

ENVIRONMENTAL DISPUTE SETTLEMENT AND ARTICLE 21 OF INDIAN CONSTITUTION

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ABSTRACT

Environmental protection can be done with the help of implementation of various provisions of environmental statutes available in India. However, because of lack of declaration of right to pollution free environment as a statutory right, the Indian courts struggled to find out that how this right, if not within any statute in India, at least can be brought within the purview of Article 21 of Indian Constitution. The struggle ended in the year 1991 with the decision of Subash Kumar case and was further nurtured in number of subsequent cases. The Supreme Court of India became proactive to protect this right to pollution free environment as fundamental right and settled many environmental disputes while analysing Article 21 of the Indian Constitution. The present article, aims to analyse the situation that how it was necessary to incorporate the right to get pollution free environment within the scheme of Article 21 of Indian Constitution successfully and by this declaration the environmental disputes settlement will become easy and effective.

KEYWORDS: Right to life, right to pollution free environment, state responsibility, forest, wildlife, water pollution,

INTRODUCTION

In India, there was no specific legislation on environmental protection till 1986, because immediately after the commencement of the Indian Constitution in the year 1950, I could see only Indian Forest Act, 1927, which again is a legislation to control the collection of revenues from forest resources. Prior to 1976 the items like wildlife and forest were placed in the state list, however, after the 42nd Amendment to Indian Constitution in the year 1976 those two items have been placed in the concurrent list. It is interesting to note here that, after perusal of few initial legislations on environmental protection I could find a very specific legislation in the

name of the Wild life (Protection) Act, 1972¹. Though, this legislation only deals with the measures to be initiated for the protection of wild animals and also declare certain animals as endangered, as they are rare species in India and at the same time few medicinal plants, which also required some sort of protection, all have been enlisted in the schedule of above-mentioned wildlife legislation. In the year 1974, almost 12 states² in India passed a resolution in the State assembly and requested the union Parliament to enact a law on control of water pollution. The union Parliament considered those resolutions and enacted the Water (Prevention and Control of Pollution) Act, 1974 under Article 252 clause 1 of Indian Constitution. The item 'Water' comes under entry number 17 of the state list for regulation of water bodies, drinking water, irrigation, et cetera. The entry number 56 of list one also mentions water for the purpose of River boards and River valleys.

It was a moral obligation for India to bring policy and legislation for the purpose of protection of environmental resources, after participating in the Stockholm Declaration, 1972. What I find that India enacted a law in the year 1981 under Article 253 of Indian Constitution to control the atmospheric pollution. The law was made in the name of the Air (Prevention and Control of Pollution) Act, 1981³. Again, I think all will agree that this legislation was also not our law to provide also protection to the environment, because it deals only with protection of the atmosphere.

In the year 1980 the union Parliament enacted a law in the name of the Forest (Conservation) Act, 1980⁴. This law was brought to control the functions of the states in India, because the

¹ The Wildlife Protection Act, 1972 which we read today is a product of process which started long ago in 1887 for the protection of a few wild birds and after addition of wild animals in 1912 and specified plants in 1991 it covered almost all the wildlife resources which need protection and management. Available at <http://www.publishyourarticles.net/knowledge-hub/environmental-studies/brief-notes-on-the-wildlife-protection-act-of-1972/3163/> (Last visited on 03.03.2017)

² "...in pursuance of clause (1) of article 252 of the Constitution resolutions have been passed by all the Houses of the Legislatures of the States of Assam, Bihar, Gujrat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect that the matters aforesaid should be regulated in those States by Parliament by law; BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India...". Available at <http://www.envfor.nic.in/legis/water/wat1c1.html> (Last visited on 01.03.2017)

³ The Government passed this Act in 1981 to clean up our air by controlling pollution. It states that sources of air pollution such as industry, vehicles, power plants, etc., are not permitted to release particulate matter, lead, carbon monoxide, sulfur dioxide, nitrogen oxide, volatile organic compounds (VOCs) or other toxic substances beyond a prescribed level. Available at <http://www.yourarticlelibrary.com/law/acts/summary-on-air-prevention-and-control-of-pollution-act-1981-of-india/30191/> (Last visited on 03.03.2017)

⁴ Forest Act would also come within the purview of the Forest Conservation Act 1980. The Supreme Court has also held that "forest" as understood in the dictionary sense would also be included under "forest land". The term "forest" shall not be applicable to the plantation raised on private land except notified private forest. Tree falling in such plantation would however be governed by state acts and rules. The term "tree" will have the same meaning

forest coverage of India was shrinking considerably as there was no check and balance from the union government over the state government, when the state government decides to convert the forest land for non-forest purposes. I find this as a good to retain the forest coverage essential for the purpose of preservation and conservation of nature. What I have found after reading Section 2⁵ of the above-mentioned Act, that for the purpose of converting the forest land for non-forest purposes, now the state government will have to apply to the Ministry of environment and Forest, government of India for permission.

