

An Overview of Environmental Jurisprudence in India

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Abstract

The principal objective of this paper is to demonstrate the importance of Environmental Jurisprudence in India. This paper gives an idea that “How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves.” This paper includes role of law makers and various legislations related to Environment Protection in India. It also talks about the influence of International Law on the domestic legal regime to deal with the problem of environment protection. It further provides an idea about judicial approach with special reference to Public Interest Litigation and cases decided by Hon’ble Supreme Court of India. Finally the paper gives certain recommendation navigated through research for further development in the area of Environment Protection in India.

Keywords: Environment Jurisprudence, Environment Protection, Domestic and International Legislations, Judiciary.

INTRODUCTION

*“...Nature provides a free lunch, but only if we control our appetites...”*¹

The preceding century has witnessed an unmanageable boost in population, placing a tremendous burden on the available natural resources. Mother nature has offered all she had, the earth itself is dog-eared due to disproportionate excessive cultivation, use of harsh chemicals and pesticides and excessive use of ground water. Water resources are badly polluted and discharge of toxic fumes from industry and vehicles has dispossessed us of uncontaminated air. Industrialisation and a growing consumer economy have led to the creation of huge megapolises with their problems of undisposed garbage and uncontrolled sewage. The alarming rate at which the ordeals are increasing, the day is not far when not only India but the whole world would get converted into a desert. The non-biodegradable plastic bag we openly dump, to the fumes generated by our luxurious cars all are unswerving invitation to our most dreadful nightmare. One can observe this destruction in every field. The rapid melting of ice caps, polluted water bodies, epidemics arising due to that unfit water and air are nothing but a ‘wake up’ call. A notice that the nature would not remain the way it is for long. And for the very first time, we Indians cannot put it as a burden on the shoulders of government as it is not the government who is solely liable for the deteriorating condition, it is also the common

¹ William Ruckelshaus, *Business Week*, 18 June 1990

mass who is to be blamed. A final call, if we do not adhere to the principles what is taught to us by the nature, we would face the most antagonistic face of nature; Something which would be synonymous to destruction.²

The inefficient hierarchy of priorities set up in a country is something which hinders our country from attaining the prime potential it has. We are struggling hard with problems from all categories- Terrorism, politics, scams, corruption and what not. Midst all this, we have apparently failed to acknowledge and address a very important issue of environmental protection. Environment- One of the most neglected zones when it comes to the rack of legislations involved and the kind of judicial treatments the disputes have been getting is one of the chief concerns of all time.

In the Constitution of India it is clearly stated that it is the duty of the state to ‘protect and improve the environment and to safeguard the forests and wildlife of the country’. It imposes a duty on every citizen ‘to protect and improve the natural environment including forests, lakes, rivers, and wildlife.’³ Time and again the Indian Laws have taken a turn and tried adapting to the dynamics of the need. However there transition phase has always been miserable. There’s a lot done, but the fact cannot be denied that a lot is yet to be done.

² Basu Palok, *Law relating to Protection of Human Rights*, pp. 27-28, First Edition 2004, Modern Law Publications.

³ Article 48 of the Indian Constitution, Refer to Directive principle of state policy and Fundamental Duties

PORTRAIT OF THE CURRENT STATUS QUA

“How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves.”

Under the lights of the Rio-de Janeiro (late 1970s) earth summit and the ideas of International bodies such as UN, The World Commission on Environment and development India is igniting its potential best. Being well acquainted to the current status quo the much needed steps to combat the environmental related problems were being adopted.

The Ministry of Environment and Forests laid down its objectives and has been putting sincere efforts to eliminate all the ordeals. Following are the main objectives laid down by the ministry of environment:

- Conservation & survey of flora, fauna, forests and wildlife
- Prevention and control of pollution
- Afforestation & regeneration of degraded areas
- Protection of environment, all within the frame work of legislations.⁴

The Indian Government has played its move, Regular surveys throughout the country is done in short period of time, this not only helps the government to keep a check of what is going on in the country but the

⁴ Pylee, M.V. (999). India's constitution. New Delhi: S. Chand and Company. ISBN 81-219-1907-X..

