

The ICAI University

From the Selected Works of Aparna Meduri

March, 2006

Article 21 of Indian Constitution – Mandate for Life Saving

Aparna Meduri



SELECTEDWORKS™

Available at: http://works.bepress.com/aparna_meduri/3/

Article 21 of Indian Constitution – Mandate for Life Saving

M.Aparna¹

Abstract

Indian Judiciary though is restrained, in many ways has evolved itself as a savior of mankind by applying its judicial activism. This article discusses few recent landmark cases of India wherein it threw focus on how the Indian Supreme Court by taking the resort of Article 21 of the Indian Constitution evolved itself as a savior of mankind.

Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right for the people of India. It protects the life and personal liberty. It envisages and aims that no person shall be deprived of his life or personal liberty except to a procedure established by law. Here, right to life includes right to health, right to good food, right to pollution free environment, etc. In simple words, Article 21 provides an inbuilt guarantee to a person for right to live with human dignity. This article focuses on some of the landmark cases that have a bearing on the person's right to life and thereby with the Article 21 of the Indian Constitution.

- **Clemenceau Case**

Clemenceau, French Warship, named after the first French Prime Minister during the France First World War, Georges Clemenceau (1906-07 and 1917-20), is popularly known as the 'Clem'. It is an extraordinary ship which became a hard core for the French defence force is pride and grace for the French navy. However, this gaint came to end of her useful life and was disarmed in 1997.

The ship with its deadly toxic contaminants included 130 tons of asbestos – a Hazardous Waste was decided for dismantling. After a series of trials to sell it to different countries like Turkey and Greece, French finally succeeded in the year 2004 in entering into a contract with the Alang - World's Largest Shipbreaking Yard located in India. However, this contract and the entry of the ship into India was opposed by Environmental Groups like Greenpeace India, Anti-Asbestos Groups, etc on the ground that it violates Basel Convention at the International Level and the Article 21 of the Indian Constitution – Right to the Health.

Article 21 gets violated on the Clem's entry into India because as continuous inhalation of Asbestos would result in developing one of the three fatal diseases such as Asbestosis – the scarring of the lung leading to shortness of breath, Mesothelioma – cancer of the lining of the lungs and stomach, and Lung Cancer. It takes 15 to 20 years to develop from the first exposure for a person to be effected with asbestos. He cannot be aware of sudden

¹ Research Associate, AW (Law), ICFAI University, INDIA

The copyrights of this article is with Mr.S.P.Gogia (H.U.F.), Publisher, Asia Law House , Hyderabad, www.asialawhouse.com, e.mail id. asialaw@satyam.net.in

change in his health after breathing in asbestos fibres. Thus, the use of asbestos results into horrific, debilitating and ultimately into a deadly disease. The Clem's entry into India would therefore deprive a person from enjoying his right to health, right to pollution free environment and his right to live.

On behalf of Greenpeace and several Anti Asbestos Group, Research Foundation for Science Policy of India filed a writ petition against the Indian Government before the Supreme Court of India seeking stoppage of the ship from entering into India. The Apex Court passed its interim order authorizing the Supreme Court Monitoring Committee on Hazardous Waste Management to submit a report on Le Clemenceau and prohibited the ship from entering into Indian waters till 13th February, 2006 - the day the Supreme Court should give its final adjudication on the case.

However, on 15th February 2006 the French President Jacques Chirac considering the above violations - Basel Convention and Article 21 of the Indian Constitution, and the impact of such violation on the people of India suo moto called back the Clemenceau, the ship with abundant toxic substances.

- **Coca Cola Case**

This is another case of Corporate rights vs. person's right to live. In the year 2000, Coca Cola set up a plant at Plachimada in Palghat district of Kerala. Within a year of its establishment the ground water in the area started to decline and wells got polluted. On 7th April, 2003 Mylamma, an adivasi woman took the initiative to start an agitation which forced the locally elected government – Perumatty Panchayat not to renew the license of Coca Cola Company. The matter of non-renewal of license went to the Kerala High Court for adjudication.

