

"The Transformative Power of the Environmental Rule of Law: A Comparative Analysis of South Asian Countries"

Naresh Kumar Maharjan

PhD, Faculty Member, and Coordinator, LLB Programme Faculty of Management & Law Nepal Open University, NEPAL

Abstract

Over the last decades, environmental law has significantly contributed limiting the environmental impacts at global and regional levels. Yet environmental problems still prevail and are strongly linked to the production and consumption systems. Thus, the current challenges must be tackled with a systemic approach. The concept of "transformative environmental policy" refers to methods for policymakers to intervene in socioeconomic systems in order to make them more pro nature and pro public. In this backdrop we seek to identify the legal contributions that can be made to a sustainable transformation. For illustrative purpose, we point out the doable steps in comparative case study in the South Asian countries.

We argue that law plays a role in all three phases of a transformation/transition. The legal framework must enable innovations and experiments in the first transformation phase, come up with restricting regulations for old non-sustainable structures in the second phase, and in the third phase provide course stability for the new system. We conclude that the concept of transformative environmental policy helps to design adaptations of the legal framework in order to transform socio-economic and socio-technical systems towards more sustainability. Hence, raising public awareness and providing legal assistance should be integral parts of this process. The State has a responsibility to ensure environmental justice by providing equal opportunities to access to justice for all, and providing legal assistance to underprivileged section of the society is also a crucial requirement for that. Conservationists and social activists also have a crucial part to play in this process by bringing legal suits/PIL in environmental issues.

Keywords: Environment, Judiciary, Sustainable and Judicial Attitude

Introduction

One of the fundamental principles of modern environmental law in the world;¹ "Sustainable Development" justifies the right of access to natural and cultural heritage of the Earth, in equality among all three generations. The necessity of integrating economic growth, social welfare, and environmental protection through a properly structured process of sustainable resource exploitation is the golden thread running through the heart of this philosophy. As a result, sustainable development is about fairness, which is defined as equal opportunity for happiness, as well as the comprehensiveness of goals.² It has been exposed to countless studies and definitions provided by numerous international treaty instruments over the last three decades,³ all of which have contributed to the theoretical foundation of the principle.

¹ <https://www.britannica.com/topic/environmental-law/Principles-of-environmental-law> (Accessed on 8/12/2021)

² Tatyana P. Soubbotina, "Beyond Economic Growth; An Introduction to Sustainable Development", 2nd Edition, The World Bank, Washington D.C., 2004 at p. 10

³ See, (I) Principle 1 & 2 of the Stockholm Declaration, 1972, (<https://docenti.unimc.it-stockholm-declaration>). (II) Principle 3 & 4 of the Rio Declaration on the Environment and Development, 1992,

"Sustainable Development" was defined by the Brundtland Commission Report in 1987 as "development that meets current demands without jeopardizing future generations' ability to meet their own needs."⁴ According to the World Bank, "growth must be both inclusive and environmentally sound to reduce poverty and build shared prosperity for today's population, as well as to continue to meet the needs of future generations...it must be resource efficient and cautiously planned to deliver immediate and long-term benefits for people, planet, and prosperity."⁵ "Article 3(4) of the UNFCCC states, "the parties have a right to and should encourage sustainable development."⁶ Furthermore, the Sustainable Development Goals were set in 2015 to eradicate poverty, safeguard the environment, and promote prosperity for all, and governments are expected to take ownership and build national frameworks for achieving the goals.⁷ The judicial attitude, In *Vellore Citizens Welfare Forum v. Union of India and Others*,⁸ Justice Kuldip Sing emphasized the importance of reconciling development and environmental protection, saying, "The conventional notion that development and ecological are mutually exclusive is no longer valid; sustainable development is the solution." Considering these opinions, it is important to emphasize that the current generation's obligation as Earth's guardians⁹ to preserve the interests of future generations cannot be disregarded or infringed.

The major goal of this research is to see if the concept of sustainable development can be legally recognised through judicial interpretation. The purpose of this analysis is to exponent the judicial attitude towards protecting and promoting sustainable development in the domestic sphere as the guardian of people's rights. Environmental degradation has occurred in South Asian countries, as well as other countries around the world, as a result of over-exploitation of resources, depletion of traditional resources, industrialization, urbanization, and population explosion. In fact, these countries have always been at the forefront of taking all possible steps to protect and improve the environment, with the goal of achieving sustainable development. These countries have enacted numerous laws at regular intervals to address environmental degradation issues. Simultaneously, the judiciary in South Asian countries have played a pivotal role in interpreting legislation in a way that not only protects the environment but also promotes long-term development. In reality, the judiciary has established a new "environmental jurisprudence."¹⁰ To make the argument stronger, innovative judicial approaches followed by the selected South Asian Major Countries will be discussed.

