Cell headed by an independent expert in the field of social science shall be set up by the State Government with the help of Central Government for solving rehabilitation and resettlement problems of the oustees of the Project. The Grievance Redressal Cell shall submit its status report every three months to the Expert Committee."⁹

⁵ Narmada Bachao Andolan v/s Union of India [2000] 10 SCC 664

⁶ BALCO Employees' Union (Regd.) v. Union of India [2002] 2 SCC 333

⁷ Samata v. State of Andhra Pradesh [1997] 8 SCC 191

⁸ Madhu Kishore v. State of Bihar, [1996] 5 SCC 125

⁹ *Supranote 4*



CAUSE OF ACTION

The idea for the construction of the Tehri Dam for hydel power generation was floated first in the year 1961 but was kept under consideration and investigation for eleven (11) years. In the year 1972, the Planning Commission anticipated an amount of Rs. 198 Crores for the gaining the necessary clearances and construction of the Tehri Dam, following which the Government of Uttar Pradesh gave all the necessary clearances in the year 1976 for the construction of the Dam.

Before the construction of the Dam could begin, the Prime Minister at the time launched an in depth review of the whole project in order to determine its feasibility and impact on the environment. It was the opinion of the Prime Minister that "There are several proposals which were agreed to earlier but would need to be looked into again. Amongst them are Silent Valley, the dam in Tehri Garhwal and the dam in Lalpur, Gujarat. It seems that larger areas of very fertile land are being submerged without any commensurate gains. There may be other such cases also, it is true that these decisions have been taken over a period of time but there is great local distress and a feeling that contractors and other such groups will be the main gainers. Hence, it is necessary to have another look in depth." Subsequently, an expert committee was set up by the Ministry of Science and Technology and in the year 1980 in its interim report and in 1986 at the conclusion of the thorough investigation by this committee in the final report dictated that the Tehri Dam Project must be abandoned irrespective of the hundreds of Crores that have already been invested towards its construction.

The Ministry of Environment and Forest accepted and endorsed the final report and its findings in October, 1986; however, in November 1986, the erstwhile USSR offered aid in a pre-integrated basis which included technical, administrative and financial assistance and as a result, the project despite failing environmental clearance was revived. In January 1987, the Government simply declared to the Press that after further investigation, it has been found that the damage caused by the construction of the Tehri Dam can be remedied and therefore the green light for the construction of the Dam was given. Indian and Russian Engineers had come together to form a Company called the "Tehri Hydro Development Corporation" (THDC). Keeping the recent developments in consideration, the Ministry of Environment and Forest (MoEF) revised the budgets and released further funds subject to the environmental clearances.

In February 1990, the MoEF again declared that the required clearance cannot be given, however in July 1990 gave a conditional clearance which stated that the formulation of the action plan shall go hand in hand with the construction failing which the entire project shall be brought to a halt.

The Petitioners in the present case are questioning the clearance given in July 1990 by the Ministry of Environment and Forest since the clearance was denied in February, 1990 due to the environmental concerns.

NEXUS BETWEEN ARTICLE 21 AND SUSTAINABLE DEVELOPMENT

Industrialization is the root cause of the degradation of the environment; however, it is a double edged sword since industrialization is also the foundation of



development of a nation. Only considering the south Asian continent, majority of the nations which form the South Asian subcontinent are 'developing' nations and in order for 'developing' nations to turn into 'developed' nations, industrialization is the key. Therefore industrialization for the protection of the environment cannot be completely discarded since the development of the nation states cannot be stopped but at the same time, the environmental protection also needs to be acknowledged.

Sustainable Development

Sustainable Development is not a new concept; in fact, it was first brought into the picture through the Stockholm Declaration in the year 1972. "The first United Nations conference on Environmental Issues which contained 26 principles placed environmental issues at the forefront of international concerns and marked the start of a dialogue between industrialized and developing countries on the link between economic growth, the pollution of the air, water, and oceans and the well-being of people around the world."¹⁰

In an overview, according to the "Brundtland Report"¹¹ sustainable development comprises of the following principles:

- a. "Inter-generational equity: Right of every generation to benefit from the natural resources,"

- b. "Precautionary Principal: if there are threats of serious or irreversible damage to the environment, lack of full scientific certainty shall not be used as a reason for post-poning cost-effective measures to prevent environmental degradation,"¹²
- c. "Polluter Pays Principle: national authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into the account the polluter should in principle bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment,"¹³

The first judicial action in furtherance of the protection of the environment was witnessed in the case of "**Vellore Citizen Welfare Forum vs. Union of India**"¹⁴ where the Hon'ble Supreme Court held that remediation of the damaged environment is part of the process of sustainable development and as such polluter is liable to pay the cost of reversing the damaged ecology."

Another landmark case indicating the Indian judiciary's promotion of environmental protection is "**Tarun Bhagat Singh vs. Union of India**"¹⁵ wherein the petitioner through a PIL brought to the notice of the supreme court that the state government of Rajasthan though empowered to make rules to protect environment, failed to do so and in contrary allowed mining work to continue

¹⁰ Anonymous, "United Nations Conference on the Environment, 5-16 June 1972, Stockholm," United Nations Conferences Archive-Stockholm 1972, (1:26pm, 24th April), <https://www.un.org/en/conferences/environment/stockholm1972>

¹¹ World Commission on Environment which was chaired by the then Prime Minister of Norway Ms. G. H. Brundtland gave a report.