The High Court of Kerala had to look into two issues – firstly, the issue of Earth Democracy and the rights of the Panchayat and the local community, and secondly the issue of excessive exploitation of water by Coca Cola. The contention of the Panchayat is that the Coca Cola Company in Plachimada excessively exploited the ground water, thereby causing acute drinking water scarcity in the area of Perumatty and nearby places. It was further contended that it is the ultimate authority to decide on the matters related to water resources since the protection and preservation of water resources are the exclusive domain of the Panchayat. It concluded its contention stating that it has taken the decision of non-renewing the license of Coca Cola Company at Palchimada as it has primarily violated the Fundamental Right to live of a person, guaranteed under Article 21 of the Indian Constitution. The Court observed that the Coca Cola company, though extracted the ground water at the admitted amounts, yet it has no legal right to extract an extraordinary amount of natural wealth. On 12th December 2003 the Court upheld the case in favor of Perumatty Panchayat and ruled that the Coca Cola Company did not have the unfettered rights to withdraw ground water. In its judgment the concept of Earth's Democracy and the Fundamental Right –Person's Right to have Polluted Free Water is reflected. The Coca Cola Plant at Plachimada was made to shut down.

On 7th April 2005, the Kerala High Court overruling its previous order opened the case for fresh adjudication. Now the conflict was between Public Trust Doctrine vs. Property Rights in Ground Water and Coca Cola's unfettered right to withdraw water. The case was placed under the Public Trust Doctrine because the doctrine primarily rests on the principle that certain services like air, sea, water and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. Thus the State has got a duty to protect ground water against excessive exploitation, and the inaction of the State in this regard will tantamount to infringement of the right to life of the people of India, guaranteed under Article 21 of the Constitution of India. However, contrary to this the Court gave a ruling that the person has a right to extract water from his property. The Court observed the third schedule of the Panchayati Raj Act and interpreted that the "maintenance of traditional drinking water resources" could not have been envisaged as preventing an owner of a well from extracting water therefrom at his will. The Court via its ruling placed the right of Coca Cola Company to quench its thirst as higher than the rights of the local community to quench their thirst and permitted the Company to draw 5,00,000 litres of ground water per day and ordered the Panchayat to renew its license.

At the time of ruling and even in the present scenario the entire country is facing acute water problem and the government is intervening in the right to draw water. Farmers across large parts of India are required to seek permission to put up tube wells. The regulations on groundwater extraction became inevitable for compliance. Thus the Kerala High Court Order of upholding the unfettered private rights of the Coca Cola Company in its extraordinary extract of groundwater resources goes against the principles of Article 21 of the Indian Constitution, the Panchayati Raj Act, the Public Trust Doctrine and Groundwater Regulation Acts.

Pursuant to this there exists 5 Special Leave Petitions (SLP) pending before the Supreme Court, challenging the High Court judgment. Three were filed by the Panchayat and one each by the Kerala Government and the Kerala State Pollution Control Board. The Supreme Court judgment is yet to be pronounced.

The Apex Court, before rendering its decision on this case, is required to consider even the allegations made on the company's product - Coke. It is alleged that the coke contains the toxic substances which is injurious to the health of the people on its consumption and thereby once again the company violated the right to life under Article 21 of the Indian Constitution.

- **Kudremukh Case**

In Supreme Court's ruling in 2002 on Kudremukh case, it was observed that the "Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of the environment are: (i) the principles of sustainable development and (ii) the precautionary principle." Sustainable development is essentially a policy and strategy for continued economic and social development without detriment to the environment and natural resources on the

quality of which the continued activity and further development depends. In simple words, Environmental Protection aims at sustainable development which in turn fulfils a person's right to life under Article 21 of the Indian Constitution.

In the year 1969, Kudremukh Iron Ore Company Limited (KIOCL) took over 3703 hectares of Shola forest land in the Kudremukh area of the Western Ghats of Southern Karnataka on a 30-year lease from the Karnataka State Government. KIOCL principle business is to extract iron ore. On expiry of its lease period on 25th July 1999 it carried out its functions based on the temporary working permission granted by the Ministry of Environment and Forests till a petition for its closure is filed with the Supreme Court.