The role of the judiciary in supporting the notion of sustainable development in the South Asian major countries

(<https://www.iau-hesd.net>. (III) Repot of the World Summit on Sustainable Development (<https://undocs.org/pdf?symbol=en/A/Conf.199/20> (Accessed on 10/12/2021)

⁴ From A/42/427, „Our Common Future: Report of the World Commission on Environment and Development in 1987“, Available at; www.un-documents.net/ocf-02.htm (Accessed on 12/08/2016)

⁵ www.worldbank.org/en/topic/sustainabledevelopment/overview (Accessed on 12/08/2021)

⁶ The United Nations Framework Convention on Climate Change (1992)

⁷ <http://www.un.org/sustainabledevelopment/development-agenda/> (Accessed on 23/09/2021)

⁸ *Vellore Citizens Welfare Forum v. Union of India and Others* (1996) 5 SCC 647

⁹ *Juan Antonio Oposa and Others v. The Honorable Fulgencio S. Factoran and Another* (224 SCRA 792), G.R. No. 101083, 30th July 1993; https://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html, accessed on 24/10/2021)

¹⁰ Paramjit, S. Jaswal, *Directive Principles Jurisprudence and Socio-Economic Justice in India*, p. 543 (1996).

"The judiciary has a critical role in achieving a balance between environmental and developmental concerns, thereby encouraging and ensuring long-term development." Judges can help in environmental protection and ensure that laws and principles for the conservation of nature are upheld through their judgements, orders, and resolutions."

According to Barak, "bridging the gap between the law and the society appears to be a central role of the judiciary."¹¹ Hence, it is correct to argue that, the judiciary can play a significant role in filling lacunae in the legal system. Therefore, the main argument on which the study is based is "why the domestic courts are often reluctant to uphold the international soft law instruments through judicial pronouncements to promote the principle of sustainable development." Markowitz (2012) says, "the judiciary fills a vital role of providing coercion while providing an incentive for compliance. It is also essential in providing the guidance and creativity needed for sustainable development which as previously described, flows from effective compliance and enforcement."¹²

Nepal

In *Surya Prasad Dhungel vs. Godawari Marble Industries*¹³ the Supreme Court approved the *locus standi* to file a complaint under Article 26(4) of the Constitution of the Kingdom of Nepal, 1990 AD, or if an issue of public concern or interest is involved. The court recognised the right to a clean environment as a "right to life" and accepted environmental deterioration as a public problem and a subject of public interest in this landmark case. The court further stressed the importance of enacting and successfully implementing the complete Environmental Protection Act.

In *Yogi Narhari Nath and Others vs. RT. Hon. Prime Minister Girija Prasad Koirala and Others*¹⁴ the SC sublimated the environmental jurisprudence and upheld its activist role in defending the significance of Directive Principle enshrined in Article 24 of the Constitution, concerning environmental protection and sustainable development. The held, notwithstanding the fact that the Directive Principles and State Policies established in the constitution are unenforceable and can refer to any government decision that violates the directive principles and policies. Whereas, in *Shree Distillery Case*,¹⁵ The SC not only expanded the scope of the court's jurisdiction in environmental protection, but also made local governments liable for environmental protection. The SC emphasized that environmental conservation, preservation, and protection are not optional; it is obligatory. In 2015, as before, judicial statesmanship was a strong supporter of public interest litigation in environmental matters.

¹¹ Aharon Barak, "On Society, Law and Judging", University Press, 2006, Vol. 47:2, P. 302 available at https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5887&context=fss_papers. Accessed on 24/10/2021.

¹² Markowitz K.J., The Importance of the Judiciary in Environmental Compliance and Enforcement, *Pace Environmental Law Review*, Volume 29, Issue 2, Winter 2012 at p. 543

¹³ NKP Golden Jubilee Special Issue, p, 169 (1995).

¹⁴ NKP 2053 BS. (1996 AD) Ank 1, P. 3 decision no. 6127

¹⁵ Surendra Bhandari vs. Shree Distillery and others, Writ No. 3259 of 1996, decided in July 1997.

In *Padam Bahadur Shrestha on his own and as President representing Environmental Development and Conservation Legal Forum v. Kathmandu Metropolitan and Others*.¹⁶ The SC firstly issued an interim order to the city to maintain a clean environment in the City. The court directed the city to maintain the civilized appearance of the metropolis and remove visual pollutants caused by different forms of hoarding boards in core areas of the capital.

In *Prakash Mani Sharma on his own and representing Pro-Public and others v. Ministry of Population and Environment and Others*.¹⁷ The SC ruled that the mining operations violate the constitutional rights to a healthy environment and the right to live in dignity, as well as Nepalese environmental regulations. The judgement includes an impassioned argument for the value of nature in human life:

“The natural world and its environment are governed by the natural law. Any activities that are in violation of those norms, commonly known as the eco-system, may disrupt the natural balance. Even while animals and the flora and fauna deliberately or unintentionally follow this rule of Nature, humans are attempting to push it beyond its bounds. Modern men, who pride themselves on having reached the height of development, are becoming increasingly reliant on machines. Food and living habits, daily routines, and certain hobbies appear to be unappealing to society and thus go against natural laws. Such unnatural and contaminated methods are being imported at a rapid rate into an underdeveloped and backward society in the guise of ultra-modernism.”

India

Two main judicial approaches; the expansion of the “right to life” for upholding the “right to a clean and healthy environment” and reception of Public Interest Litigation (PIL) in environmental matters have mainly contributed to develop a new corpus of environmental jurisprudence in India. Geetanjoy Sahu (2008)¹⁸ states that, “through a series of illuminating directions and judgments, the Court has laid down new principles to protect the environment, reinterpreted environmental laws, created new institutions and structures, and conferred additional powers on the existing ones, in addition to its assigned role of interpretation and adjudication of environmental law.” For an example, the approach of expanding the legal capacity of standing before the Courts (“locus standi”) has been entertained by the Indian courts, through the reception of PIL as a procedural innovation in encouraging the environmental litigation.

