

# Judicial Approach regarding Mining Activities with Special Reference to the Concept of Sustainable Development

Shamsher Singh<sup>1</sup>

## I. Introduction:

It will not be wrong to say that natural resources like forests, ponds, hillock, mountain etc. are nature bounty. These help in maintaining delicate ecological balance. These need to be protected for a proper and healthy environment which enables people to enjoy a quality life, guaranteed right under article 21 of the Constitution<sup>2</sup>. But in practice from the last five decades man has been continuously exploiting these natural resources for satisfying its own selfish ends. Deforestation, water pollution, air pollution, soil pollution, depletion of ozone layer, dangerous diseases are evidence of this selfishness. Even, now, environmental scientists have raised the alarm of having reached at dangerous level and humanity being at stake. Number of times it has been suggested that the concept of sustainable use of natural resources is only way to avoid these dangerous circumstances<sup>3</sup>.

It is true that without the principles of sustainability as a way of life, human race could not be survived<sup>4</sup>. Development is defined as the increasing

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<sup>1</sup> Assistant Professor, Khalsa College of Law, Amritsar (Punjab).

<sup>2</sup> *Hinch Lal Tiwari v. Kamla Devi*, AIR 2001 SC 3215.

<sup>3</sup> The concept of sustainable use of natural resources is an ancient one. As in *Guru Granth Sahib*, Guru Nanak Sahib said, *human body composed from five vital elements of nature i.e. air, water, land, fire and sky, which shows close relationship between man and nature*. Apart from that *Vedas, Puranas, Upanishads* gave a detailed description of trees, plants and wildlife and their importance to people. In ancient period chopping of trees are prohibited and considered as offence. Rivers and seas were treated as God and worshipped. The first efforts to codify the aspect of environmental protection came from *Kautilya, Prime Minister of Chandragupta Maurya*. As early as 300 BC, he realized the significance of the environment and formulated rules which mandated the rulers to protect forests and animals. (See V.Gupta 'Kautilya Jurisprudence' (1987) 155 in Divan Shyam and Rosencranz Armin, *Environment Law and Policy in India*, 2<sup>nd</sup> ed., 2005, Published by Oxford University Press, New Delhi, P.24).

<sup>4</sup> The term *sustainability* has been derived from the Latin word *sustinere* which means to hold up, to endure, to bear, to support, to provide for, to maintain, to sanction, to keep up, to prolong, to support the life of<sup>4</sup>. There are many definitions to highlight what is desirable to achieve the common goal of sustainable development. Most accepted definition of the term sustainable

capacity to meet human needs and improve the quality of human life<sup>5</sup>. In other words it can be said that sustainable development is a pattern of social and structural economic transformation, which optimizes the social and economic benefits available in the present without jeopardizing the likely potential for similar benefits in the future<sup>6</sup>. Economists have also provided a definition of sustainable development as being an economic process in which the quantity and quality of our stocks of natural resources (like forests) and the integrity of biogeochemical cycles (like climate) are sustained and passed on to the future generations unimpaired<sup>7</sup>.

According to Justice Kuldip Singh 'Sustainable Development' is a balancing concept between ecology and development<sup>8</sup>. Thus, the term means improving the quality of human life and at the same time living in harmony with nature and maintaining the carrying capacity of the life supporting ecosystem.

So far as the Constitution of India is concerned, it provides number of constitutional remedies for the preservation of environment and natural resources of country<sup>9</sup>. To realize these constitutional mandates, a legally strong ideal environment is prevalent in India<sup>10</sup>. At the same time, Indian

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development is: *The World Commission on Environment and Development* established by the U.N. General Assembly in December 1983 was chaired by *Norwegian Prime Minister, G.H. Bruntland*. This Commission defined the term *sustainable development* as the development which meets the needs and aspirations of the present without compromising the ability of the future generations to meet their needs. This is the most popular definition of the term. The concept of sustainable development was given a definite shape in a report by World Commission on Environment, known as 'Our Common Future' The concept had been further discussed under *Agenda 21 of UN Conference on Environment and Development* held in June 1992 at Rio de-Janeiro, Brazil.

<sup>5</sup> *The caring for the earth document*.

<sup>6</sup> Goodland and Ladac.

<sup>7</sup> Anil Aggarwal, 'What is Sustainable Development?' *The Administrator*, Vol. XI., April-June, 1995, p.1.

<sup>8</sup> *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2720-21.