raw data available also helps in research and development programmes. Further, Indian Government is also trying its best to curtail pollution issues within the geographical boundaries. Regeneration programmes and undeviated support from NGO's has led to additional help in curbing such problems. Noble step, indeed but can that be termed as adequate is the question. Through the years, the ministry has approved infinite laws to assist them in their chore of environmental protection. Sadly, all the regulations and acts have not done enough to shelter the environment against all ordeals. The greed of many in the governing bodies has led to misuse of the laws and ruthless exploitation of the land, leading to ecological destruction and social injustices. Public apathy and lack of concern amplifies the effect. Opening up of our economy and globalization is another raison d'être for shattering the protective walls our country has created. The arguments advanced shouldn't be misconceived and taken in complete disapproval of globalisation. But the fact that it is burdensome to let an MNC work on our lands and exploit our natural resources cannot be ignored.

ROLE OF THE LAW MAKERS: LEGISLATORS

For any country the effective way of control pollution and degradation of resources is to combine traditional laws, with modern legislation. In India is concerned, the Ministry of Environment and Forests is the nodal agency at the Central level for

planning, promoting and coordinating the environmental programmes, apart from policy formulation.⁵

In India the Central Pollution Control Board monitors the industrial pollution prevention and control at the central level, which is a statutory authority attached to the Ministry of Environment and Forests. At the State level, the State Departments of Environment and State Pollution Control Boards are the designated agencies to perform these functions. There are many important legislations which came up, in order to slash the immediate problems which were faced. Each of the acts were evolved due to some or the other reasons. Lets us investigate the saga.

Some of the wild animals have already extinct in India and others are apprehended of facing extinction. The rapid declination of wild life did not go unnoticed. An urgent need for introducing a comprehensive legislation for providing protection to wild animals and birds was felt by the central government.⁶ As it was realised, that state laws were not enough, thereby local provisions were amalgamated with new provisions and thus led to the formation of wild life protection act. There is similar tale behind the formation of every act. The legislators of our country do not act unless their tails are on fire.

⁵ Pylee, M.V. (1999). India's Constitution. New Delhi: S. Chand and Company. ISBN 81-219-1907-X.

⁶ Ibid

FEW MILESTONES ATTAINED SO FAR

Wild Life (Protection Act), 1972

This act has been provided so that the wildlife which is an integral part of the ecosystem can be protected and guarded against extinction. Under this Act every State has to constitute a Wild Life Advisory Board. Certain areas are to be declared as sanctuaries and National Parks. This is Act is basically for the protection of animals, plants and birds which live in forests. Hunting of the wild animals is permitted only when such animals become dangerous to the human beings or it becomes diseased beyond recovery.⁷

The Indian Forest Act, 1927

Section 26(i) of the Act makes it punishable if any person, who, in contravention of the rules made by the State Government, poisons water of a forest area. The State Government has been empowered under Section 32(f) to make rules relating to poisoning of water in forests.

The Water (Prevention and Control of Pollution) Act, 1974

National water law is more developed than international water law. Nevertheless, India lacks an umbrella framework to regulate freshwater in all its dimensions. The existing water law framework in India is characterised

⁷ Tayal, B.B. & Jacob, A. (2005), Indian History, World Developments and Civics, pg. A-33

by the coexistence of a number of different principles, rules and acts adopted over many decades. These include common law principles and irrigation acts from the colonial period as well as more recent regulation of water quality and the judicial recognition of a human right to water. The Water (Prevention and Control of Pollution) Act, 1974 is the first act thrown by the Indian government. This act empowers SPCB / PCC to enter into industrial plants, factories, etc., and inspect plant, records registers and documents. it also Empowers SPCB / PCC to take samples of industrial effluents and analysis of same. This act has clauses which also Provides for Criminal liabilities.⁸

Air (Prevention and Control of Pollution) Act, 1981

The objective of the Act was to provide prevention, control and abatement of air pollution. This Act basically aimed at the industrial pollution and automobile pollution.