Meanwhile, a tragedy which was written in the fate of many people was finally expressed through the Bhopal gas tragedy in the year 1984⁶. And immediately within a year in 1985 another not very serious but a tragedy occurred as *Oleum gas leak*⁷ incident in New Delhi. In both the cases, I feel that the kind of pollution which affected life and property of the nation is the example of atmospheric pollution. Therefore, in spite of having legislation on air pollution of 1981, the law was not sufficient to control the above-mentioned serious incidents of atmospheric pollution.

Finally, in the year 1986 union Parliament enacted a law in the name of the Environment (Protection) Act, 1986⁸. After going through the Act and provisions thereof, I find that this

as defined in section 2 of the Indian Forest Act 1927 (Rural Litigation & Entitlement Kendra Vs. State of U.P [1988] INSC 254). Available at <http://www.wealthywaste.com/forest-conservation-act-1980-a-summary> (Last visited on 03.03.2017)

⁵ **2. Restriction on the dereservation of forests or use of forest land for non-forest purpose**-Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government; (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

⁶ The Bhopal Gas Tragedy, 1984 was a catastrophe that had no parallel in the world's industrial history. In the early morning hours of December 3, 1984, a rolling wind carried a poisonous gray cloud from the Union Carbide Plant in Bhopal, Madhya Pradesh (India). Forty tons of toxic gas (Methy-Iso-Cyanate, MIC) was accidentally released from Union Carbide's Bhopal plant, which leaked and spread throughout the city. The result was a nightmare that still has no end, residents awoke to clouds of suffocating gas and began running desperately through the dark streets, victims arrived at hospitals; breathless and blind. The lungs, brain, eyes, muscles as well as gastrointestinal, neurological, reproductive and immune systems of those who survived were severely affected. When the sun rose the next morning, the magnitude of devastation was clear. Dead bodies of humans and animals blocked the street, leaves turned black and a smell of burning chili peppers lingered in the air. An estimated 10,000 or more people died. About 500,000 more people suffered agonizing injuries with disastrous effects of the massive poisoning. None can say if future generations will not be affected. Available at <http://www.bmhrc.org/Bhopal%20Gas%20Tragedy.htm> (Last visited on 04.03.2017)

⁷ M.C. Mehta And Anr vs Union Of India, 1987 AIR 1086

⁸ As per this Act, the Central Government shall have the power to take all such measures for the purpose of protecting and improving the quality of the environment and to prevent environmental pollution. Further, the

Act/Legislation can be considered as efficient legislation to protect and preserve the wholesome environment. I also find that this legislation has been enacted under the provisions of Article 253⁹ of Indian Constitution and I could relate this legislation with the promises made by India during Stockholm conference of 1972¹⁰, that India will bring the policy and legislation to control the environmental pollution. Now, I can find that a compact legislation to protect the wholesome environment has come up in the year 1986, but how far Indian Constitution through its provisions protect the rights of the citizens against the degradation of the environment, still remains a vital question.

INDIAN CONSTITUTION AS A SILENT SPECTATOR OF ENVIRONMENTAL DEGRADATION

Schedule seven of the Indian Constitution from the very inception included the items, such as, water, wildlife, forest, et cetera. In fact, I find that part III of the Indian Constitution had no direct fundamental rights which could declare that right to clean environment is a fundamental right. Though, rights like, right to equality, right to life, they are strong enough to suggest for right to pollution free environment, but there was no such direct expression of right made in the Constitution right from its inception. Even I have seen that part IV of the Indian Constitution was silent about directly giving any directive principles of state policy on conservation and preservation of environment till the year 1976. It was the 42nd amendment¹¹

Central Government shall have the power to give directions in writing to any person or officer or any authority for any of the purposes of the Act, including the power to direct the closure, prohibition or regulation of any industry, operation or process. Available at

<http://www.advocatekhaj.com/blogs/index.php?bid=5844e03567140583459245221&bcmd=VIEW>

(Last visited on 03.03.2017)

