

## RIGHT TO LIVE AND THE MINING ENVIRONMENT

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### **INTRODUCTION**

The environment which surrounds us and which consists of plants and animals, non-living objects as water, air, light, soil, temperature etc is being damaged and disturbed, it is in peril. Our genetic composition, our whole existence, as also the existence and survival of many animals and plants is threatened. It is really depressing to note that the water we drink, the air we breathe is all polluted. We are now facing the serious ecological crisis like acid rain, global warming, water and air pollution, the extinction of numerous animal and plant species, the loss of bio-diversity and ozone depletion. The depletion of the Ozone Layer causes skin cancer, cataracts, damage to body's immunity system, mutation, loss of crop productivity and upsetting the balance of ecosystems. The need of the day is therefore to bring greater awareness for harmonizing population dynamics and socio-economic development and harnessing of natural resources with due care to see that the quality of the environment does not deteriorate.

Mining has been and continues to be a major contributor to the economic growth of most of the developed and developing countries. India possesses vast and diverse natural resources, of which the exploration, extraction and utilization of minerals are currently considered to be one of the most significant factors in the economic growth and development of the country, India ranks among top five global players in terms of production of several important minerals.

However, unregulated mining activities also have adverse effects on the environment, which may pose threat to human health and well being. A high environmental cost which has been associated with years of unregulated mining and mineral-processing activity made it realised to strike a balance between mineral developments on the one hand and the greening of the environment on the other.

### **Mining in Orissa and its impact on Environment**

It is true Orissa is endowed with vast resources of minerals particularly Chromite and Bauxite. But the area in which these minerals are located is inhabited by tribals who mainly depend on the forest environment and its products, without disturbing the environment. No doubt by exploitation of these mines the government plans to raise huge foreign exchange besides meeting the domestic needs that provide some money and employment opportunities yet displacing thousands of people depending on these forest and mining areas. This apart mining activities create environmental pollution by way of deforestation dumping of semi-toxic matters and creating large areas of void. The effect of mining over livestock, perennial water system, the habitat and agriculture on which lakhs of people depend for subsistence, is too large to be accounted for.

If the formal adverse affects of a mining activity are taken into consideration, the possible benefits that result out of the mining activities and the income derived weigh less. Therefore there is need to conserve the mineral wealth exploiting only the minimum needed.

Environmental degradation in mining areas is caused by methods of mining, ore beneficiation, soil/sub-soil/ slope destabilization, pollution of water resources, ambient air transquility, harm to vegetation covers of the bio-resources, solid waste, tailing etc.

### **International efforts on Environment**

The earth's atmosphere is a common heritage. The environmental issues take in to account the human being, and not the State as a unit. It is a global issue. The Stockholm Declaration recognized that man is the part of nature and life depends on it. U.Thant, the Secretary General, United Nations, in Stockholm Conference appealed "Like or not we are travelling together on a common planet and we have no national alternative but to work together, to make an environment in which we and our children can live a full and peaceful life".

The declaration in the United Nations Conference on human environment from 5th to 16th June, 1972 at Stockholm considered the need for a common outlook for common principles to inspire and guide the people of the world in the preservation and enhancement of human environment. The long and tortuous evolution of the human race was not possible without rapid acceleration of science and technology. The man has achieved the ability to transform his environment in countless ways and on an unprecedented scale. This power if used wisely can bring benefits of development and opportunity to enhance the quality of life. The wrong application on the other hand can do incalculable harm to human beings and human environment. The members to the declaration felt that millions continue to live far below the minimum level required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. The industrialist countries pose gigantic environmental problems. The natural growth of population on preservation of environment. With the people as the most precious commodity in the world and their progress, social wealth with development and science and technology continue to transform human environment. The members felt that a point has reached when we must shape our actions with a more prudent care for environmental consequences for achieving for ourselves and our posterity, a better life in an environment, more in keeping with human needs. What is needed is a enthusiastic but calm state of mind. The freedom should not be misused for manipulating environment. The Stockholm Declaration proceeded to declare the principle : State of common conviction that the man has fundamental right to freedom, equity and adequate conditions on life permitting life of dignity and well being and bears solemn responsibility to protect and improve the environment for present and future generations. The natural resources are common to all and must be safeguarded for the benefit of present and future generations. The capacity of the earth to produce vital renewable resources must be maintained and wherever practicable restored and improved. The discharge of toxic substances and the release of heat in the quantities and the concentration should not exceed the capacity of the environment to tender them harmless. The state should take positive steps to prevent pollution of the seas by substance hazardous to human health, living resources and marine life. The economic and social development is essential. It should however be such that would not adversely affect the present or future development potential nor should hamper attainment of better living condition for all. The resources must be made available to preserve and improve the environment. A rational

management of resources should be ensured to make development compatible with a need to protect and improve the human environment for the benefit of the population. The planning should be rational to avoid adverse affect on environment and obtaining maximum social economic and environmental benefits. Science, technology and education should be applied for identification, avoidance and control of environmental risks.