Environment (Protection) Act, 1986

A cursory analysis of its Preamble makes it obvious that the objectives of the enactment are three fold. 1) Protection of the environment 2) Improvement of environment 3) Prevention of hazards to a) human beings b) other living creatures, c) plants and d) property .This is an umbrella legislation, that has a broad spectrum indeed. It covers from

⁸ Ibid

Radio- Active Substances disposal to use of plastic bags.⁹

The Noise Pollution (Regulation and Control) Rules, 2000

‘Noise is a silent killer’, keeping in mind this valuable advice(which perhaps may/ maynot be the source of the acts revival), The Noise Pollution (Regulation and Control) Rules, 2000, According to this act the State Government shall categorize industrial, commercial, and residential or silence zones and implement noise standards. Further it also restricts the use of loudspeakers, amplifiers, beats of drum and tom-tom except with the permission of the authorities.

The Serais Act, 1867

The Act enjoined upon a keeper of Serai or an inn to keep a certain quality of water fit for consumption by “persons and animals using it” to the satisfaction of the District magistrate or his nominees. Failure for maintaining the standard entailed a liability of rupees twenty.

Obstruction in Fairways Act, 1881

Section 8 of the Act empowered the Central Government to make Rules to regulate or prohibit the throwing of rubbish in any fairway leading to a port causing or likely to give rise to a bank or shoal.

⁹ Ibid

PUBLIC INTEREST LITIGATION: A TOOL FOR IMPROVEMENT

The most characteristic feature of the Indian environmental law is the important role played by the public interest litigation. The majority of the environment cases in India since 1985 have been brought before the court as writ petitions, normally by individuals acting on pro bono¹⁰ basis. USA, in mid 1960s initiated PIL system, In UK it was Lord Denning, and in India it was J PN Bhagwati and J Iyer through their landmark judgements made a clear path to proceed on the road of PIL. There have been inventiveness from the legislature and the executive but it is the Indian judiciary which has taken a lead in terms of the actual immediate effects in the matters of the environment. Disappointment from the governmental agencies to implement the laws made, prompted the NGO and Public to approach the Courts as a last resort. The glory of delivering several admirable landmark verdicts goes to the Supreme court of India. It was Mr. M.C Mehta¹¹ who revived the concept of environmental jurisprudence in India through PIL. Others too had their silent but noteworthy roles to play. Some of the landmark judgements having fair share in development of the environmental jurisprudence in India are:

Andhra Pradesh Polluting Industries Case: Nakka Vagu was a fresh water stream which provided fresh water for drinking and

irrigation to the villagers living in 14 villages adjacent to it. But the indiscriminately set up 250 industries which did not fulfill the condition of setting up water treatment plants turned the stream into a huge drain carrying industrial effluents. The Supreme Court directed that an amount of 20 million should be paid to the farmers who had lost their crops and cattle due to air and water pollution. The authorities are directed monitor setting up of set up pollution control devices by the polluting industries.¹²

Delhi Ridge Case: To save the Delhi ridge from destruction an order from the Supreme Court was obtained directing NCT of Delhi to declare it as 'Reserved Forest'.¹³

Gamma Chamber Case: Against the hazardous radiation a PIL was filed in the Apex Court. The Court's timely intervention saved the students and teachers of Jawaharlal Nehru University (JNU) from the radiation of Gamma Chamber, New Delhi.¹⁴

Ganges Pollution Case: The Supreme Court of India reacting to the public interest litigations has passed several judgments and a number of Orders against polluting industries numbering more than fifty thousand in the Ganga basin. As a result of these directions millions of people have been saved from the effects of air and water pollution in Ganga basin covering 8 states in India.¹⁵

¹²(1996) 6 SCC 26

¹³(1996) 8 SCC 462

¹⁴W.P. 4677/1985

¹⁵AIR 1987 SC 1086

¹⁰Satish C. Shastri, "Environmental Law in India"
Second Edition, Eastern Book Company 2005

¹¹1997 Magsaysay Award Winner for Public Service

Kamal Nath's Case: The irony of this case is that a Public Interest Litigation was filed against the family members of Kamal Nath, the Minister of Environment and Forests, Govt. of India. The family members of the Minister own the Span motel in the State of Himachal Pradesh. They diverted the Course of River Beas to beautify the motel. The Supreme Court of India had directed the owners of the Motel to hand over the forest land to the Govt. of Himachal Pradesh and further order the removal of all sorts of encroachment spending the money from their own pocket.¹⁶