⁹ "Legislation for giving effect to international agreements.— Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." Available at <http://www.ebc-india.com/lawyer/articles/71v2a5.htmLast> (visited on 05.05.2017)

¹⁰ Stockholm represented a first taking stock of the global human impact on the environment, an attempt at forging a basic common outlook on how to address the challenge of preserving and enhancing the human environment. As a result, the Stockholm Declaration espouses mostly broad environmental policy goals and objectives rather than detailed normative positions. However, following Stockholm, global awareness of environmental issues increased dramatically, as did international environmental law-making proper. Available at <http://legal.un.org/avl/ha/dunche/dunche.html> (Last visited on 03.03.2017)

¹¹ A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity. Available at <http://indiacode.nic.in/coiweb/amend/amend42.htm> (Last visited on 03.03.2017)

to Indian Constitution which inserted two important Articles, for example, Article 48 A¹² and Article 51 A (g)¹³ to the directive principles of state policy. However, surprisingly I see that Article 47¹⁴ of Indian Constitution though speaks of public health and safety. Again, the Article 47 only indirectly recognises that the public health cannot be promoted in an environment which is full of pollution.

Why I say that the Indian Constitution became a silent spectator of environmental degradation, that is because of twofold reasons, first, when massive environmental disaster occurred in India, for example, Bhopal gas tragedy, the Indian courts could not find any specific provisions from the Indian Constitution about right to pollution free environment for its citizens and also legislations in India had ever conferred a statutory right to persons/citizens in India about right to pollution free environment and second, Article 48 A is a part of directive principles of state policy, is merely a set of guidelines, which the states will have to adopt at its discretion, which I consider at its whims and fancies, therefore, the guideline is not a mandatory one that any machinery can pressurise the state to consider the right as right to pollution free environment to its citizens. Moreover, till today Article 21 of Indian Constitution is a silent spectator and it is the honourable Supreme Court and high courts in India analysed the above-mentioned article and gave life that it has another responsibility to its citizens that they are having right to pollution free environment.

I have made my observations, that most of the environmental Justice that could be possible to deliver by the Indian judiciary is because of interpretation of various articles from the Indian Constitution. As Right to Education is not only a fundamental right but also statutory right as well, but this was not possible and was not so easy to be declared so without the continuous reasonable intervention made by the Indian judiciary. What I find that it was a tireless effort which was initiated by the Indian judiciary in number of relevant case laws and provided its

¹² "48A. Protection and improvement of environment and safeguarding of forests and wild life.-The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Available at <http://indiacode.nic.in/coiweb/amend/amend42.htm> (Last visited on 03.03.2017)

¹³ (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; Available at <http://indiacode.nic.in/coiweb/amend/amend42.htm> (Last visited on 03.03.2017)

¹⁴ "Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health" Available at <http://www.constitution.org/cons/india/p04047.html> (Last visited on 06.06.2017)

valuable judgements, by which ultimately the same right gained a status of fundamental and statutory right. Then, why not also for right to clean environment.

ENVIRONMENTAL DISPUTE SETTLEMENT BY STATE HIGH COURTS THROUGH ARTICLE 21

Public interest litigation is one of the important mechanisms in India which has been used by citizens to come up with the environmental Justice. This mechanism is not only helpful to the citizens to appear before the courts for easy access of Justice, but also the judiciary, in particular Writ Courts played a vital role for environmental Justice delivery system. The State high courts in India can entertain any petition with relation to public interest litigation under Article 226 and issue Writs.

What I have seen that High Court came forward to analyse the scope of Article 21 of Indian Constitution in the light of right to get pollution free environment rather than the honourable Supreme Court, though Supreme Court already decided many cases connected with the environmental jurisprudence by the year 1987, but the expansion of the meaning of the “Right to Life” was not done so properly.

One of the important cases, which I would like to mention here is the contribution made by the Andhra Pradesh High Court. In the year 1987 a writ petition was filed by Mr T Damodhar¹⁵ (hereinafter the petitioner) before the High Court of Andhra Pradesh seeking orders to make the open space/public park free from any sort of private constructions. The case is connected with the master plan of the municipality and earmarking the open space/public space for public purposes only. However, the government of Andhra Pradesh allotted a portion of the open space, so earmarked, and given to life insurance Corporation of India for construction of residential houses. After some time the life insurance Corporation of India allotted a portion of the land from their original allotment to the income tax department again, for the construction of residential houses. The question is, if open space/public space is made for public purposes only, then whether allotment of a portion of the open space by the government of Andhra Pradesh to life insurance Corporation of India, can that be considered for public purposes?