<sup>9</sup> The Indian Constitution adopted in 1950, originally did not deal with environment protection, but some of the Articles like 14, 19, 21, 32, 39, 42, 47, 48, 48 A, 49, 51 (A) (g) etc. were there having an indirect impact on environment and reinforcing sustainable development.

<sup>10</sup> Section 277, 278 and 290 Indian Penal Code; Section 133, 134, 135, 136, 137, 138, 140, 141, 142, 144 Criminal Procedure Code; The Mines and Minerals (Regulation and Development) Act, 1957; Environment (Protection) Act, 1986; The Environment (Protection) Rules, 1986; National Environmental Tribunal Act, 1995 (NETA); The National Environment Appellate Authority Act, 1997 (NEAAA); The Environment (Siting for Industrial Projects) Rules, 1999; The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; The Public Liability Insurance Act, 1991; The Bio-Medical Waste (Management and

Judiciary is also playing pivotal role for protecting and preserving natural resources of the nation. In this paper, the researcher highlights the activism of Indian Judiciary in interpreting the cases related to mining operations particularly with an emphasis on the concept of Sustainable Development.

## II. Sustainable Development and Mining Activities:

Whereas mining and quarrying is related to the natural resources base of a country, manufacturing, utilities and construction represent the overall economic development status of a country<sup>11</sup>. On the other hand mining activities impairs the ecology and people's right to natural resources. Therefore, the entire process of setting up and functioning of a mining operation requires utmost honesty and good faith on the part of the intending entrepreneur<sup>12</sup>. In the mining sector, major changes were made to the National Mining Policy in 1994 to facilitate private investment. At the Destination India Summit in New Delhi on September 10, 1996, the Prime Minister announced that the Foreign Investment Promotion Board had cleared 350 projects in the later part of 1996 alone<sup>13</sup>.

It cannot be refused that mining can bring about not just ecological devastation but also dislocation and hardship to the people who inhabit large

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Handling) Rules, 1998; The Recycled Plastics Manufacture and Usage Rules, 1999; The Municipal Solid Wastes (Management and Handling) Rules, 2000; The Ozone Depleting Substances Rules, 2000; The Noise Pollution (Regulation and Control) Rules, 2000; The Batteries (Management and Handling) Rules, 2001; The Biological Diversity Act, 2002. The Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Rules, 1975; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Water (Prevention and Control of Pollution) Cess Rules, 1978; the Indian Fisheries Act, 1897. (Pre-Constitutional); the Rivers Boards Act, 1958; the Merchant Shipping Act, 1958; the Coastal Regulation Zone Notification, 1991; Orient Gas Company Act, 1857; Factories Act, 1948; the Atomic Energy Act, 1962; Air (Prevention and Control of Pollution) Act, 1981; the Air (Prevention and Control of Pollution) Rules, 1982; the Motor Vehicle Act, 1988; The Noise Pollution (Regulation and Control) Rules, 2000; The Wild Life (Protection) Act, 1972; The Forest (Conservation) Act, 1980; The Forest Conservation Rules, 2003; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2007; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008; The National Green Tribunal Bill, 2009.

<sup>11</sup> Martin. Z. Wilderer, '*Economic Growth, Environment and Development- the Significance of Eco-Industrial Park concept in India and Indonesia*', Published by Manak Publications Pvt. Ltd., p.21.

<sup>12</sup> Chairman Barton, '*The Status of the Precautionary Principle in Australia*', Vol. 22, 1998, Harv. Envtt. Law Review, pp. 509, 549-A).

<sup>13</sup> Down to Earth, '*The Never Green Gowda*' January 31, 1997.

mining tracts<sup>14</sup>. Recently, the Goa Government has decided to freeze mining exports of all companies found selling iron ore illegally<sup>15</sup>. In the same line Chief Minister of Karnataka Mr. B.S. Yeddyurappa announced a ban on export of iron ore from Karnataka and saying that it was the only way to stop illegal mining in the State. According to data provided by Yeddyurappa to the State Assembly, from 2000 to 2010, over 30 million tones of iron ore was illegally mined and exported from Karnataka<sup>16</sup>.

From the above facts, it will not be wrong to say that mining activities contributes in the economic growth, but if we see the other side of the coin, it is a big threat to the right of healthy and pollution free environment<sup>17</sup>.

### III. Judicial Approach on Mining Operations:

Judiciary may be described as the most vigilant defender of democracy. It is one of the three pillars upon which the edifice of the Constitution is built. It will not be wrong to describe it as the guiding and balancing pillar of democracy<sup>18</sup>. According to **Justice A.R. Lakshman (Judge Supreme Court of India)**, '*A successful judicial system is a hallmark of any developed civilization*'. Highlighting the importance of judiciary, *Ronald Dworkin* said that law is not merely a system of rules, but also includes principles and policies developed by the courts. It means laws are not applicable itself, but these are applied by the courts through the means of interpretation.