Taj Trapezium Case: In and around Agra, several industries were set up. The Mathura Refinery, iron foundries, glass and other chemical industries are first and foremost amongst them. The Supreme Court of India delivered a historic Judgment in December 1996. The apex Court gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).¹⁷

In addition to this, every Friday a courtroom is set aside to adjudicate the cases of M.C. Mehta. He has succeeded in getting 40 landmark judgements handed down from the Supreme Court which is a record.¹⁸

¹⁶W.P. 182/1996 Decided on 15th March 2002

¹⁷ AIR 1997 SC 734

¹⁸Refer to www.goldmanprize.org, last visited on 01.12.2011

INFLUENCE OF INTERNATIONAL LAW ON THE DOMESTIC LEGAL REGIME

Polluter Pays Principle

The Polluter Pays Principle was first adopted at international level in the 1972 OECD Council Recommendation on Guiding Principles concerning the International Aspects of Environmental Policies. The 1974 principle experienced revival by OECD Council in 1989 in its Recommendation on the Application of the Polluter Pays Principle to Accidental Pollution, and the principle was not to be restricted to chronic polluter. In 1991, the OECD Council reiterated the Principle in its Recommendations on the Uses of Economic Instruments in Environmental Policy. This principle was first stated in the Brundtland Report in 1987. This principle was also adverted to in Indian Council for *Enviro-legal Action vs. Union of India*.¹⁹ In this case this was held that once any activity is inherently dangerous or hazardous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

Absolute liability is one tort²⁰ where fault need not be established. It is no-fault liability. In the *Oleum Gas Leak case (M.C. Mehta v. Union*

¹⁹1996(3) SCC 212.

²⁰Ranchhodas, R., Thakore, D. K., & Singh, J. G. (2010). *Liability for wrongs committed by others* (26th edition ed.). Gurgaon, India: Lexis Nexis Butterworths Wadhwa Nagar.

of India)²¹, the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and non delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part.

Precautionary Principle and Principle of New Burden of Proof

The precautionary principle had its origin in the mid-1980s from the German Vorsorgeprinzip. The Supreme Court of India, in the case of *Vellore Citizens' Welfare Forum v. Union of India*²² referred to the precautionary principle and declared it to be part of the customary law in our country.

In the Vellore Case²³, Kuldip Singh J observed as follows: "*The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign*".

In A.P. Pollution Control Board case²⁴: it was explained that the 'precautionary principle'

has led to the new 'burden of proof' principle. In environmental cases where proof of absence of injurious effect of the action is in question, the burden lies on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise, in environmental cases, those opposing the change could be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden and the party who wants to alter it, must bear this burden.²⁵

Sustainable Development

In the international arena 'Sustainable Development' came to be known as a concept for the first time in the Stockholm Declaration of 1972. *Justice P.N. Bhagwati once made a insightful observation: 'We need judges who are alive to the socio-economic realities of Indian life'* This statement explains the gradual shift in the judicial approach while dealing with the issues of sustainable development.²⁶

The first case on which the apex court had applied the doctrine of "Sustainable Development" was *Vellore Citizen Welfare Forum vs. Union of India*. In the instant case, dispute arose over some tanneries in the state of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which

²¹ AIR 1987 SC 1086

²² 1996(5) SCC 647

²³ Supra fn 25

²⁴ 1999 (2) SCC 718 (at p 734)

²⁵ Hardman Reis, T., *Compensation for Environmental Damages Under International Law*, Kluwer Law International, The Hague, 2011, ISBN 978-90-411-3437-0.

²⁶ Id.

was the main source of drinking water in the state .

The 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 to the individual sufferers as well as the cost of reversing the damaged ecology...”

But before Vellore Citizen’s case, the Supreme Court has in many cases tried to keep the balance between ecology and development. In *Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh*, which was also known as Doon valley case, dispute arose over mining in the hilly areas. The Supreme Court after much investigation, ordered the stopping of mining work and held that:

“... This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment...”

Public Trust Doctrine

The ‘public trust’ doctrine was referred to by the Supreme Court in *M.C. Mehta v. Kamal Nath*²⁷. The doctrine extends to natural resources such as rivers, forests, sea shores, air etc., for the purpose of protecting the

²⁷ 1997 (1) SCC 388

eco-system. The State is holding the natural resources as a trustee and cannot commit breach of trust²⁸.