¹² Principle 15, Rio Declaration

¹³ Principle 16, Rio Declaration

¹⁴ Vellore Citizen Welfare Forum vs. Union of India (1996 AIR 2715)

¹⁵ Tarun Bhagat Singh vs. Union of India (1993 SCR (3) 21)



within the forest area. Consequently, the Supreme Court issued directions that no mining work or operation could be continued within the protected area.”

The Indian Constitution and Sustainable Development

Originally the Indian Constitution did not contain provisions about the protection of the environment. However, through subsequent amendments in the Constitution, the following provisions for the protection of the environment were incorporated:

- a. “Article 48A: Protection and improvement and safeguarding of forests and wild life: The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country,”¹⁶
- b. “Article 51-A: It shall be the duty of every citizen of India - (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures,”¹⁷
- c. “Article 246 List III - Concurrent List Item no. 17 Prevention of cruelty to animals, Item no. 17A Forests, Item no. 17B Protection of wild animals and birds.”¹⁸

Specifically talking about Article 21 of the Indian Constitution that guarantees the Fundamental Right to life with dignity also includes sustainable development in its ambit. The judicial awakening with respect to sustainable development resulted in multiple pronouncements which created history by setting precedents largely favoring

sustainable development. The scope of the Fundamental Rights has always been wide with the possibility of the inclusion of more issues if deemed fit. The judiciary when talking about the right to life and environment, in many of its pronouncements declared that since any danger to the environment hold the potential to endanger human life, it must be included under the scope of Article 21.

In the case of “**Charan Lal Sahu vs. Union of India**”¹⁹ the Supreme Court interpreted the right to life guaranteed by article 21 of the Constitution to include the right to a wholesome environment.” Similarly, in the case of “**Subhash Kumar v. State of Bihar**”²⁰ the Court observed that ‘right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.’ Both these cases more or less were based on the same obiter dicta that right to a wholesome environment is a part of Article 21.

Such cases paved the way for all the future judicial pronouncements, some of the noteworthy cases are discussed here:

“**M.C. Mehta v. Union of India**,”²¹ concerned the deterioration of the world environment and the duty of the state government under article 21, to ensure a better quality of environment. The Supreme Court has held that life, public health and ecology have priority over unemployment and loss of revenue. The Supreme Court ordered the Central government to show the

¹⁶ Part IV: Directive Principles of State Policy, Article 48A of the Indian Constitution

¹⁷ Part IV-A: Fundamental Duties, Article 51-A of the Indian Constitution

¹⁸ Seventh Schedule, List III, Indian Constitution

¹⁹ Charan Lal Sahu vs. Union of India (1988 SCR (1) 441)

²⁰ Subhash Kumar v. State of Bihar (AIR 1991 SC 420)

²¹ M.C. Mehta v. Union of India (1991) AIR SC 813 (Vehicular Pollution Case)



steps they have taken to achieve this goal through national policy and to restore the quality of environment.”

“**Enviro-Legal Action vs. Union of India**²², (the Bichhri pollution case), following the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water.”

“**WWF vs. Union of India**²³ case has led to the orders that no forest, National Park or Sanctuary can be dereserved without the approval of the Supreme Court, no non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act, 1980 had been obtained, New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.”

CONCLUSION

Law in action is different from law in the books as reiterated by legal realist theory and no more is this disparity glaringly visible as in the case of protection of the environment. The law pertaining to the environment has been created, amended and made to fit the existent issues of a particular time, but the machinery which enforces the law and the various stakeholders forming a part of the same disrupt the application of the law concerning the environment. This is a trend visible across the world, but more so in India, considering the regular tussle between the forces of economic development vis-à-vis

protection of the environment. The present project is an attempt at depicting this saddening trend in India through the lens of the case “*ND Jayal v. Union of India*”. In spite of the competing interests of the parties, the Supreme Court of India struck a chord of harmony by declaring sustainable development to be an integral part of Article 21 of the Constitution of India.

However, years after the decision the general outlook concerning environmental issues in India is extremely saddening. The decision in *ND Jayal v. Union of India* has been inducted into the highest echelons of legal studies and debates but its practical consequences have been close to none. This is in turn related to the indiscriminate attitude of the people towards the environment. Although it cannot be disputed that the pressure on resources is constantly spiking, it is for the legislature, executive and judiciary to join hands to arrive at a sustainable model of development which can be rigorously followed. One major suggestion which can be implemented is the use of stricter Environment Impact Assessment rules. The inadequacy and the callousness thereof has already cost the environment dearly. Another logical but difficult improvement may be effected in the manner in which enforcement mechanisms are woven in India. The lack of punishment with “teeth” for an environmental infraction emboldens the population to completely disregard the environment. Finally, a constant suggestion in this field has been raising awareness and education in respect of the environmental issues. The imparting of civic sense and the importance of civic duty is sufficient to drive the newer population to protect and nurture the environment. It can

²² *Enviro-Legal Action vs. Union of India*, 1996 3 SCC 212

²³ *WWF vs. Union of India* (1998) 6 SCC 483



only be hoped that the education system and the civic society works in tandem with the three branches of the government to ensure that the environment is preserved and appropriately passed down to the future generations, possibly in a better condition than was passed down to us by our ancestors- a task which appears formidable at this point in time, but one not impossible.

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