If we look at the number of legislations related to environment in India, we would found that there is no dearth of laws. The meaning of law is not only statutory rules made of legislature. The object of law is to do justice. The courts not only shape the statutes but also develop principles and policies to render justice where letter of law falls short of justice<sup>19</sup>.

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<sup>14</sup> See Combat Law, '*Mining: Who really benefits*' Volume 7, Issue 5, September, 2008 at 27.

<sup>15</sup> Economic Times '*Control on mining activities: Goa stops illegal iron ore exports*', 2 August, 2010. (See also <http://www.indiaenvironmentportal.org.in/category/thesarus/mining>. last visited on 4-08-2010.

<sup>16</sup> See; <http://www.deccanherald.com/content/84665/karnatak-bans-iron-ore-exports.html>. Last visited on 4-08-2010.

<sup>17</sup> Article 21 of the Constitution of India.

<sup>18</sup> V.K.S. Chaudhary, '*A Pillar of the Constitution*' in the Ivory Tower-51 years of the Supreme Court of India, Ed. 2002, Universal Law Publishing Co. Pvt. Ltd., p.1.

<sup>19</sup> V.S. Deshpande (Former Chief Justice of Delhi High Court) '*Law and Public Interest*' in Environment, Administration Law and Judicial Attitude (edited book), published by Deep and Deep Publications, p. 129.

Following decisions are given by Apex Court and various High Courts in context of mining activities with an emphasis on the concept of Sustainable Development.

In one of the first case in which the issue of mining (development) and the environment came into sharp focus is *Rural Litigation and Entitlement Kendra (RLEK), Dehradun and Others v. State of UP and Others*<sup>20</sup>. It brings into notice the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest of the country.

In summary the facts of the case arose from illegal and highly environmentally damaging limestone mining in Doon Valley. These destructive practices continued until RLEK, an NGO, sent a letter to the Supreme Court, as a writ petition<sup>21</sup> complaining about the environmental degradation, which eventually led to more than 100 mines being joined in the action. The court created a number of committees to consider the environmental impacts of the different mines and to give recommendations. From 1983 onwards the Court gave recommendations to *inter alia* prohibit blasting, close the most dangerous mines and finally in 1987 on the recommendations of the Banopadhyay Committee decided to close all the mines completely because of the ecological considerations and violations of the Forest (Conservation) Act, 1980. It also ordered that the valley be reforested and noted the necessity for forest preservation in the protection of environment and ecology<sup>22</sup>. During the progress of the case, the court examining the meaning of sustainable mining, in doing so it said this:

*Though exploitation of mineral resources in the interests of industrial growth of the country is necessary, yet such mines should be worked as not to disturb the ecology and not to affect the livelihood and living conditions of a very large number of the people.*

Supreme Court held that level of scrutiny required when considering whether mining in any particular area should be permitted in the interests of economic development and public health. Keeping in mind the above said view, court ordered the closure of mining operations for the sake of public health. Apex Court further stated that undoubtedly, this would 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.

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<sup>20</sup> AIR 1985 SC 652.

<sup>21</sup> Article 32 of the Constitution of India.

<sup>22</sup> See Judgment paragraphs 25-32.

The Division Bench of Himachal Pradesh High Court in *Kinkri Devi v. State of Himachal Pradesh*<sup>23</sup>, held that where there is indiscriminate operation of mines which are proving hazardous to natural wealth and environment the courts have no option but to intervene. When this intervention is done then even the closure of mining operations can also be ordered. Further, Court directed the State Government to take steps on the basis of recommendations of the Committee headed by the Chief Secretary whether the mining lease to be granted or not.

Further the concept of development (mining) and environment was come into limelight in the case of *Tarun Bharat Sangh, Alwar v. Union of India*<sup>24</sup>. The case involved widespread illegal mining in a notified National Park and a Tiger Reserve. The area now popularly known as 'Sarika Tiger Park' was, it would appear, an exclusive hunting forest of the rulers of the Quondam, Alwar State. The area has since been declared as a 'Game Reserve' under the Rajasthan Wild Animals and Birds Protection Act, 1951. The area is also notified pursuant to the notification dated 1-1-1975, under Section 29 and 30 of the Act. The direct effect of these, it is averred, is to impose restrictions on the carrying on of any mining activity in the protected area which would impair environment and wildlife.