Inter-Generational Equity

Principles 1 and 2 of the 1972 Stockholm Declaration²⁹ refer to this concept. Principle 1 states that Man bears solemn responsibility to protect and improve the environment for the present and future generations. Principle 2 states that the national resources of the Earth must be safeguarded for the ‘benefit of the present and future generations through careful planning or management, as appropriate’. Principle 3 of the Rio Declaration, 1992 also states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

JUDICIAL ADVANCEMENTS AND RELEVANT CASE ANALYSIS

Lk Koolwal V State of Rajasthan and ORS Air 1988 Raj.2

A writ petition was filed by the petitioner asking the court to issue directions to the

²⁸ Nicola Tilche, In What Ways Is The Emphasis On Public Participation A Positive Development In Environmental Law? An Analysis Of The Aarhus Convention And Its Impact On EU Environmental Law And Policy. *Environmental Law & Practice Review*, Volume 1, 2011

²⁹ Article 23 of the Stockholm Declaration, Principle 7 of the Rio Declaration and various provisions of the 1992 Biodiversity Convention,

state to perform its obligatory duties. The petitioner invoked Fundamental Rights and the Directives Principles of State Policy and brought to the fore the acute sanitation problem in Jaipur which, it claimed as hazardous to the life of the citizens of Jaipur.

The Court observed that maintenance of health, preservation of sanitation and environment falls within the purview of Art. 21 of the Constitution as it adversely affect the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because o the hazards created of not checked.

The Court held that the Municipality had a statutory duty to remove the dirt, filth etc from the city within a period of six months and clear the city of Jaipur from the date of this judgment. A committee was constituted to inspect the implementation of the judgment.

Narmada Bachao V. Union of India Air 2000 SC 3751

Way back in 1946, the then government of the Central Provinces and Berar and the then government of Bombay requested the Central Waterways, Irrigation and Navigation Commission to take up investigation on the Narmada river system for basin wise development of the river with flood control, irrigation, power and extension of Navigation as the objectives in view. The Project was inaugurated by the then Prime Minister Shri. Jawaharlal Nehru on 5th April 1961. Thereafter due to certain difference of opinion between the riparian States, the matter was referred to a tribunal in 1968

constituted under the Inter-State Water Disputes Act, 1956. Based on the agreement between the Chief Ministers of 4 States [M.P, Maharashtra, Rajasthan and Gujarat] the tribunal declared is award on 16th August 1978. In order to meet the financial obligation, consultations started in 1978 with the World Bank for obtaining a loan. In May 1985 the loan was sanctioned, and in 1987 the Ministry of Environment and Forest accorded Environmental Clearance subject to certain conditions.³⁰

Taking the cause of the ousters, those displaced by the acquisition of land and submergence of land to the building of the many dams across the river, in April 1994 the NBA filed a writ petition praying that the respondent should be restrained from proceeding with the construction of the dam.

The Supreme Court observed that the Sardar Sarovar Project would make a positive impact on the preservation of environment. The project has been long awaited by the people of Gujarat to whom water will be available to the drought prone and arid parts, this would help in effectively arresting ecological degradation which was returning the make these areas inhabitable due to salinity ingress, advancement of desert, ground water depletion, fluoride and nitrite affected water and vanishing green cover. The ecology of water scarcity areas is under stress and transfer of Narmada water to these areas will lead to

³⁰ Sinha, Savita; Das, Supta; Rashmi, Neeraja (2005). Social Science – Part II. New Delhi: National Council of Educational Research and Training, India. ISBN 81-7450-351-X

sustainable agriculture and spread of green cover. There will also be improvement of fodder availability, which will reduce pressure on bio-diversity and vegetation. The SSP by generating clean eco-friendly hydropower will save the air pollution which would otherwise take place by thermal general power of similar capacity.³¹

The Court observed that poverty of the biggest threat to environment and unless people are provided with water and other development amenities, the environment will be exploited to a larger extent.

Following the above analysis the Court thought it unfit to interfere with the construction of the dam, as its advantages over took its disadvantages. The construction of the dam was allowed subject to certain conditions.