Analysing the impact of this judicial approach in the South Asian region, Surya Deva (2009) states that, “the Indian PIL jurisprudence has contributed to the trans judicial influence, especially in South Asian Courts to develop their own PIL jurisprudence.”¹⁹ It can be found a number of PIL litigations, which contributed to lead a green revolution in India such as; M.C.

¹⁶ See, The National Daily Newspaper, The Republic, 3rd Sep. 2015

¹⁷ See, *Pro Public v. Godavari Marble Industries*, 068–WO–0082 (April 15, 2016) The National Daily Newspaper, The Kathmandu Post, 17th April 2016

¹⁸ Geetanjoy Sahu, Implications of Indian Supreme Court's "Innovations for Environmental Jurisprudence", Law, Environment and Development Journal, 4/1, (2008) at p.3

¹⁹ Deva S., Public Interest Litigation in India: A Critical Review, Civil Justice Quarterly, Issue 1, (2009), P.32.

Mehta v. Union of India cases,²⁰ State of Himachal Pradesh v. Ganesh Wood Products²¹ Narmada Bachao Andolan v. Union of India²² Indian Council for Enviro-Legal Action v. Union of India,²³ Rural Litigation and Entitlement Kendra Dehradun v. State of Uttar Pradesh²⁴ and S. P. Gupta v. Union of India.²⁵

Importantly, in some of the cases such as; *M.C. Mehta v. UOI*²⁶ and *Andhra Pradesh Pollution Control Board v. M.V. Nayudu* case,²⁷ the judiciary has underlined the importance of the precautionary principle. Not only that, “as a pioneer in this field, the Indian Supreme Court has adopted an expansive interpretation to the “right to life” clause in the Indian Constitution”.²⁸ *Subash Kumar v. State of Bihar*; is a PIL, which filed against the water pollution of the Bokaro River from the sludge/slurry discharged from a company,²⁹ and in this case, the Court held that, “right to life, guaranteed by the Article 21 of the Constitution includes the right to enjoyment of pollution-free water and air for full enjoyment of the life.” Also, in the case of *M.C. Mehta v UOI* or Ganga Pollution Case,³⁰ Justice K.N. Singh has highlighted the State responsibility under the Article 48(A) and Article 51(A) of the Indian Constitution and held that, “we are conscious that closure of tanneries may bring unemployment and loss of revenue, but life, health and ecology have greater importance to the people.”

Moreover, Justice Bhagwati, in *Rural Litigation and Entitlement Kendra Dehradun v. Uttar Pradesh and Others*,³¹ has emphasized that, “Governments, both at the Centre and State levels, must recognise and remain aware that the stakes are high and far-reaching. The evil consequences would last long. Amends or fixes would be impossible once that unwanted condition had taken hold. The greenery of India may vanish, and the “That desert may expand its bounds,” as some fear. In *Vellore Citizens Welfare Forum v Union of India*,³² Justice Kuldeep Singh has noted that: “while the leather sector is crucial to the country in terms of generating foreign cash and providing employment opportunities, it has no right to harm the ecological, degrade the environment, or represent a health risk.”

In the process of examining this innovative judicial attitude towards Eco-sustainability in India, it has to be commented on the background story behind this revolutionary transformation by considering the views of legal scholars. According to Niyati (2015), “the emergence of the

²⁰ Shri Ram Gas Leak Case - M.C. Mehta v. Union of India, AIR 1987 SC 965, M.C. Mehta v. Union of India, AIR 1987 SC 982, M.C. Mehta v. Union of India, AIR 1987 SC 1086; Ganga Pollution (Tanneries) Case - M.C. Mehta v. Union of India, AIR 1988 SC 1037; Ganga Pollution (Municipalities) Case MC. Mehta v. Union of India, AIR 1988 SC 11 15; Taj Mahal Case - M.C. Mehta v. Union of India & Others, Writ petition (civil) no. 13381 of 1984; M.C. Mehta (Badkhal and Surajkund Lakes Matter) V. Union of India (1997) 3 SCC 715

²¹ 1995 (6) SCC 363

²² (2000) 10 SCC 664

²³ AIR 1996 SC 1446

²⁴ AIR 1985 SC 652

²⁵ AIR 1982 SC 149

²⁶ M.C. Mehta (Badkhal and Surajkund Lakes Matter) V. Union of India (1997) 3 SCC 715.

²⁷ AIR 1999 SC 812

²⁸ Anderson, M.R., “Individual Rights to Environmental Protection in India”, 1996

²⁹ (1991) 1 SCC 598

³⁰ Supra fn. 25

³¹ Supra fn. 24

³² Infra fn. 38

environmental jurisprudence in India through the innovative judgement ... is a reaction towards the failure on the part of the Governmental agencies to effectively enforce the environmental laws.³³ Perhaps, the dark memories of the Bhopal disaster in 1984³⁴ had a huge influence on this liberal and philosophical judicial thinking in favour of the environmental protection. However, this judicial standpoint has contributed to promote the environmental litigations by welcoming various efforts to provide extensive dimensions to "locus standi", which ultimately supports to uphold the principle of "sustainable development", as discussed above.

