



TRADE OFF BETWEEN URBAN DEVELOPMENT AND ENVIRONMENTAL PROTECTION: INDIAN JUDICIAL PERSPECTIVE

ABSTRACT

Urban development has new dimensions in twenty first century. Population growth, expanding cities put pressure on natural resources and civic amenities. Green areas, water bodies are shrinking while regularization of unauthorized structures is common. Urbanization has environmental repercussions and hence urban issues are environmentally based.

Judicial perspective towards urban development— Indian judiciary has dealt with the issues of urban life/ development and protection and conservation of environment in urban settlements. Judicial precedents depict resolution of conflict between urban development vis-à-vis environmental protection and conservation. Issues like legality of conversion of green areas, open spaces, recreational/ play grounds allotted in the development plans or wetlands for other uses such as construction of a housing colony and for laying roads or for commercial/ industrial purposes were raised in the Indian courts.

Findings and conclusions—Courts have nullified such conversions on the ground that these reservations are necessary to maintain environmental equilibrium in the cities and the city dwellers have right to hygienic climatic conditions, right to healthy environment as a part of right to life. But courts did not adopt anti- development stance. Rulings seem to halt the trend of conversions of green areas into commercial or residential or industrial zones. The courts have applied legal norm of sustainable development to resolve the conflicts by harmonizing need of the development as well as protection of environment in the cities.

Suggestions—City planners should realize and address multiple environmental challenges particularly in the context of climate change. City development should be environmentally sustainable. Long-term land use planning based on sustainable development parameters and strict enforcement is indispensable. Uniform and strict regulations in fragile areas and meticulous enforcement are needed. Natural resources or landscapes can be better appropriated by its natural use rather than changed use. Meaningful efforts for environmentally sound sustainable development of cities should be made through legislative policy by reframing land policy, bye-laws, and proper enforcement.

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INTRODUCTION

Urban development and environmental deterioration—Twenty first century envisages tremendous pressure for development of urban regions. In India, election campaigns have development agenda. Growth of industries, migration of rural population to urban areas, and consequent provision of facilities would lead to urban revolution. Concept of smart cities is fascinating but unhygienic slums, clogged and overflowing drains, decrepit local transport, unmanageable traffic jam, dirty streets, chronic water shortages, identify our mega cities. Routine and arbitrary issue of relaxation orders by ruling parties is a matter of common occurrence. Population in urban area puts pressure on facilities like supply of water, transportation, sanitation. Construction in peripheral areas in the name of 'second homes, 'farm houses' is rampant. Growth of houses entails shrinking of free spaces in the cities leading to concrete jungles.

Development in eco-sensitive urban regions is environmentally destructive. Major tragedies in Kedarnath and Shrinagar last year illustrate our undue interference in fragile and environmentally sensitive regions. Shrinagar's flood devastation in September 2014 manifests worst town planning. Dal lake's size is reduced to 15% of its original size and 60% wetlands are encroached by people. Unprecedented flood in Kashmir is the result of climate change but situation is worsened because of unbridled human intervention in river environment. Shimla, Kullu Manali represent Himachal's urban human habitat. Tourists are disillusioned to reveal that overbuilding, concrete jungles have replaced deodar trees on the mountains. We are resorting to conventional construction in environmentally sensitive regions. Nature tolerates disturbance to some extent but it is most destructive when played with.

Environmental repercussions of urbanization—To counter grappling problem of Mumbai traffic, the government has proposed a 34 kilometer road from Nariman Point to Kandivali in Coastal Regulation Zone. Project's first victim would be the mangrove plantation apart from loss of habitat of migratory birds and pollution of beautiful beaches. For such ambitious projects we have to pay the cost in the form of environmental degradation. In Chennai, in June last year, more than sixty people died in a building collapse constructed in a wetland area, pond! Wetland is still considered as a land and planned as a land. Builders earn money and disappear. Unscrupulous developers with land grab and political nexus change zoning regulations to benefit vested interests. Regularization of unauthorized

structures is most common. Green areas are now most populated regions. Urbanization has environmental repercussions and hence urban issues are environmentally based.