### **Environmental concern in India**

Compassion towards nature was preached in all regions and by all religions. Don't make mischief in the earth's resources says Holy Quran. Gautam Buddha's religion was based on experience and logic. He believed on evolution of man. In the contemporary period Sikhism teaches that the life is made of five basic elements i.e. earth, air, water, fire and sky.

Kautilya, the Prime Minister of Magadh, during the regime of Chandra Gupta Maurya, 300 B.C. in his Arthshastra exhaustibly dealt with the question of environmental protection. He laid down the rules for protection and up gradation of environment minutely, meticulously and with great details. Mauryan King Ashok depicted exemplary compassion for wild life and prohibited killing of certain species of creatures.

The Colonial rule, however, disregarded ancient prudence, cultivated ruthless intelligence to exploit environment for their material gain. The legacy of imperialism and colonialism, concealing a sense of ownership over environment, propagated its consumption for wealth. Growth of industrialization and lack of awareness to handle the fast pace of development, has brought into focus many environmental issues and in its response environmental legislations.

After independence, in the Constitution of India which was adopted, 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'. Reference to the environment has also been made in the Directive Principles of State Policy as well

as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

The constitutional provisions are backed by a number of laws - acts, rules, and notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling and Management of Hazardous Waste Rules in 1989.

### **Article 21 and Environment**

Environmental law has found special mention in the Indian Constitution. Prior to the 42<sup>nd</sup> amendment, environment protection was availed through Article 21 of the Constitution. Article 21 runs thus 'No person shall be deprived of his life or personal liberty except according to procedure established by law. It ensures to every person the fundamental right of life and personal liberty'<sup>3</sup> Justice P.M. Bhagwati in *Francis Coralie v Union Territory of Delhi*<sup>4</sup> stated:

We think that the right of life includes the right to live with human dignity and all that goes alongwith it, namely the bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human being.

In *Subhash Kumar v State of Bihar*<sup>5</sup>, the Court observed:

Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In *M.C.Mehta v.Union of India* (1987, popularly known as Oleum Gas Leakage Case),the Supreme Court once again impliedly treated the right to live

in pollution free environment as a part of fundamental right to life under Article 21 of the constitution.

In *M.C. Mehta v. Union of India*, (1987, Kanpur tanneries case), the matter of pollution of Ganga river by the tanneries in Kanpur was brought to the notice of the Court by the petitioner, a social worker, through public interest litigation. The Supreme Court ordered the closure of tanneries at Jajman near Kanpur, polluting the river Ganga. The Court said that notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act and the Environmental (protection) Act, no effective steps were taken by the Government to stop the grave public nuisance caused by the tanneries at Jajman, Kanpur. In the circumstances, it was held that the Court was entitled to order the closure of tanneries unless they took steps to set up treatment plants.

In *Vellore citizens' Welfare Forum v. Union of India* (popularly known as T.N. Tanneries case), the Supreme Court held that in view of the constitutional provisions contained in Articles 21,47,48-A, 51-A(g) and other statutory provisions contained in the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986, the "precautionary" principles and the "polluter pays" principle are part of the environmental law of the country. In other words, two basic principles of sustainable development can be derived from various provisions including the right to life under Art 21 of the Constitution.

In *M.C. Mehta v. Union of India*, (1992), the Supreme Court took note of environmental pollution due to stone crushing activity in and around Delhi, Faridabad and Ballabgharh complexes. The court was conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Thus the court further observed that 'every citizen has a right to fresh air and to live in pollution free environment.' Thus the Supreme Court once again treated it as violation of Article 21 of the constitution and passed the order in absolute terms under Article 32 directing the stone crushing units to stop their activities in Delhi, Faridabad and Ballabgharh complexes.

The role of judiciary in creative constitutional interpretation and evolving suitable principles and remedies, especially by building consensus, and motivating the state and society towards better protection of environment, has further ordered the government to rehabilitate these stone crushers in "crushing zone" within the period of six months. In a significant judgement in *Indian Council for Enviro-Legal Action v. Union of India*" (1996), the Supreme Court has held that if by the action of private corporate bodies a person's fundamental right, is violated the court would not accept the argument that is not "state" within the meaning of Art 12 and, therefore, action cannot be taken against state. If the court finds that the Governmental or authorities concerned have not taken the action required of them by law and this has resulted in violation of right to life of the citizen. It will be the duty of the court to intervene. In this case an environmentalist organization filed a writ petition under Art 32 before the court complaining the plight of people living in the vicinity of chemical industrial plants in India and requesting for appropriate remedial measures. The fact was that in a village Bichari in Udaipur district of Rajasthan an industrial complex had developed and respondents have established their chemical industries therein. Some of the industries were producing chemicals like oleum and single phosphate. Requisite licences were not obtained by the respondent nor they had installed any equipment for treatment of toxic effluents discharged by them. As a result of this the water in the wells got polluted. It spread diseases, death and disaster in the village and surrounding areas. The villagers revolted and ultimately these industries were closed. But the consequences of their action remained in existence causing damage to the village. The court requested the National Environmental Engineering Research Institute to study the situation and to submit their report. In the technical report it was found that 720 tonnes out of 2440 tonnes of sludge was still there. With a view to conceal it from the inspection team respondents had dispersed it all over and covered it with earth. In spite of the court's order they did not remove the sludge.