In *R.L. and E. Kendra, Dehradun vs. UOI* (Doon Valley Case); It was the first case of its kind in India addressing environmental and ecological issues, and it brought the tension between development and conservation into sharp light, with the court emphasizing the importance of harmonizing the two in the country's greater interests. Mining, which depleted the Mussorie Hills of trees and forest cover, sped soil erosion, resulting in landslides and the blocking of underground water that fed several rivers and springs in the river basin, intensified soil erosion, resulting in landslides and landslides. In rejecting the Petition, the Court stated that it was conscious of the fact that as a result of the closure of the mines workmen employed in the mines will be out of work and directed that immediate step be taken for reclamation of the areas forming part of such quarries and that the affected workmen be as far as possible and in the shortest possible time, be provided employment in the reforestation and soil conservation programs to be undertaken in the area.

In *M.C. Mehta vs. Kamal Nath and others*,³⁵ the thought that the right to life is a Fundamental Right under Art. 21, and right to life connotes quality of life, a person has a right to enjoyment of pollution free water and air to enjoy whole life. In case any disturbance of the basic environment elements such as air, water, and soil, would be hazardous to life. The court accepted in this case the doctrine of public trust which rests on the premise that certain natural resources like air, sea, water are means for general use and cannot be restricted to private ownership. The court further states, resources are a gift of nature and the State, as a trustee thus, is duty bound to protect them, whereas, the State is a trustee, and public the beneficiary of such natural resources.

In *Vellore Citizens Welfare Forum vs. Union of India*,³⁶ the court ruled cognizance of environmental problem being caused by tanneries which were pollution all water resources, rivers, canals, underground water and agricultural land. The court issued several directions to deal with the problem. The Supreme Court has laid down that the "Precautionary Doctrine" and the "Polluter Pays Principle" are essential features of "Sustainable development."

Bangladesh

In *Dr. Mahiuddin Farooque vs. Bangladesh, Represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and Other*.³⁷ The petitioner, the Secretary General of the Bangladesh Environmental Lawyers Association (BELA), appealed against an order of the High Court Division summarily dismissing a writ petition filed on behalf of a group

³³ Mahajan Niyati, "Judicial Activism for Environment Protection in India", International Research Journal of Social Sciences, Vol. 4(4), 7-14, April (2015), at p. 8

³⁴ bhopal.org/what-happened/union-carbides-disaster/ (Accessed on 23/9/2021)

³⁵ Supreme Court of India (1997) 1 SC Case 388.

³⁶ AIR, 1996 SC 2721; (1996) 5 SCC 647.

³⁷ 48 DLR 1996, Supreme Court of Bangladesh, Appellate Division (Civil)

of people in the district of Tangail whose life property, livelihood, vocation, and environmental security were being seriously threatened by the implementation of a flood control plan, the compartmentalization Pilot Project, FAP-20. The petition was dismissed by the High Court on the ground that BELA was not an "aggrieved person" within the meaning of Article 102 of the Constitution of Bangladesh. Article 31 and 32 of the Constitution protects the right to life as a fundamental right, but there is no express right to a healthy environment. The question before the court was whether the fundamental right to life included the protection and preservation of the environment, the ecological balance and an environment free from pollution essential for the enjoyment of the right to life.

The Appellate Division of the SC of Bangladesh granted the Petitioner locus standi to petition the High Court Division under Article 102 of the Constitution, stating that the term "any person aggrieved" in Article 102 of the Constitution refers to the people as a collective and consolidated personality, not just to individual affected persons. The court considered, in the writ petition and determined that the Association should be granted locus-standi to continue the writ petition, stating that the Association is a "person aggrieved" within the meaning of Article 102 of the constitution "because the cause it bona fide espouses, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people."

"The expression" any person aggrieved" approximates the test of or if the same is capsulated, amounts to, what is broadly called, "sufficient interest." Any person other than an officious intervener or a way farer without any interest in the cause beyond the interest of the citizen of the country having sufficient interest in the matter in dispute is qualified to be a person aggrieved and can maintain an action for is qualified to be a victim and can maintain an action for judicial redress of public injury arising from a breach of some public duty or for violation of constitutional and provisions. *Justice B.B. Roy Choudhary* comparison with the Article 48 of Indian Constitution for protection of environment, Art. 31 and 32 of Constitution protection right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological free from pollution of air and water, sanitation without which, life can hardly be enjoyed. Any act or omission contrary there will be violate of the said right to life." Although, the real test of "sufficient interest" of course essentially depends on the co-relation between the matter brought before the court and the person who is bringing it." (Hon. Mr. Justice A.T.M. Afzal, Chief Justice.)

In *Dr. Mohiuddin Farooque vs. Secretary, Ministry of Communication Government of the Peoples' of Bangladesh and Others*.³⁸ The Supreme Court of Bangladesh directed by issue to

³⁸ The petitioner, Mohiuddin Farooque, Secretary General of the Bangladesh Environmental Lawyers Association (BELA), filed this petition against the Secretaries of the Ministries of Communication, Environment, Health Affairs and industries and others including the Chairman of the Bangladesh Road Transport Authority and the Commissioner of Dhaka Metropolitan Police, to require them to perform their statutory duties and mitigate air and noise pollution caused by matter vehicles in the city of Dhaka. The Petitioner argued that vehicles on Dhaka's roads did not comply with the required fitness standards, and that they emitted smoke harmful to humans. He also argued that his use of prohibited horns and audible signalling devices was causing extreme noise pollution. The Petitioner argued that although the Constitution of Bangladesh contained no specific right to a safe and healthy environment, this right was inherent in the "right to life" enshrined in Article 32. The petitioner stated that this interpretation of Article 32 is supported by Article 31 which prohibits actions detrimental to life, body or property.

writ petition, to take effective measures, as provided in the Motor Vehicles Ordinance 1983, to check air pollution caused by motor vehicle emissions and noise pollution resulting from audible signaling devices.