OBJECTIVES

The objectives of the research work include;

—Examination of emerging issues of urban development and consequent environmental deterioration:

—Exploring the intersection of developmental and environmental values in legal parlance:

—Ascertaining the judicial perspective and the scope of applicability of the principle of sustainable development in the conflict between urban development and environmental conservation:

—Critically reviewing the relevant judicial precedents resolving above clash of interests, and to offer suggestions in the light of the research work.

RESEARCH METHODOLOGY

The research work is purely library based as it involved analysis and interpretation of judicial pronouncements pertaining to the issues in question, critical examination of the doctrine of sustainable development and its application. The study is explicative, descriptive as it focuses critical evaluation of legal norms as a tool to resolve the social conflicts. For the purpose of analysis and review, the author has chosen leading judgments of the Supreme Court and the High Courts of India which have dealt with and resolved the conflict between the issues of urban development and environmental protection and conservation in its various ramifications, particularly where the norm of sustainable development is applied and reconciliation between the conflicting values is evident.

JUDICIAL ATTITUDE TOWARDS URBAN DEVELOPMENT

Considering nexus between urban development and environment, the adverse effects on the quality of environment are inevitable. Development strategies do not meet the environmental challenges. Sometimes plans are not meticulously followed. There seem to be irregularities in execution of plans and illegal relaxations are granted. Natural resources in urban areas are not utilized judiciously. Some of the judgments given by Indian courts have taken the cognizance of ill effects of faulty development policies and the failures of municipal authorities on the quality of environment in urban regions

and have set certain legal norms to correct the situations. Indian judiciary has shown concern for the issues of urban life and protection and conservation of environment in urban settlements. Following judicial precedents depict resolution of conflict between urban development vis-à-vis environmental protection and conservation.

*T. Damodar Rao v/s Municipal Corporation, Hyderabad*¹—In the approved development plan for the growing city of Hyderabad, zoning was demarcated as residential, commercial, recreational purposes. In a petition the apex court foiled the attempt of change of user of the recreational area for construction of a housing colony for the staff of Life Insurance Corporation of India. According to the court this change would upset the environmental balance, and it amounts to slow poisoning of city dwellers, violating right to life under Article 21 of the Constitution of India. Construction of a housing colony deviating from approved plan was not permitted.

*Banglore Medical Trust v/s Mudappa*²—In development scheme for the extension the city of Bangalore, an area was earmarked for development as Low Level Park. Chief Minister directed the conversion of the said area as a civic amenity site (construction of a hospital). The court observed that, ‘public park is ‘gift from people to themselves’... It is reserved for beauty and recreation...In modern planning and development, it occupies an important place in social ecology.’ The Court held that nursing home (commercial venture) cannot replace park emphasizing pollution free environment as a civic amenity.

In *ML Sud v/s Union of India*³ an area was shown as ‘green’ by Delhi Development Authority (DDA) in its Master Plan to be maintained by city forest. The apex court thwarted an attempt to use it for construction and for laying roads and directed the authorities to maintain city forest.

*Ajay Singh Rawat v/s Union of India*⁴—A public interest litigation alleged that unauthorized constructions of buildings in the City of Nainital caused pollution of air, water, noise pollution. The Supreme Court suggested that multi-storied buildings and commercial complexes have to be banned in the town of Nainital to regain its unsoiled beauty and attract tourists. This decision is a guideline for development of tourist places.

The judgment in *Peoples United Forum for Better Living in Calcutta v/s State of West Bangal*⁵ is known for balancing development programs and environmental values. The High Court granted an injunction against reclamation of wetland. The court held that wetlands are important in maintaining environmental equilibrium.