¹⁵ T. Damodhar Rao V. The Special Officer, Municipal Corporation of Hyderabad, AIR1987AP171

When this case was filed, what I feel that at the time the concept of public trust doctrine was not at all available or applicable in India. Otherwise, that concept might have been taken into consideration to decide this case. However, after reading the case I found that the High Court of Andhra Pradesh meticulously examined the fact of the case and counter affidavits filed by the respondents. After examining the counter affidavits, the High Court found that not only the Hyderabad municipality, who has prepared the master plan, but also the government of Andhra Pradesh, life insurance Corporation of India and the Hyderabad Urban development authority all have accepted the fact that the land so allotted to life insurance Corporation of India for the purpose of construction of residential units are basically the land earmarked as open space/public space in the original master plan prepared by the municipality. Therefore, there is no contradictory opinion filed in the counter affidavit by the respondents that originally the land is earmarked for open space and that is also for public purposes. In this regard, in order to understand that the open space shall be utilised for public purposes only, the High Court went further to analyse the situation. After reading the judgement what I felt that the honourable High Court wanted to examine the sanctity of the open space, for example, if open space is for public purpose then allotting the land to those entities who will construct the residential houses cannot be called as for public purpose. Similarly, I also felt that the honourable High Court examined the purview of the open space as earmarked in the master plan that if the open space/public park is to be maintained efficiently then allotting the land for the construction of residential houses will no more serve the purpose of open space, because those constructions will slowly occupy the open space and continuously allotting the land finally will lead to no open space.

The High Court, before awarding the final judgement, analysed few international obligations for India and thereafter analysed the spirit of Article 21 of Indian Constitution. The High Court deliberated upon the very concept of Law and ecology and stated the variation in the concept of ownership. As I have already stated above that when this case was decided at the time public trust doctrine was alien to Indian judiciary, because the concept was adopted by the honourable Supreme Court only in the year of 1997¹⁶. The concept of ownership as developed by the common-law countries are very specific and gives huge freedom to the original owner and the owner can decide how such property shall be utilised and for that purpose the freedom of owner cannot be challenged before any authority, though, unless such pattern of use of the property

¹⁶ M.C. Mehta Vs. Kamalnath (1997)1 SCC 388

reasonably affects other neighbours/persons. What I feel that the honourable High Court brought this idea to show to the government of Andhra Pradesh that open space is not the property of the government and the common-law concept of ownership is not applicable that the government of Andhra Pradesh not only can change the temporary ownership in the name of life insurance Corporation of India and also can decide the way in which opens spaces can be utilised.

In order to support the above stand, the honourable High Court had taken the reference of Stockholm declaration 1972 and stated that various resources of nature not only be safeguarded for the purpose of meeting the need of the present generation, but also, they should be preserved efficiently for the future generation as well. Moreover, the honourable High Court also clarified a very important point that economic development of the nation can be well achieved with the help of proper planning and management. Accordingly, the court wanted to give a message to the government and municipality that allotting a portion of the land, which is earmarked for open space, to life insurance Corporation of India is very much against the terms of proper planning and management for economic development. It is contrary to such provisions.

According to me, the wonderful part the honourable High Court has efficiently pronounced is the description of Article 48 A and Article 51 A (g). The court not only pronounced the mandates of these two articles by describing the importance, but also linked these mandates with the present case and clarified that government of Andhra Pradesh, Hyderabad municipality and Hyderabad Urban development authority all are the example of state and as per the mandates of Article 48A, the state shall make all endeavours and efforts to protect and preserve the natural environment and for that purpose whatever the steps are to be taken and initiated, they should be reasonably planned and managed. Accordingly, for petitioner, the High Court stated that as per the mandates of Article 51 A (g), it is now the fundamental duties of the citizen that they should come forward not only to take participation in proper planning and management initiated by the state but also to point out the difficulties and irregularities, which will affect the preservation and promotion of natural environment.

Moreover, under the Indian Constitution, the municipality is considered to be a state having a mandatory function to perform for the preservation and conservation of natural environment. The 74th Amendment¹⁷ to Indian Constitution, 1992 has not only revived the status of state to

¹⁷ Article 243W Urban forestry, protection of the environment and promotion of ecological aspects Available at <http://indiacode.nic.in/coiweb/amend/amend74.htm> (Last visited on 03.03.2017)

municipality, but also declared various functions to municipality to perform as mandates of the Constitution of India. Therefore, it is quite surprising that in spite of having those mandates from the Constitution the municipality instead of raising objections against the state government of Andhra Pradesh about not to convert the open space for transferring the ownership of a part of that land in the hand of life insurance Corporation of India for the purpose of construction of residential units, the municipality agreed with such conferment of ownership and supported the stand of the government.