Pakistan

The real meaning of guaranteeing "right to life" by the Constitution is ensuring the right to life in an unpolluted, safe and clean environment. In that sense, Justice Saleem Akhtar has raised a question in *Shehla Zia and Others v. The Water and Power Development Authority*³⁹ as, "the Constitution guarantees dignity of man and right to 'life' under Article 9 and if both are read together, a question will arise whether a person can be said to have dignity of man if his right to life is below the bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment."

This progressive judicial approach towards Eco-sustainability has also been followed by the judiciary of Pakistan in several instances, such as; *Anjum Irfan v Lahore Development Authority*,⁴⁰ and *General Secretary, West Pakistan Salt Miners Labour Union v. The Director, Industries and Mineral Development*.

In the case; *Ashgar Leghari v. Federation of Pakistan*,⁴¹ has been filed as a PIL, citing the Pakistani government's negligence and delay in addressing climate change vulnerabilities, and arguing that this violates the fundamental constitutional rights to life and dignity. "Climate change issues were not sufficiently reflected within the acts of the ministries," the High Court of Lahore said, "therefore the Court directed the national government to take action on climate change based on fundamental legal principles."

In *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Khelum vs. The Director, Industries and Mineral Development, Punjab Lahore*,⁴² petition was filed in the Supreme Court under Article 184(3) of the Constitution against the pollution of the water supply source to the residents and mine workers of Khewra. The spring Mitha Pattn was the only major source of drinking water in the area. Accordingly, a water catchment area was reserved and grant of mining leases in the area was prohibited prior to 1911. Notwithstanding the prohibition, the authorities concerned had granted mining leases in the catchment area. The petitioners' alleged that as a result, poisonous waste water discharged from the mines polluted the reservoir creating a health hazard, and that the allotment and grant of leases for mining in the catchment area was illegal and mala-fides, and prayed for cancellation of licenses.

The petition was granted by the Supreme Court of Pakistan, which stated that people who are in danger have the right to claim that their fundamental right to life, as guaranteed by the constitution, has been violated and that there is a case for enforcing that right by issuing directions or orders prohibiting parties and authorities from committing such violations or failing to perform their duties.

³⁹ PLD 1994 SC 693, Case No.15-K of 1992, heard on 12th February, 1994

⁴⁰ PLD 2002 Lahore 555, Writ Petition No. 25084 of 1997, Decided on 14/06/ 2002

⁴¹ As per Justice Syed Mansoor Ali Shah, W.P. No. 25501/2015, Decided on 4th September, 2015

⁴² 996 SC MR 2061, Supreme Court of Pakistan.

Quoting Article 184(3) of the Constitution, the court observed that "it is well settled that in human rights cases/public interest litigation under Article 184(3), the procedural trappings and restrictions, precondition of being an aggrieved person and other similar technical objections cannot bar the jurisdiction of the court. This court has vast power under Article 184(3) to independently investigate factual issues by recording evidence, creating commissions, or any other reasonable and legal means to determine the proper position. This court has the authority to make orders of the sort described in Article 199, according to Article 184(3). The fact that the order or directive must be of the sort described in Article 199 broadens the scope of remedy that can be awarded by this court, and the relief so granted can be tailored to the facts and circumstances of each case."

As a result, the court proceeded to consider the facts pertinent to the question of whether mining activities could harm the water supply, and issued an order instructing PCC to relocate from the mouth of mine 27 A to a safe distance from the stream and small reservoir within four months. The court also established a commission to oversee the implementation of the orders, with the authority to inspect, record evidence, and so on. Furthermore, any mines operating near the catchment region were required to take measures that would avoid pollution of the reservoir, stream, and catchment area to the satisfaction of the commission. The authorities concerned were also ordered not to grant new licenses in the catchment area or to renew old ones referred to in a schedule, without the prior approval of court.

In *RE: Human Rights case (Environment Pollution in Balochistan)*,⁴³ the Supreme Court of Pakistan having taken note of the news item issued an order requiring Chief Secretary of Balochistan to provide the Court with full information on the allocation or the receipt of applications for allocation of coastal land in Balochistan or any area within the territorial waters of Pakistan.

The Supreme Court of Pakistan ruled that the Balochistan and Development Authority must submit a list of persons to whom land on Balochistan's coastal area has been allotted, including their names and full addresses, as well as copies of any letters of allotment, lease, or license issued in their favour. Furthermore, the Government of Balochistan and the Balochistan Development Authority have been directed that if any application for allotment of coastal land is pending or if any party applies for allotment of such land in the future, the applicant's full details must be provided to the Assistant Registrar.