*Virendra Gaur v/s State of Haryana*⁶—A lease of an open space (demarcated for the purpose of maintaining ecology, sanitation, recreation, playground, ventilation and in general hygienic environment in Town Planning Scheme as such) was sanctioned by the Government to a private party for Punjabi Gram Sabha and further sanction was procured for construction of Dharmashala. The Supreme Court nullified the sanctions as it transgressed the right to environment, as part of right to life under Article 21. The demolition of construction was ordered to maintain hygienic atmosphere and ecological balance. Supreme Court held that the world ‘environment’ is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It held, ‘The preservation of environment and ecological balance free from pollution of air, water, sanitation without which life cannot be enjoyed.’

In *Dr. B.L. Wadhera v/s Union of India*⁷, the Supreme Court reminded the municipal authorities of Delhi of their constitutional and mandatory duty to collect and dispose of the sewage and water generated from various sources in the city and to maintain the city clean. Earlier on similar lines, the ruling was given in *Municipal Council, Ratlam v/s Vardichand*⁸

The Supreme Court ruled in *Allahabad Municipal Corporation v/s Nawab Khan Gulab Khan*⁹ that unauthorized encroachment of pavement dwellers affects pedestrians’ right to free passage and creates unhygienic ecology and poses traffic hazards. In this ruling court’s view of minute aspects of development and environment is evident.

In one of peculiar leading judgment delivered in *S. Jagannath v Union of India*⁹ the apex court observed that shrimp industry [Intensified shrimp (prawn) farming culture industry in coastal areas] must adopt ‘unified motto of environment and development’. The court observed that the sea coast and the beaches are the gift of nature and any activity polluting such natural resources cannot be allowed. The case should afford as a parameter for carrying on an industry at least in artificially breeding seafood in a sustainable fashion and also in sea-shore development through construction of long roads.

The Supreme Court had in depth consideration of sustainable development as remedy in the conflict between the development and conservation of environment in *A. P. Pollution Control Board v M.V.Nayudu*¹⁰ Water bodies have a bearing on expansion and development of an urban area. It was alleged that an industry for production of BSS castor oil derivatives within prohibited area in the twin cities of Hyderabad and Nizamabad was a polluting unit and posed a danger to

water body of Nizamsagar. The court observed, "With a view to ensure that there is neither danger to environment nor to ecology and at the same time ensuring sustainable development, this court in our view can refer scientific and technical aspects for investigation and opinion to the expert bodies."

*M.C. Mehta v Kamal Nath*¹¹—Lease of a large area in the protected forest on the banks of River Beas was granted to the motel. The High Court and later on Supreme Court held that the Himachal Pradesh government committed a breach of the public trust in granting the lease of an ecologically fragile area to the motel management. Not only the lease was declared as inoperative but exemplary damages were awarded for the pollution of the protected forest.

Conversion of sites of parks for other purposes:-

The conversion of sites allotted for parks in the cities have been seriously viewed by the courts. Construction of nursery school was not allowed on the site allotted for park in residential colony.¹² Similarly decision of conversion of park into garbage dumping yard was struck down.¹³ Following public trust doctrine, the apex court regards Mahapalika as the trustee for proper management of the parks.¹⁴ In one of cases filed by M.C. Mehta, the court prevented state government from converting zonal park in Agra Development Master Plan into a light industrial area.¹⁵ Again in the Rose city of Jaipur the court disallowed any encroachment upon or conversion of parks and green areas. The court observed that the green belts in the cities are the green lungs. Parks and green belts create a healthy environment and promote well-being of the citizens. Civic amenities like parks are meant for the welfare of the people contemplated in the Indian Constitution. The court emphasized the necessity to halt the trend of such conversions of green areas into commercial or residential or industrial zones.¹⁶ The above precedents go to show that the environmental factors dominated the courts' assessment of development activities in the city. But in the cases below mentioned, *civic facilities were given a nod though apparently harmful to environment.*

*Mrs Susetha v State of Tamil Nadu and others*¹⁷—Construction of shopping complex on the artificial temple tank (which was used as a dumping yard) was permitted. Permitting construction, apex court observed that public trust doctrine does not necessarily mandate prohibition in all cases. The court stressed the need to delicately harmonize the needs of the development and environment as it involves complex synergies and tradeoffs.