Such interpretations of Article 21 by the Supreme Court have over the years become the basis of environmental jurisprudence, and have been instrumental in helping in the of protection of India's environment. Also in addition to this there now exist a number of laws relating to environment, enacted over the last few decades.

M.C. Mehta (Badkhal And Sujratkund Lakes Matter) VS. Union Of India (W.P. (C) No.4677/ 1985 Decided On Oct.11, 1996)

The main issue in the case was to preserve environment and control pollution during

³¹ Ibid

mining operations within the radius of five kilometers from the tourist resorts of Badkal Lake and Surajkund be stopped?

On the basis of the two reports before it the Court concluded that the mining activities were harming the environment and must be stopped. The Court considered the geographical features of the area to determine the extent to which the ban must apply. It ordered that no mining activities would be carried out in a two km radius around the tourist spots of Badkal lake and Surajkund and no construction work would be undertaken in a five km radius. Also ordered the Forest Department and Mining department to enforce all the recommendations made by NEERI.

The court also held that Articles 21, 47, 48A and 51A (g) of the Constitution of India give a clear mandate to the state to protect and improve the environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "precautionary principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation.

RECOMMENDATIONS

In view of the involvement of complex scientific and specialized issues relating to environment, there is a need to have separate 'Environment Courts'³² manned only by the

³²Law, Judiciary and Environmental Governance Need of Separate Environment Courts In India,Pooja Shastri,Rashmi Bela,GNLU

persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment. Also what we need is a speedy justice when it comes to trials related to the environment. Any delay in a criminal matter may infringe the Right of a single person, however a delay in such matters can put the rights of millions at stake. Further it should also be note that the penalties awarded in the breach of certain duties should be increased to atleast a point where people affected can get a proper and adequate compensation. Most importantly, the legislators should remember that we aren't filling our racks with the rules and acts, we need to have a basic rule and allow the judiciary to interpret in the best way they can.

CONCLUSION

The right to live in a healthy environment as part of Article 21 of the Constitution was also recognized in the case of Rural Litigation and Entitlement Kendra vs. State of U.P., AIR 1988 SC 2187 (Popularly known as Dehradun Quarrying Case). It involved issues relating to environment and ecological balance. The R.L. & E. Kendra and others in a letter to the Supreme Court complained about the illegal / unauthorized mining in the Missouri, Dehradun belt. As a result, the ecology of the surrounding area was adversely affected and it led to the environmental disorder.

The Supreme Court treated the letter as writ petition under Art. 32 of the Constitution and directed to stop the excavation (illegal

mining) under the Environment (Protection) Act, 1986. The respondents contended / argued that the write petition was registered in 1983 and the Environment (Protection) Act was passed in 1986 and hence the criminal proceedings cannot be initiated with retrospective effect. The court rejected the contention of the respondents and held that the provisions of procedural law shall apply to ordinary criminal cases and not to the environmental cases. The court directed the Central and State Governments to take necessary steps to prevent illegal mining and to re-afforestation in the area of mining.

In M.C. Mehta vs. Union of India, AIR 1987 SC 1086 (Popularly known as "Oleum Gas Leak Case") – The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art. 21 of the Constitution. Further the A.P. High Court in T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad, (AIR 1987 A.P. 171) laid down that right to live in healthy environment was specially declared to be part of Art. 21 to the Constitution.

The concept of right to healthy environment as a part of right to life under Art 21 of our Constitution is developing through judgements. Further the right to environment is often associated with human right, mostly right to live. Right to life is guaranteed as a fundamental right under article 21. In order to live a healthy life it is of utmost importance that our environment and surroundings be pollution free and clean. The flora fauna also impact the lives of individuals and can also be of utmost importance for survival. Therefore

there is emergence of the concept of right to environment as a fundamental right as can be seen in various judgements mentioned above.

Thus, in India, the judiciary has interpreted Art 21 to give it an expanded meaning of including the right to a clean, safe and healthy environment. Class actions have been entertained by the Supreme Court under Art 32 of the Constitution as being part of public interest litigation actions. The High Courts, also being granted this jurisdiction under Art 226 have intervened by passing writs, orders and directions in appropriate cases, thereby giving birth to an incomparable environmental jurisprudence in the form of the constitutional right to healthy environment.

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