Now, I will come to the very specific area which is the subject matter of this heading, that is, Article 21 of Indian Constitution. The High Court stated that the above-mentioned two articles are sufficient enough to claim that common law concept of ownership, that is, the liberty and privileges given to individual ownership is no more functional in India and any space meant for public purposes there will be no question of individual ownership. Even if those ownerships are sanctioned by the state, those mistakes can be rectified by the court. The honourable High Court examined the scope of Article 21 of Indian Constitution and asserted that with the description of Article 48 A and Article 51 A (g) *“it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gift, without which life cannot be enjoyed”*.

Now, it is clear for me that till this case was decided by the Andhra Pradesh High Court in the year 1987, there was no such cases ever decided by the honourable Supreme Court while analysing the very scope of Article 21 of Indian Constitution. Therefore, I can assert that it is the state high court who for the first time recognised the importance of Article 21 and deliberated upon to bring the pollution free water and air under the right to life. I will bring here discussion that how the honourable Supreme Court first ever recognise the importance of Article 21 of Indian Constitution through its unique judgement. Before, I start analysing the judgement relating to environmental dispute settlement under article 21, it would be wise to state that the right to life and liberty as enshrined under article 21 of Indian Constitution has been analysed meticulously by the honourable Supreme Court and number of other rights which are related with right to life and personal liberty have been declared by the honourable Supreme Court. Therefore, now we can see that right to travel¹⁸, right to privacy¹⁹, right to

¹⁸ Maneka Gandhi v. Union of India [1978] 2 SCR 621, Satwant Singh v. A.P.O., New Delhi [1967]3 SCR 525

¹⁹ Kharak Singh v. State of U.P. 1963CriLJ329, Sharda v. Dharampal [2003] 3 SCR 106

speedy trial²⁰, right to prisoners to interview²¹, right to fair trial²², right against torture and custodial violence²³, right to free legal aid²⁴, right to primary education²⁵, right to health and medical care²⁶, right to pollution free environment²⁷, right to safe drinking water²⁸, right of working women against sexual harassment²⁹, right to a quality life³⁰ and right to family pension³¹ have become integral part of right to life and personal liberty under article 21 of Indian Constitution. Now, I will analyse the judgement decided by the honourable Supreme Court to show how environmental dispute settlement has been handled under article 21 of Indian Constitution.

ENVIRONMENTAL DISPUTE SETTLEMENT BY SUPREME COURT THROUGH ARTICLE 21

I have observed that till 1991, the honourable Supreme Court was not very particular to come forward and protect the environmental concern in every aspect. The cases decided between 1985 to 1990 were entertained by the honourable Supreme Court under public interest litigation with the help of Article 32 of the Indian Constitution, which itself is a fundamental right. However, the claiming the right to pollution free environment within the ambit of Article 21 of Indian Constitution, still was not addressed by the apex court. It is not the case that the court was not aware of the different dimensions of Article 21, but various environmental statutes were being analysed by the Supreme Court for delivering environmental Justice. As I have already observed that there is no environmental legislation which confers to the people in India the right to environment as a statutory right, accordingly, the people in India would not approach before the court of law for requesting to issue directions to protect such rights, because of absence of the right in any environmental statute. Therefore, the struggle for bringing a right to pollution free environment under the purview of article 21 of Indian

²⁰ Common Cause, a Registered Society v. Union of India 1997CriLJ195

²¹ Prabha Dutt v. Union of India 1982CriLJ148

²² Police Commissioner, Delhi v. Registrar, Delhi High Court 1997CriLJ90

²³ D.K. Basu v. State of West Bengal 1997CriLJ743

²⁴ State of Maharashtra v. M.P. Vashi AIR1996SC1

²⁵ Unnikrishnan v. State of A.P. [1993]1SCR594, T.M.A. Pai Foundation v. State of Karnataka (2002)8SCC481

²⁶ CERC v. Union of India (1995) ILLJ768SC, State of Punjab v. M.S. Chawla [AIR 1997 SCC 125]

²⁷ M.C. Mehta v. Union of India [1986]1SCR312

²⁸ APPCB v. M.V. Naidu AIR 1999 SC 822

²⁹ Visakha v. State of Rajasthan AIR1997SC3011, AEPC v. A.K. Chopra (1999) ILLJ962SC