The Supreme Court held that the writ was maintainable and directed the government and the authorities concerned to perform the statutory further ordered the government to rehabilitate these stone crushers in "crushing zone" within the period of six months. In a significant judgement in *Indian Council for Enviro-Legal Action v. Union of India*" (1996), the Supreme Court has held that if by the action of private corporate bodies a person's fundamental right, is violated the court would not accept the argument that is not "state" within the meaning of Art 12 and, therefore, action cannot be taken against state. If the

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The Supreme Court held that the writ was maintainable and directed the government and the authorities concerned to perform the statutory provided new vista to the right to environment. From a perusal of the trend as reflected in the cases discussed, it is evident that there has been a new development in India and right to live in a healthy and pollution free environment is considered as the fundamental right under Art 21.

The Apex court has stressed on the need to strike a just balance between the tapping of the natural resources for the purposes of the socio-economic development and the preservation and protection of the ecology, the environment and the natural wealth and resources. It added that this can be possible by the adoption of a long-term perspective planning and effective steps in the direction of implementing the same, otherwise there will not only be a total neglect and failure on the part of the administration to attend to an urgent task in the national interest but also a violation of the fundamental rights conferred by Article 14 and 21 of the Constitution.

Supreme Court dealing a body blow to the mining company that unlawfully housed huge quantity of non-iron and manganese ore, the apex court order for the necessary of 100% compensation in lieu of the excess or lifted.

Depositing of a writ petition filed by common cause in a case of rampant illegal mining in Odisha, the apex court held that they can be no compromised on quantum of compensation that should be recovered from any defaulting lessee it should be 100%.

A clutch of minors both captive and non-captive have to cough up the penalty as a result of this order. Mining companies includes, Tata Steel, SL Mining and industry limited, Indrani Patnaik, Rungta Mines, Serajuddin and Mines and company SAIL, Aditya Birla and even state run entities Odisha Mining Corporation are the duck for the violation of the mining Law.

The Shah Commission of inquiry set up in 2010 by the Central Govt. to look into the mining irregularities in Odisha had computed the loss at more than Rs. 61,000 crore. But for the purpose of judgement on Odisha mining Scam the Supreme Court has not relied on the figure but the court has gone along with the recommendation of the Central Empower Committee i.e. why out of 187 mines, 102 are closed and some of lease holder may not in position to pay the penalty.

Expanding the Environment jurisprudence the court for first time has held that violation of environment and Forest Law amounted to illegal Mining and the value of the Ore so produced on sold can be recovered from the mine owner.

### **Short Comment:**

When we are talking about right to live and personal liberty and safety related to environmental pollution we have to take effective steps while taking decision on matter of concerning ecology.

Now the time has reacted when we must shape our action with more prudent care for environmental consequences for achieving for ourselves and for our posterity. The natural are

common to all and must be safeguarded for the benefit of present and future generation. The capacity of the earth to produce vital renewable resources must be maintained.

The mining industry in India is infamous for human right violation and environment pollution almost all of India's minerals are located in region as that hold most of its forest tribal population and major river system. Due to mining industry conversion of green landscapes into barren lands, transformation of agricultural lands into wastelands, and pollution of air, water and soil are some of the common consequences of mining. The terrestrial and aquatic ecosystems adjoining the mines become adversely contaminated leading to loss of biodiversity and depletion of other natural resources. All such environmental perturbations exert tremendous pressure on human health and socio-economic of the society. These in turn, have multifaceted repercussion at local, regional and global levels.

There is no dearth of legislations on environmental protection from mining activities in India but their enforcement has been far from satisfactory. Hence, there is need for the effective and efficient enforcement of the constitutional mandate and other environmental legislations.

In order to ensure efficient and effective enforcement of law, it is necessary to set up an Adjudicatory Body which should consist of legal as well as technical expert. Caring for regulating and protecting the environment is essentially a desire to see that national development should proceed along the rational sustainable laws.

At the same time all necessary steps and care should be taken by the person those who are engaged

In such those may be skilled person or unskilled person.

The concept of sustainable development is one of the happy union between environmental value and development needs. Sustainable use of existing resources is one of such example. On the other

Hand the law maker lack sufficient awareness of environmental problems which restrict formulation of comprehensive legislation on environment .The National Environment Tribunal Act, 1955 is yet to be enforced. Moreover collective effort of the people and constructive

function of government will meet the challenges of mining pollution and environment degradation.

### **Conclusion**

Environment protection is a practice of saving the environment, on individual, organizational or governmental level. With the unplanned industrial and agricultural development, the pressure on natural resources has considerably increased and due to man's increased interference with the nature, the problem of environment pollution has increased manifold. Environmental destruction and pollution has seriously threatened the human life, health and livelihood. Thus, there has been a thrust on the protection of environment the world over. If the quality of life is to be assured to the present generation and if the nature generation is to be saved from the environmental catastrophe, the nature's gift to us in the form of flora and fauna has to be preserved in the natural form. The object of environmental law is to preserve and protect the nature's gifts such as water, air, earth and atmosphere from pollution.