The Court further stated that government officials, particularly those in charge of allotting land in coastal areas, should include a condition in the allotment letter/license/leave that the allotted tenant will not use the land for dumping, treating, burying, or destroying waste of any kind, including industrial or nuclear waste in any form, by any device. All those to whom allotments have been made for shipbreaking, agriculture, or any other purpose should give equivalent assurances to the Balochistan Development Authority.

⁴³ Human Rights Case No: 31-k/92(Q), in this case a news item entitled "N-Waste to be dumped in Balochistan" was published in "Dawn", a daily newspaper in its issue dated 3rd July, 1992. In the report, concern was expressed that certain business men were making attempts to purchase coastal areas of Balochistan and convert it into dumping grounds for waste material.

Sri Lanka

The 3rd South Asia Judicial Round table on Environmental Justice for Sustainable Green Development, 8th & 9th August 2014, Colombo, Sri-Lanka.

The Supreme Court of Sri-Lanka held:

In relating to Sri-Lanka's obligation towards the International Covenant on Civil and Political Rights (1966), Justice Fernando, in *Weerawansa v. AG*,⁴⁴ emphasized that, "Article 27 (15) of the Constitution requires the State to Endeavor to foster respect for international law and treaty obligations in the dealings among nations. That implies that the State must likewise respect international law and treaty obligations in its dealings with its own citizens, particularly when their liberty is involved. The State must afford to them the benefit of the safeguards which international law recognises."

In the *Environmental Foundation Limited and Others vs. The Attorney General and Others*,⁴⁵ in this case petitioners include residents Nawimana and Weragampita Villages in the South of Srilanka, as well as a company which is devoted to environmental protection. In 1987 the Southern Group took over a rock quarry near Petitioners villages. Petitioners allege that they have suffered serious injury to their physical and mental health, and serious damage to their property, as a result of large-scale blasting which commenced at the quarry in 1987.

Among other allegations, Petitioners state that pieces of rock 20 centimetres in diameter were projected into their village, that the blasting created unbearable noise, severe vibrations & thick smoke, destruction of homes, and harm to their health and livelihoods.

Petitioners argued that despite their complaints, the Government Agent, Matara, renewed the quarry's license without giving them a hearing, the Superintendent of Police, Matara, did not exercise his powers to abate a public nuisance, the Central Environmental Authority (CEA) did not exercise its powers under the National Environmental Act because the quarry's operator had not obtained a license from the CEA, and the Director of the Geological Survey Department did not exercise his powers under the National Environmental Act because the quarry's operator had not obtained. These parties are all respondents in this action. Finally, petitioners asserted that the quarry's owner and operator, the Southern Group, benefited from the other respondents' executive conduct (or omission), and should pay to repair petitioners' physical quality of life. Petitioners claimed that different articles of the Constitution had been violated, including: Article 3 "Sovereignty is inalienable and includes fundamental rights," Article 11 "no one shall be subjected to cruel, inhuman, or degrading treatment," Article 14 (1) (g) "every citizen is entitled to freedom to engage in any lawful occupation," Article 14 (1) (h) "every citizen is entitled to freedom of movement and residence."

After this action was instituted, CEA officials inspected the quarry, and met with petitioners' representatives. In December 1992, the parties informed the Supreme Court that a settlement had been reached.

⁴⁴ *Weerawansa v. The Attorney General and Others* (2000) 1 Sri LR 387

⁴⁵ Supreme Court of Srilanka S.C. Application No. 128/91,

The Supreme Court of Sri-Lanka held that the court listed the terms of the settlement. The number of blasting was limited to three days a week (Monday, Wednesday and Friday), and if there is necessity to increase the number, the Monitoring Committee (two persons nominated by Petitioners and two persons from the Southern Group, the Gamma Niladhari of the villages of Nowimana and Weragampita, and the Government Agent, Matara) must approve the change. If the blasting cannot be done on one of three days, it can be done on an alternative day suitable to the Southern Group if 24 hours' writer notice is given to the Gamma Niladhari. Contingencies preventing a scheduled blasting include bad weather and inability of the police to be present.

Blasting will take place between 10:00 am and 5:00 pm. There should be at least a 20 second time lapse between each blasting, and electronic detonation and the safety fuse method must be used. The depth of a bore hole cannot exceed 8 feats. The number of blasting per day is not stipulated.

The police must maintain a monthly report outlining the total amount of explosives used, the depth of bore holes, the dates on which blasting took place, the start and end of blasting, the blasting methods utilized, the number of bore holes drilled each day, and any objections filed by petitioners. The quarry's site manager certifies this report, which is kept on the grounds.

Secondary blasting, maximum noise and vibrations, and crusher operation were also considered in the agreement. The CEA shall include a condition in the environmental protection license mandating the installation of a sound barrier around the crusher, and the crusher operation should be a continuous wet process. Finally, before blasting begins and when blasting is done, a siren should be heard three times.

Another important case, *S.C. Amara Singh and three Others vs. the Attorney General and three Others*,⁴⁶ the petitioner sought to quash an order of the President of Sri-Lanka dated 21.10.1992 made under section 2 of the Urban Development Projects (Special Provisions) Act no. 2 of 1980 declaring that upon the recommendation of the Minister in charge of Urban Development he was opinion that the lands described in the schedule to the order were urgently required of an Urban Development Project. The Attorney General and, the Road Development Authority were made respondents. He was common ground that the lands in question were to be acquired in connection with the construction of an express way from Colombo to Katunayake. The petitioners contended in the Supreme Court that there had been a failure of natural justice as there had been no hearing prior to making the order, even though under section 2 of the Act the Urban Development Project had to be one" which would meet the just requirements' of the general welfare of the people."

