

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 12251 of 2018

Hanuman Laxman Aroskar

...Appellant

Versus

Union of India

...Respondent

WITH

Civil Appeal No 1053 of 2019

Federation of Rainbow Warriors

...Appellant

Versus

Union of India and Ors

...Respondents

127 Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement – both in developed and developing countries alike.⁵⁹ The environmental rule of law seeks to address this gap.

128 The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development— economic, social, environmental, and peace.⁶⁰ It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance.⁶¹ The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.⁶² Similarly, the rule of law in environmental matters is indispensable “for equity in terms of the advancement of the Sustainable Development Goals⁶³, the provision of fair access by assuring a

⁵⁹ United Nations Environment Programme, First Environmental Rule of Law Report. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

⁶³ SDGs

rights-based approach, and the promotion and protection of environmental and other socio-economic rights.”⁶⁴

129 Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard⁶⁵ to a standard based on freedoms.⁶⁶ Thus recharacterized, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar - or more - freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

130 Decision 27/9 which was adopted by the United Nations Environment Programme’s⁶⁷ Governing Body at its first universal session in 2013 on ‘Advancing Justice, Governance and Law for Environmental Sustainability’ was the first internationally negotiated document to establish the term ‘environmental rule of law.’ It declared that “the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations”. It thus urged governments and organisations to reinforce cooperation to combat noncompliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the “development and implementation of environmental rule of law with attention at all levels to mutually supporting

⁶⁴ UN Environment, Environmental Rule of Law. Available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>

⁶⁵ Brundtland definition of Sustainable Development

⁶⁶ Amartya Sen, Sustainable Development and our responsibilities. Available at <http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf>

⁶⁷ UNEP