Therefore the court held that no mining operation of whatever nature shall be carried on within the protected area. The relevant paragraph of the court judgment states:

*'At the outset, we may be permitted to clarify an aspect. This is not a case where we are called upon to shut down an activity being carried on lawfully, in the name of higher considerations of ecology and environment'*<sup>25</sup>.

Another case in which the issue of the protection of the environment and sustainable development was considered was *KM Chinnappa v. Union of India*<sup>26</sup>. In this case, Supreme Court was faced with a situation where Kudremukh Iron Ore Company Limited (Government run Company) had been mining illegally in a national park. The national park<sup>27</sup> is a part of the Western Ghats and the forest area is one of the eighteen hotspots for biodiversity in the world. The said petition, challenged the correctness of orders issued by the States of Karnataka and Uttar Pradesh respectively on

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<sup>23</sup> AIR 1988 H.P. 4 (as Cited in S.C. Tripathi, 'Environmental Law', Fourth Edition 2010, Published by Central Law Publications, p. 35.

<sup>24</sup> AIR 1992 SC 514 (popularly known as the 'Sarika Case').

<sup>25</sup> The Apex Court believed that even a lawful mining operation, in compliance with all clearances, could be stopped in the interests of environment.

<sup>26</sup> AIR 2003 SC 724.

<sup>27</sup> Kudremukh National Park was declared to be National Park in 1987 within the terms of Section 35(1) of the Wildlife Protection Act, 1972.

dated 12-12-1996 and 14-12-2000, which according to petitioner were in violation of the provision contained in the Wild Life (Protection) Act, 1972.

The company argued that it had a good environmental policy and had spent considerable amounts of money on preservation of the environment. Further it had subsisting orders from foreign buyers and that if the orders were not respected then there would be loss of foreign earning and a large number of employees made jobless.

After examining the above facts, *Justice Arijit Pasayat* observed, in that case flora and fauna in and around Kudremukh National Park is the real victim. Therefore, Court held that certain proceedings have been initiated against the Company for alleged violation of various statutes<sup>28</sup>. The Court recognized that any non-compliance with regulatory controls by companies may result in criminal liabilities, administrative sanctions, clean up costs, civil liabilities and adverse publicity. It ordered, following the forest advisory committee's recommendations, that mining be terminated within five years and that the land be restored through an eco-forestation fund. Compensation should also be made to strengthen the protection of the park and other protected areas in Karnataka<sup>29</sup>.

In the case of *M.C. Mehta v. Union of India*<sup>30</sup>, the question before the Supreme Court was that whether the mining activity in the area of up to 5 kms. from the Delhi-Haryana border on the Haryana side and also in the Aravalli Hills causes environment degradation and what directions were required to be issued. The contention of the mine operator was that the pollution, if any, thus generated by the mining activities cannot go beyond a distance of 1 km. and the stoppage was wholly unjustified. Keeping in mind the concept of sustainable development, Apex Court permitted the mining activities at Aravalli Hills range. Court observed that:

Having regards to the enormous degradation of environment in Aravalli hill range the court made it clear that the mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions. The Aravalli hill range has to be protected at any cost. In case despite stringent condition, there is an adverse irreversible effect on the ecology in the Aravalli Hill Range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons such step may have to be considered in respect of mining in Faridabad District as well<sup>31</sup>.

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<sup>28</sup> See Judgment Para 59.

<sup>29</sup> See *Combat Law, 'Mining and Law'* Volume 7, Issue 5, September, 2008 at 29.

<sup>30</sup> AIR 2004 SC 4016.

<sup>31</sup> *Id*, Para 71.

Further Court stated that, the development and the protection of the environments are not enemies. If without degrading the environment and or minimizing adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck.<sup>32</sup>.

Allahabad High Court in the case of *Pyari Devi v. State of U.P.*<sup>33</sup> held that prior approval of the Central Government is necessary for grant of permission to carry on mining in a reserved forest area. Court further held that no illegality had been committed in directing the petitioner to stop her mining operations. Where permission is not accorded by the Central Government the petitioner is not entitled to start mining activities by using forest land portion thereof for non-forest purposes. Even construction/repair of the road for the purpose of transportation of minerals could not be done without prior approval of the Central Government.