*M/S Vijay Nagar Educational Trust v/s Karnataka State Pollution Control Board*¹⁸The High Court observed that whether the construction of hospital would result in pollution of water bodies would be better determined by the SPCB and directed SPCB to make a study and report and based on that report decision be taken. It further remarked that hospital being an institution to improve the quality of human life, its establishment falls within the concept of sustainable development. It did not apply precautionary principle directly to prevent construction.

*M.C. Mehta v/s Union of India*¹⁹—The Supreme Court gave green signal to the setting up of Hot Mix Plants for resurfacing the runway at Airport, within safe vicinity maintaining a distance of 3 km from populated area. The resurfacing was regarded as a work of national importance. Court remarked that the necessity of running an International Airport in the capital and environmental protection have to be balanced. Central and State Governments were directed to provide new business opportunities or alternative employments for economically displaced persons.

*Partha Pratim Ghosh v/s State of West Bengal*²⁰—Municipality had encroached upon a public park for construction of multi-storied building.. Applying the principle of sustainable development the court held that the maintenance of ecological balance must co-exist. However in view of the fact that promoters had spent huge amounts for construction and many hawkers were rehabilitated, it was allowed. Court remarked that rigid view cannot be adopted in each case.

In *Goa Foundation, Goa v/s Dixa Holding Pvt. Ltd*²¹, the apex court, on facts, allowed a hotel for augmenting tourism in Goa. There was no evidence of risk to flora and fauna, vegetation or soil. The court however reminded that the government should follow harmonizing principle of sustainable development as it is the order of the day.

The above rulings are illustrative. There are many overlapping judgments on similar lines wherein Indian judiciary has attempted to harmonize environmental and developmental values applying various legal norms.

FINDINGS AND CONCLUSIONS

Considering deviations from the development plans, and misuse of powers, the present regulatory bodies have lost accountability and credibility factor. Land and building regulations seem to be missing. Still illegal constructions are going along the river banks in mountain regions. In the light of climate change and man-made environment, environmental deterioration would be unprecedented and realized in the long run.

Indian courts have expressed deep concern over degradation of environment quality by development activities in urban areas. Time and again the courts have reminded the government of its constitutional duty to preserve and protect environment. Detail analysis of the precedents would go to show that the courts have deprecated the arbitrary exercise of powers by the government authorities particularly in change of user of the spaces/areas in development plans. Their orders have held to be illegal and hence nullified. Directions were issued to government authorities to maintain equilibrium between the need of the urban people and the preservation of ecology and healthy natural environment. The judiciary is keen to protect peoples' right to health as a constitutional right to life. They have firmly held that wetlands, city forest, open spaces, water bodies in cities are important for environmental equilibrium. In most of the decisions conversions of these spaces for constructions are disallowed. But courts did not adopt anti-development stance. On practical considerations and facts, change of use was permitted. There seems to be no blanket formula to resolve the conflict between urban development and environmental conservation. Sustainable development as a balancing concept is accepted as the order of the day. As a harmonizing principle, it may weigh in favor of development or environmental protection. However rulings seem to halt the trend of conversions of green areas into commercial or residential or industrial zones.

The courts resolved the sensitive conflicts by harmonizing need of the development as well as protection of environment in the cities. While striking delicate balance, they have applied international legal norms like sustainable development; polluter pays principle, precautionary principle, public trust doctrine etc. Sustainable development is a prominent, firmly established legal norm being the part of Indian jurisprudence and can be resorted to resolve environmental and developmental urban issues.