The closure petition stated that way back in 1987 the Government by notification declared Kudremukh as a National Park and hence it comes under the Wildlife (Protection) Act, 1972 which disallows any non-forestry operations including mining activity within the protected area. Despite this notification, KIOCL continued its operations on the basis of the lease granted to it two decades prior to this notification. When appeals to the Karnataka State Government for closure of KIOCL and inclusion of leased areas into National Park proved unsuccessful, KM Chinnappa, a retired Forest Officer and Trustee of the NGO filed an interlocutory application with the Supreme Court in 2001 wherein Godavarman Thirumalpad vs. Union of India case is highlighted.

In the application Chinappa contended with the evidence that the KIOCL through its mining operations caused an everlasting damage not only to the environment of the Kudremukh region but also to the Bhadra river and reservoirs to agricultural land downstreams. Millions of farmers dependent on the river for their cultivation, thereby livelihood were placed in hazardous situations due to the impact of sediment from the mines brought down through the river. He further contended that KIOCL included 56 hectares of forest land for its mining operations between 1999 – 2002, i.e., after the lease expired, contravening the provisions of the laws in force. The Comptroller and Auditor General of India estimated environmental damage from this unauthorized use of land to the extent of Rs.19.33 crores. On 30th October 2002, the Supreme Court upheld the judgment in favor of Chinappa and ordered KIOCL for closure of mining operations and to vacate the Kudremukh area by December 2005. The apex court also constituted a Supreme Court Monitoring Committee to oversee the closure proceedings.

It is a welcoming judgment as it ensures sustainable development, which in turn ensures the protection of the fundamental right of a person – mainly right to life under Article 21 of the Indian Constitution.

- **Noise Pollution Case**

Right to Life includes Freedom from Noise Pollution. This was held by the Supreme Court of India in the year 2005 in Forum, Prevention of Environment and Sound Pollution and Union of India and Another case. Accordingly, noise pollution was geared to prohibit on the grounds that it disturbs a person's daily life.

In this case the petitioner filed a Special Leave Petition with the Supreme Court moved by the incidence of a 13-year-old rape victim committing suicide when her cries for help fell on deaf ears due to the earsplitting noise emanating from the loud speakers in the neighborhood. The petitioner challenged the validity of Rule No. 89 of The Environment (Protection) Rules 1986, as there was severe failure on part of the machinery in implementing the regulations. The petitioner further alleged that the noise produced by the use of loud speakers at public, political speeches, religious places, processions, bhajans, and marriage functions, the noise created by the use of high capacity Stereo systems during terrace parties, or in clubs, the bursting of crackers during festivals and parties all were causing noise pollution. The noise pollution so caused disturbed and affected the concentration of the students preparing for their examination; caused physiological, psychological and occupational or other forms of communication interference to small children and elderly people in school and residential zones. Hence, all such noise polluters especially the firecracker manufacturers be prohibited completely from manufacturing loud sound making crackers. Supporting this prohibition the Respondents- Union Of India and Central Pollution Control Board choose not to oppose the petitioner's prayer and rather supported the petitioner by bringing in research documents and highlighted the practical difficulties faced by the authorities meant for regulating the noise pollution levels.

The Apex Court while considering the evidences and supportive decisions produced by the petitioner passed orders directing the Union Government to amend Environment (Protection) Rules 1986, especially Rule 89, thereby imposing stricter noise standards for use and manufacture of fire-crackers, like bursting of fire crackers only between 6 A.M and 10 P.M and not to be used in silence zones like Schools, educational institutions, hospitals, courts, religious places etc. The Government was further directed to bring in awareness among the public, especially the young children by educating them on ill effects of air, water, and noise pollution in their curricula either by using the medium of print or press.

Thus, in the wake of all the above cited recent cases it is becoming evident that the Indian Judiciary though is restrained, in many ways has evolved itself as a savior of mankind by applying its judicial activism. The key chosen for widening the scope of application of provisions of law is Article 21. The Supreme Court conquered the faith of the millions of Indian people by these people friendly decisions mainly on this constitutional provision though there is delay in delivery of the decision. Let us all welcome the evolution of this neo-jurisprudence of Indian Constitution.