Further, Supreme Court in the case of *T.N. Godavarman Thirumulpad v. Union of India and Others*<sup>34</sup> had again shown the faith on the Principles of Sustainable Development. In this case a Company made a proposal for setting up an alumina refinery in the area of Lanligarh Tehsil of Kalahandi District. The mining of bauxite deposits is required to take place on the top of Niyamgiri Hills. Niyamgiri Hills which is the only vital wildlife habitat, part of which constitutes elephant corridor and also in the ground that the said project, including mining area, would obstruct the proposed wildlife sanctuary and the residence of certain tribes.

According to CEC, Niyamgiri Hills would be vitally affected if mining is allowed in the above area as it is an important water source for two rivers. The project would also destroy flora and fauna of the entire region and it would result in soil erosion. But on the other side there is a picture of object poverty in which the local people (including tribal people) are living in the area concerned. There is no proper housing. There are no hospitals, there are no schools and people are living in poor conditions.

After analyzing the both aspects, Supreme Court adopted the approach of Sustainable development. Court is not against the project, but it could not take risk of placing an important national asset into hands of

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<sup>32</sup> *Id* Para 48.

<sup>33</sup> AIR 2004 All. at 70 as cited in Annual Survey of India, Volume XL, 2004 at 613-14.

<sup>34</sup> (2008) 2 SCC 222.

applicant company. It is only safeguard by which we are able to protect nature and sub serve development.

Recently in case of *T.N. Godavarman Thirumulpad v. Union of India and Others*<sup>35</sup> court suspended the all mining operations in the Aravalli Hill range. It was stated by the State of Haryana that a complete ban on mining minerals there could cause scarcity of building materials and the construction of roads and buildings and other development activities would be seriously affected. Court held that any mining activity in 600 hectares of land identified and earmarked in Faridabad shall be subject to the directions CEC and State of Haryana. Supreme Court permitted mining minerals in 600 hectares of land but with a condition that it could begin only after the Haryana Government put in place a comprehensive rehabilitation and eco-restoration scheme<sup>36</sup>.

#### **IV. Conclusion:**

In the nutshell, it is submitted that industrial resources, economic growth and social change are three pillars on which the edifice of our future progress rests. All of us want to progress socially and economically. But we cannot build our future at the cost of any one of the pillars. We must seek a balance between all the three so that the edifice of our progress that we are trying to build is stable and durable<sup>37</sup>. So the message is very clear. Humanity has no choice but to move towards a secure future to keep a sustainable environment. We are concerned about future of our children; we try to save in the form of land, housing, jewellery, etc. that we pass on to them. However, it is rather strange that while we do all this for them we do not show same concern for our life-support elements- freshwater, clean air, fertile earth, etc. we are bartering away the future of our children for the sake of our material comforts today<sup>38</sup>.

Undoubtedly, the role of Indian judiciary in context of mining activities and sustainable development is marvelous and laudable. But still there are a number of hindrances in the way of achieving the concept sustainable mining. Most of the cases relating to mining operations are technical in nature and it is not easy for judges to understand the

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<sup>35</sup> (2010) 1 SCC 500.

<sup>36</sup> Reported in English Daily 'Times of India', dt. 10-10-2009 (as cited in S.C. Tripathi, 'Environment Law', 2010, p. 40).

<sup>37</sup> Prof. M.N. Madhyastha-Emerritus Scientist, AICTE, National Institute of Technology, Karnataka and Chair, Public Hearing, 48<sup>th</sup> report of public hearing on environment and development, December 19, 2003, p.39.

<sup>38</sup> Prof Krishna Kumar, Director- Motilal Nehru National Institute of Technology, Allahabad addresses on Forty-Seventh Public Hearing on Environment and Development, 11, October, 2003, p. 3.

technicalities of these cases; therefore in my view the persons of skills may be preferred for the post of the judges. The shortages of judicial officers in law courts too somewhere is responsible for non-implementation of sustainable development principles. It is submitted that for the handling of cases related to mining and sustainable development should be by Environmental Courts, which are administered by specialist judges having sensitivity towards mining activities and Sustainable Development, so that it may help the speedy and effective justice. Further, I will say that environment and development (mining activities) are two sides of the same coin. Any one of these cannot be sacrificed for the other.

Another submission is Green mining. It is another way to follow the sustainable development principles. It has been possible for us to turn over mines green. We have to implement various measures to ensure that our mining operations do not leave any unsightly scars on nature<sup>39</sup>. Last but not the least, it cannot be refused that industrialization and mining activities disturbs the environment. It is submitted by the present researcher that, if our industrial practices and mining operations will remain within the sphere of the law, then we will be able to manage the environmental problems more efficiently.

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<sup>39</sup> The Chronicle, May, 2010.