³⁰ (SIC) Lal Tiwari v. Kamala Devi and Ors. AIR2001SC3215

³¹ S.K. Mastan Bee v. General Manager South Central Railway (2003) ILLJ561SC

Constitution can easily be witnessed by the readers that how the apex court was making effort to explain and analyse further the very concept of right to life under article 21. There was another necessity for which the apex court was struggling hard to declare such a right as fundamental right because of the mass environmental disaster faced by the people in the city like Bhopal. It is also true that while declaring such a right as fundamental right will not completely eradicate pollution problem or larger environmental degradation issues, but the people will have recourse to the court of law easily not only for the protection of their fundamental right, once this right is declared as such, but also for the preservation and conservation of natural environment. An excellent effort was made by the honourable Supreme Court while analysing the ambit of Article 21 of Indian Constitution in *Subhash Kumar* case³².

In this case a public interest litigation was filed before the honourable Supreme Court to issue directions against the directorate of collieries and against the Tata iron and steel company, that is, TISCO, to stop industrial discharge into the River water of Bokaro. According to this petition, the main issue was concerned with prevention of River water pollution from industrial waste water. It is not the case that in the state of Bihar, there was no existence of state pollution control board, rather the concerned board was very much in its existence and could be witnessed from the incident of frequent visitor to the devices of the industry and collection of samples and analyses of the samples thereof. Since, the petitioner filed the case before the honourable Supreme Court under article 32 of the Indian Constitution, hence, the apex court had to look into the serious issues of water pollution problem.

The petitioner claimed that, it is not only the industrial waste water which is polluting the River water of Bokaro, but also along with the waste water the coal particles are also being deposited on the agricultural land including the petitioner's land and this incident making the agricultural land infertile, because of presence of Carboniferous layer on such land. Accordingly, there is loss of livelihood issues to the farmers and this loss is not temporary but for long period of time as the removal of presence of coal particles over the agricultural land will not be that easy.

The petitioner also claimed that the pollution is happening not only because of the inefficient and unprofessional approach from the Tata iron and steel company including the casual approach of directorate of collieries, but also it is gross failure of statutory duty on behalf of the state of Bihar state pollution control board. In this regard, to prevent the agricultural land

³² Subhash Kumar Vs. State of Bihar AIR 1991 SC 420

pollution with the help of coal particles, the petitioner requested the apex court to allow him to collect these particles from the outlet of the industrial waste water, so that before these particles approach over the agricultural land, they are being collected by the petitioner.

In order to support problem of River water pollution, the petitioner mentioned the importance of the preamble of the Water (Prevention and Control of Pollution) Act, 1974 and stated in the petition that the above legislation is enacted only for the purpose of prevention and control of water pollution. For the purpose of prevention and control of water pollution, the statute also establishes an authority in the name of central and state pollution control board respectively. Under 17 of the above legislation, the state pollution control board has been imposed with various important functions to make the concerned board efficient in the administration of prevention and control of water pollution. Similarly, Section 24 of the above legislation defines the prohibited functions and it is the board, in order to exercise its statutory duties, to look into whether any polluter/industry discharging those pollutants, which are prohibited activities. According to the petitioner the Tata iron and steel company has violated the provisions of Section 24 of the above-mentioned legislation.

While describing the extent of pollution, the petitioner the process that the coal washeries within the Tata Iron and Steel Company industrial premise, after extracting the coals, they are broken into graded pieces to make them further ash free, so that these coal particles can be utilised by the Steel Plant for metallurgical processes. To make the coal particles ash free a method is applied which is called 'Froth Floatation Process' and in this process diesel oil and pine oil including certain harmful chemicals are used. Once the coal particles are treated with this above process, to make these particles free from those oil and harmful chemicals, gallons of fresh water are applied to these coal particles. In this process, not only the graded pieces of coal particles are produced, but also many graded pieces of coal particles are further broken into tiny particles, which are also ash free coal particles. These tiny particles which are ash free has exorbitant market value, because these are used by fuel industry. The fresh water applied to coal particles are not only carrying with themselves harmful chemicals and other processed materials, which are though sent to settling tanks, but also most of the untreated trade effluents coming out from the industrial outlets mixes with the River water of Bokaro and flows over the nearby agricultural land as well. The petitioner claimed that it was the statutory duty of the state pollution control board to inspect the premises of the Steel industry and should have ensured that untreated trade effluents should be sent 1st to settling tanks and after depositing of

the coal particles in the said tanks the treated trade effluents should have been released outside the industry premises. If there are not sufficient settling tanks, the pollution control board should have instructed the steel plant to dig a few more settling tanks within the premises to treat the trade effluents before discharging such influence outside the premises. Based on these developments, the petitioner was seeking relief while filing this public interest litigation before the apex court.