SUGGESTIONS

Indian government plans 100 smart cities and there is a race for enlisting as smart city. But town planning in India is not easy today. Recently released World Bank Report on Urbanization in South Asia states that India and her neighboring countries are going through the tortuous process of urbanization—slow, messy and partly hidden! What would be our green agenda for such cities? Paris Conference at the end of this year intends to propose a global climate change architecture post 2020 and sustainable development goals. What is our growth strategy? Can we envisage carefully planned government intervention? Population growth frustrating every policy

is a challenge. Development cannot be abandoned and it would have impact on environment. Planners should realize and address multiple environmental challenges. Instead of merely public service instrument, corporations must have long term planning and policy making for transformation of cities. Environmentalists are not against development. But what they expect is that the authorities should follow the norms for development through provision for civic amenities and other ambitious projects.

According to Guljar Natarajan²², urban planning seems to be virtually non-existent. Long-term land and construction policy should be framed and strict enforcement is indispensable. Special attention to religious tourism in environmentally sensitive areas is to be given considering mass exodus therein. In view of the climate change, fresh scientific study of the geographical areas of the cities, urban habitats is to be undertaken and expedited. City planners do not foresee the expansion in the context of climate change. Uniform and strict regulations in fragile areas and meticulous enforcement are needed. Common policy for construction, management of raw materials for construction in mountain and riverside terrain, particularly in geologically unstable ecologies should be framed. Considering degraded rivers, loss of forest cover, green governance should be given top priority in city development plans.²³ Wetlands can be used to cater water need of the city. Natural resources or landscapes can be better appropriated by its natural use rather than changed use.²⁴ Paradigm shift in urban governance is the need of the hour. Meaningful efforts for environmentally sound sustainable development of cities should be made through legislative policy by reframing land policy, bye-laws, and proper enforcement.

FOOT NOTES & REFERENCES

- 1 AIR 1987 AP 171
- 2 AIR 1991 SC 1902
- 3 1992 Supp (2) SCC 123
- 4 (1992) 3 SCC 266
- 5 AIR 1993 Cal 215
- 6 (1995) 2 SCC 577
- 7 (1996) 2 SCC 594, 7-A AIR 1980 SC 1622
- 8 (1997) 11 SCC 312
- 9 (1997) 2 SCC 87, Commonly known as 'Shrimp Culture Case'
- 10 AIR 1999 SC 81
- 11 AIR 2000 SC 1824
- 12 Dr. G. N. Khajuria v/s Delhi Development Authority (1995) 5 SCC 762
- 13 Uma Devi v/s Government of Andhra Pradesh AIR 2001 AP 460—

- 14 *MI Builders Pvt. Ltd. v Radhey Shyam Sahu – (1999) 6 SCC464*
- 15 *M.C. Mehta v/s Union of India AIR 2002 SC 3696*
- 16 *R.S Varma v State of Rajasthan— AIR 2004 Raj 175*
- 17 *AIR 2006 SC 2893*
- 18 *AIR 2002 Kant. p.123*
- 19 *AIR 1999 SC 2367*
- 20 *AIR 2000 Cal 84*
- 21 *(2001) 2 SCC 97*
- 22 *An IAS officer, in Indian Express, 11-6-14*
- 23 *Chandra Bhushan of Centre for Science and Environment, in Times of India, 17-9-14*
- 24 *Sunita Narayan, (Director, Centre for Science and Environment, Delhi), 'Bhavtal', Daily Loksatta 23-7-14, p.6]*
- Other references of experts in the field—*
- Dipankar Gupta, 'City Smart, City Beautiful', Times of India 11-10-14—Anisa Draboo (City planner in Shrinagar), 'Man v/s Nature', Times of India, 15-9-14,—Gautam Bhatiya, (Delhi based architect), 'Kedarnath to Kashmir, 'Tragedy of Development', Times of India, 14-9-14*

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