Likewise, Justice Amerasinghe in *Bulankulama v. Secretary, Ministry of Industrial Development*⁴⁷ has stated that, "As a member of the United Nations, they [soft law] could hardly be ignored by Sri Lanka. Moreover, they would, in my view, be binding if they have been either expressly enacted or become a part of domestic law by the adoption by the superior courts of record and by the Supreme Court in particular, in their decisions."

⁴⁶ S.C. (SPL) No. 6/92, Supreme Court of Sri-Lanka.

⁴⁷ *Bulankulama v. Secretary, Ministry of Industrial Development* (2000) 3 Sri L.R. 243

Furthermore, the Supreme Court of Sri-Lanka held:

- i. the order issued under section 2 of the Urban Development Projects (Special Provisions) Act has no negative influence on a citizen's property, liberty, or livelihood, and does not deprive him of or alter his possession of property. At that time, a public hearing was not necessary.
- ii. Based on the available evidence, the court would not intervene since the decision to build the highway was not irrational.
- iii. Section 3 of the Urban Development Projects (Special Provisions) Act did not take away the Superior Courts' constitutionally protected powers.
- iv. Section 7 of that Act, did not empower the state to take over privately owned land under the State Lands (Recovery of Possession) Act without first acquiring the land under the Land Acquisition Act.
- v. Sections 23 AA and 23 BB of the National Environmental Act, as modified, were not applicable because no orders specifying any "prescribed projects" had been issued. However, under section 10(h) of the Act, the Central Environmental Authority had the authority to request an EIA for any new project, and the Court noted that the Respondents had agreed to prepare an EIA and make it available for public scrutiny for 30 days, which would be the appropriate time to consider public comments on environmental factors.

Based on the aforementioned judicial viewpoints, this study asserts that the principle of sustainable development, which is primarily enriched in soft law instruments, can be applied as binding legal authorities through judicial pronouncements to cover gaps in the legislative framework. Although this technique has not been well-established as a rule, there are numerous outstanding examples in South Asian countries that demonstrate the veracity of such an argument.

Conclusion

In order to achieve the real objectives of having principles of environmental law⁴⁸, those principles must have to be recognized as legal binding authorities in its domestic application either by enabling laws or by the Courts through judicial decisions. In that sense, the judiciary, as the upper guardian of the rights of the people, has the capability of incorporating principles of environmental law into the domestic legal systems, through a comprehensive judicial interpretation. In light of above-mentioned decisions, it is correct to say that, in order to promote the value of the principle of sustainable development, the judiciary must step out from its conventional role to provide a strong legal recognition to the obligations of the countries under international environmental law.

The judicial decisions outlined above clearly illustrate that, by filling gaps in the existing statutory and constitutional framework, the judiciary can play a critical role in the protection and promotion of the idea of sustainable development.⁴⁹

⁴⁸ Environmental Principles such as; Sustainable Development, public trust doctrine, inter-generational equity, intra-generational equity, precautionary principle and the common heritage of mankind, etc.,

⁴⁹ In some cases, discussed above, the judiciary has mentioned and defined the principle of sustainable development and some judges have gone further to emphasize the importance of the principle in direct

Kaniaru (1998) argues that, “judiciaries have, and will most certainly continue to play a pivotal role both in the development and implementation of legislative and institution regimes for sustainable development.”⁵⁰ Hence, it is worth to mention the point raised by Justice J.B. Ojwang (2007) as; “It is, however, in the area of civil litigation, that greater opportunities lie for the judicial contribution to the environment., I have proposed that, where the pleadings, the evidence and the submissions before the Courts are right, recourse should be made to the best principles of environmental conservation and sustainable development, in determining the claims of parties.”⁵¹

On the other hand, a country should not embrace excessive or pure dualism, and judicial officers should be urged to incorporate international standards and values into their court decisions. "Domestic judges must view themselves, no course, as owing a responsibility of justice to their people, but also as trustees of humanity's law, ever capable of enforcing international law by the reception of it into their national institutions," writes Sornarajah (2016).⁵²

To facilitate this task to be achieved, the independence of the judiciary must be guaranteed. The study further suggests that, the citizens must be encouraged to claim their rights through active participation in the environmental litigation process.⁵³ Hence, raising public awareness and providing legal assistance should be integral parts of this process. The State has a responsibility to ensure environmental justice⁵⁴ by providing equal opportunities to access to justice for all, and providing legal assistance to underprivileged members of the society is also a crucial requirement for that. Environmentalists and social workers also have a part to play in this process by bringing legal suits/PIL in environmental matters. Finally, we must remember that our responsibility to future generations cannot be simply disregarded or denied, because we owe a great deal to previous generations for what we have now.

References:

Books;

1. Anderson, M. R. (1996). Individual Rights to Environment Protection in India.
2. Barak, A. (2006). The Judge in a Democracy. Princeton University Press.

way. But in some cases, though the phrase; sustainable development has not been expressly mentioned, the spirit and the objective of the principle reflects through the judgment.