The counter affidavits filed by the state of Bihar and state pollution control board are interesting to observe. The state pollution control board has clearly mentioned in its counter affidavit that frequent inspection to industrial premises have been made. While claiming so the concerned board also expressed its views while reading out the provisions from Sections 25 and 26 of the Water Act 1974. The board has stated that Section 25 and Section 26 of the Water Act, 1974 clearly instructed that the industries if they are renovating their discharge outlet or making any modification in the existing industrial outlet or bringing any new construction within the existing industrial premises in all these cases the concerned industry must apply for no objection certificate to the pollution control board. In this regard, since, neither there was any such application made by the industry for modification or innovation of any existing outlet nor even there was any application regarding construction within the existing premises, hence, it is the state pollution control board who requested the industries to construct two more settling tanks because of enhancement of volume of coal particles and use of froth floatation process and equally application of use of enhanced fresh water resources. Similarly, the industry accepted the directions of the state pollution control board and they were about to construct two more settling tanks within the premises, but before that the petition was filed before the apex court. Moreover, in the counter affidavit the pollution control board clarified and emphasised upon that the River Bokaro remains dry for nine months and there is no question that the industrial waste water including sludge was carried away by the water of River Bokaro and polluted the downstream villages.

From the counter affidavit of the Tata iron and steel company, it was revealed before the honourable Supreme Court that Subhash Kumar was earlier associated with this company and used to collect coal particles for his own business. Since, Mr Subhash Kumar could not get the contract for the subsequent years, therefore, he filed this case. Because, when he came to know that his contract has been terminated, then he went to meet with the management of the Tata steel and Iron Company, however, there was failure from his part to convince the management

of the Tata steel and iron company to take his contract back. Out of personal interest and vengeance Mr Subhash Kumar has filed this case and it is nothing but abuse of article 32 of Indian Constitution. Moreover, it was revealed before the Supreme Court that a criminal case is pending to be decided against Mr Subhash Kumar regarding transfer of title deed of the agricultural land.

The Supreme Court has taken the note of pollution aspects and found that there is no such considerable amount of pollution, for this, the present writ petition should be dismissed, moreover, the petitioner has filed this case not as public but private interest litigation to settle the personal score with the company. Finally, the apex court dismissed the petition. However, before concluding the judgement the honourable Supreme Court made an Obiter that article 21 of Indian Constitution proclaims right to life which also includes right to get pollution free water and air.

Many cases approached before the Supreme Court for environmental dispute settlement and the apex court with the help of article 21 of Indian Constitution delivered environmental Justice.

OTHER IMPORTANT CASES ON ARTICLE 21 AND RIGHT TO POLLUTION FREE ENVIRONMENT

Environmental dispute settlement has been done comprehensively by the honourable Supreme Court in number of cases while raising the legal implications under Article 21 of Indian Constitution. Settling the environmental dispute by the Supreme Court started basically from the *Shriram fertiliser*³³ case, however, in *Subhas Kumar*³⁴ case the Apex Court explained that the right to get pollution free water and air is fundamental right under the right to life as enshrined under article 21 of Indian Constitution. Thereafter, the honourable Supreme Court did not look back and proceeded to enlarge the scope of right to environment in multi facet way. Few important cases dealing with environmental dispute settlement and proclamation of right to environment, under article 21 of the Indian Constitution, are given below.

³³ 1987 SCR (1) 819

³⁴ See, *Supra* Note No. 32

In *M.C. Mehta v. Union of India*³⁵ case, there was claim of money in the form of compensation to be paid to those persons who suffered harm because of oleum gas leak from one of the plants of Shriram fertilizer. The opposite Council stated that for fixing compensation the petitioner may go to apply before the civil court. However, the apex court clarified that since the present case involves substantial question of law to be decided in the light of article 21 of Indian Constitution, therefore, this court can issue directions to authorities for the protection of fundamental right.

In *Unni Krishnan V. State of Andhra Pradesh*³⁶ case, the apex court, while analyzing one of the MC Mehta cases of 1988, stated that article 21 of Indian Constitution is the genesis of many human rights jurisprudence, in particular, right to pollution free environment.