⁵⁰ D. Kaniaru, L. Kurukulasuriya and C. Okidi, “UNEP Judicial Symposium on the Role of the Judiciary in Promoting Sustainable Development”, paper presented to the Fifth International Conference on Environmental Compliance and Enforcement, Monterey, California, USA, 1998, p. 22 of Conference proceedings.

⁵¹ J.B. Ojwang, “The Role of the Judiciary in Promoting Environmental Compliance and Sustainable

⁵² Ibid.,

⁵³ In the Fundamental duties” enriched in the Constitution of Nepal, 2015 AD, it is the duty of every person in Nepal to protect nature and conserve its riches” [Article 51(g)]

⁵⁴ For an example, In Directive Principles, Policies and Responsibilities of the State in the Constitution of Nepal, 2015 AD, especially, in Article 51(g)(7) states that, “The State shall pursue a policy of keeping necessary landmass as forest area in order to strike an environmental balance.” Also, Article 51(g)(8) of the Constitution, declares that, “The State shall formulate policies and enact laws on the basis of the principle of sustainable environment development based on pre-warning and pre-informed agreements regarding environmental protection.”

3. Jaswal, P. S. (1996). Directive Principles Jurisprudence and Social-Economic Justice in India. APH Pub. Corp.
4. Ojwang, J. B. (n.d.). The Role of the Judiciary in Promoting Environmental Compliance and Sustainable.
5. Soubotina, T. P. (2004). Beyond Economic Growth; An Introduction to Sustainable Development (2nd ed.). Washington D.C.,: The World Bank, Washington D.C.,

Websites

1. <https://www.britannica.com/topic/environmental-law/Principles-of-environmental-law>
2. <https://docenti.unimc.it-stockholm-declaration>.
3. <https://www.iau-hesd.net>.
4. <https://undocs.org/pdf?symbol=en/A/Conf.199/20>
5. www.un-documents.net/ocf-02.htm
6. www.worldbank.org/en/topic/sustainabledevelopment/overview
7. <http://www.un.org/sustainabledevelopment/development-agenda/>
8. https://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html
9. https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5887&context=fss_papers.

Cases:

1. *Vellore Citizens Welfare Forum v. Union of India and Others*, (1996) 5 SCC 647
2. *Juan Antonio Oposa and Others v. The Honorable Fulgencio S. Factoran and Another* (224 SCRA 792),
3. *Surya Prasad Dhungel vs. Godawari Marble Industries*
4. *Pro Public v. Godavari Marble Industries*, 068–WO–0082
5. *Yogi Narhari Nath and Others vs. RT. Hon. Prime Minister Girija Prasad Koirala and Others*
6. *Surendra Bhandari vs. Shree Distillery and others*, Writ No. 3259 of 1996
7. *Padam Bahadur Shrestha on his own and as President representing Environmental Development and Conservation Legal Forum v. Kathmandu Metropolitan and Others*.
8. *Prakash Mani Sharma on his own and representing Pro-Public and others v. Ministry of Population and Environment and Others*
9. *M.C. Mehta v. Union of India*, AIR 1987 SC 1086;
10. *M.C. Mehta v. Union of India & Others*, Writ petition (civil) no. 13381 of 1984; Taj Mahal Case
11. *MC. Mehta v. Union of India*, AIR 1988 SC 11 15; Ganga Pollution (Municipalities) Case
12. *M.C. Mehta (Badkhal and Surajkund Lakes Matter) V. Union of India*, AIR (1997) 3 SCC 715
13. *State of Himachal Pradesh v. Ganesh Wood Products* AIR (1995) SC (6) SCC 363
14. *Narmada Bachao Andolan v. Union of India*, AIR (2000) 10 SC 664
15. *R.L. and E. Kendra, Dehradun vs. UOI (Doon Valley Case)*
16. *Dr. Mahiuddin Farooque vs. Bangladesh, Represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and Other*. 48 DLR 1996, Supreme Court of Bangladesh, Appellate Division (Civil)

17. *Dr. Mohiuddin Farooque vs. Secretary, Ministry of Communication Government of the Peoples' of Bangladesh and Others.*
18. *Shehla Zia and Others v. The Water and Power Development Authority*, PLD 1994 SC 693, Case No.15-K of 1992,
19. *Anjum Irfan v Lahore Development Authority, and General Secretary, West Pakistan Salt Miners Labour Union v. The Director, Industries and Mineral Development.* PLD 2002 Lahore 555, Writ Petition No. 25084 of 1997, Decided on 14/06/ 2002
20. *Ashgar Leghari v. Federation of Pakistan*; W.P. No. 25501/2015,
21. *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Khelum vs. The Director, Industries and Mineral Development, Punjab Lahore*, 996 SC MR 2061, Supreme Court of Pakistan.
22. *RE: Human Rights case (Environment Pollution in Balochistan)*, Case No: 31-k/92(Q),
23. *Weerawansa vs. The Attorney General and Others* (2000) 1 Sri LR 387
24. *Environmental Foundation Limited and Others vs. The Attorney General and Others*, Supreme Court of Sri Lanka S.C. Application No. 128/91,
25. *S.C. Amara Singh and three Others vs. the Attorney General and three Others*, S.C. (SPL) No. 6/92, Supreme Court of Sri-Lanka.
26. *Bulankulama v. Secretary, Ministry of Industrial Development* (2000) 3 Sri L.R. 243