In *Consumer Education and Research Center V. Union of India*³⁷ case, the honorable Supreme Court while taking reference from *Kanpur Tanneries* case (AIR 1988 SC 1037) stated that right to life under Article 21 includes right to clean and healthy environment.

In *Vellore Citizens Welfare Forum v. Union of India*³⁸ case, the apex court clarified the constitutional and statutory mandates for pollution free environment and stated that individual's right to clean water, fresh atmosphere should be protected by the provisions of Constitution and environmental legislation. Common law provides an inalienable right to clean environment. Right to life and personal liberty as guaranteed under article 21 of Indian Constitution, also includes right to fresh air.

In *K.M. Chinnappa and T.N. Godavarman Thirumalpad V. Union of India*³⁹ case, the honourable Supreme Court while defining the ambit of full enjoyment of life clarified that, though article 21 protects right to life as fundamental right, but the meaning is more than that, it also speaks of right to life with human dignity, therefore, it includes ecological balance, pollution free water and air, sanitation, protection and preservation of natural environment, without which life cannot be enjoyed in its full extent.

³⁵ AIR 1987 SC 1086

³⁶ AIR1993SC2178

³⁷ AIR1995SC922

³⁸ AIR1996 SC 2715 at 2720

³⁹ AIR2003SC724

In *N.D. Jayal V. Union of India*⁴⁰ case it was stated by the apex court that article 21 of Indian Constitution makes a balance between right to development and right to pollution free environment.

In *In Re: Noise Pollution*⁴¹ case it was stated by Supreme Court stated that if a person is exposed to high level of noise with the help of amplifiers, which creates noise in the nature of unbearable, unpleasant and obnoxious type, will violent the right to comfortable, peaceful and pollution free life as enshrined under article 21 of Indian Constitution.

In *Tirupur Dyeing Factory Owners Association V. Noyyal River Ayacutdars Protection Association*⁴² case, the honourable Supreme Court asserted that it is compulsion for the state to make the River water pollution free as per the mandate of article 21 of Indian Constitution, accordingly, Noyyal River to be free from pollution is available under Article 21.

In *Court on its Own Motion v. Union of India*⁴³ case it was stated by the Supreme Court that the right to life as guaranteed under article 21 of Indian Constitution includes right to live with dignity, safety and in a clean environment.

In *T.N. Godavarman Thirumulpad V. Union of India*⁴⁴ case it was accepted by the SC that right to live in a clean and pollution free environment can be vitiated if the forest lands are degraded and deforestation is promoted. Therefore, as per the mandates of article 21 of Indian Constitution protection and preservation of forest is an essential element under 'right to life' for maintaining clean and pollution free environment.

In *Gulf Goans Hotels Company Ltd V. Union of India*⁴⁵ case the honorable Supreme Court stated that "Violation of Article 21 of Constitution on account of alleged environmental violation could not be subjectively and individually determined when parameters of

⁴⁰ (2004)9SCC362

⁴¹ AIR2005SC3136

⁴² AIR2010SC3645

⁴³ 2012 (12) SCALE 307

⁴⁴ AIR2014SC3614

⁴⁵ AIR2015SC2032

permissible/impermissible conduct were required to be legislatively or statutorily determined".

In *Hindustan Zinc Ltd. V. Rajasthan Electricity Regulatory Commission*⁴⁶ case it was stated by Supreme Court that right to live with healthy life guaranteed under article 21 of Indian Constitution is nothing but right to live in a pollution free environment. Energy generated from renewable sources is the best example of environment which is pollution free.

CONCLUSION

It is clear now that Indian Constitution is pro towards declaring and protecting the right to development and right to pollution free environment. Right to pollution free environment is not a statutory right, yet, in India. However, right to pollution free environment, right to clean water and fresh air, right to clean environment, et cetera are the integral rights declared under right to life and personal liberty in article 21 of Indian Constitution. Article 48 A and article 51A (g) of the Indian Constitution play vital role in preservation, conservation and protection of environment in India. From the above-mentioned cases, it can be concluded that on the one hand when the courts in India are settling the environmental disputes with the help of constitutional mandates and environmental legislation for successfully delivering environmental Justice, on the other hand, making a balance that violation of fundamental right or right to pollution free environment cannot be claimed whimsically, that is, unless it is proved that the parameters fixed under environmental Law or constitutional mandates have been violated one cannot ask constitutional relief. Therefore, it can be concluded that because of various mandates including article 21 of Indian Constitution environmental dispute settlement has seen the light of the day.

⁴⁶ 2015(6) SCALE706