



PIL IN ENVIRONMENT PROTECTION: CONCERNS AND CRISES

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Abstract-- Public Interest Litigation in Environment Protection is a technique with tremendous potential to curb the malfeasance and misconduct of environmental degradation. The environmental jurisprudence has snuffed out the illegality from corporate honchos and leaders from civil society. The astounding growth in PIL's for environment protection is invariably the result of relentless effort to secure environment from further degradation. The role of society to safeguard nature can be potentially navigated by the unstinted support and respect to the judiciary. Over the years the PIL's have altered the litigation landscape to eliminate vulnerability of environment protection. The PIL regime has imposed social and statutory duty on the courts to act reasonably and responsibly. Indian judicial system's pro-active role has often been targeted to cause invalidated intrusion into social issues leading to adverse consequences, on the other hand the scourge of pollution continues without any hindrance. While in some cases courts have made guidelines to restore the pitiable condition, making people responsible for the sagging attitude causing detrimental impact on the environment.

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The most basic right of healthy environment is the comprehensive term encompassing all such natural and biotic elements that promote quality of life.² The environment pollution has incarcerated the human beings with smoke, smog and pollution. Since time immemorial, natural resources have been source of support and strength of the human beings. In the quest of human greed of comfort the undeterred exploitation of natural resources has taken place. The uninterrupted and unstinted growth in environment degradation has led to the concern of its protection and preservation.³ Stockholm Conference on Human Environment, 1972 has generated a strong global concern and awareness and in India has enabled the enactment of 42nd Amendment, 1976. The introduction of Article 51A(g) and Article 48-A has had an indelible impact on the minds of the citizens to secure environment from further degradation. The Article 21 of the Constitution has an inflinching impact towards the development of environment jurisprudence Judiciary has vividly expanded the frame of protection towards its citizens and more diligently devoted its impact to restore environment. PIL's have had unstinted support as "mass voice" due to the 42nd Amendment, which incorporated the Article 39-A in Indian Constitution to provide equal justice and free legal aid. Due to PIL's many socially significant issues were

¹ Minhar H. Upadhyay, PIL and Environment Protection, *International Journal of Research in all subjects in Multi Languages*, Vol. 2, Issue 3, March 2014, IJRSML, 1.

² Sunil K. Pandey, Seva Sadan Law College, Bhuranpur (M.P.), PIL: Instrument of Environmental Protection: An Appraisal, *Journal of Environmental Research and Development*, Vol. 1, No. 1, July-Sept., 2006 (97-98).

³ Kailsah Thakur, *Environmental Protection Law and Policy in India* (1999), 305.



raised and resorted equally with prudence by the judicial will. The Supreme Court and High Courts have entertained enthusiastically the environment petitions under Article 32 and 226 of Indian Constitution regarding the issues violative of Article 21. The outcome has been promising, since the courts have passed landmark judgements, thereby enforcing the duty on the public bodies to take action on burning environment issues. What is to be considered is that mere judicial activism will not resolve the clout of environment degradation, the executive laxity, legislative commitment and unconcern attitude of the citizens as a whole cannot be made good by pro-active role of the judiciary.

Indian Judiciary has played a pivotal role in interpretation of the law for the marginalized people⁴ and at the same time provides guidelines towards environmental protection and ecological balance. Such environmental jurisprudence which has promoted policies and provisions will be effective only with strong commitment towards environment protection. The failure of the state agencies to effectively enforce the environmental laws apart from non-compliance with statutory norms by the polluters have resulted into further degradation of the environment.

The ongoing conflict between development and environment have been resolved by the judiciary, to secure public interest. The welfare content of the democratic policy seeks to address social realities and meet the demands of time. The administrative and legislative strategies should be formulated to secure the future and prevent further deterioration of the ecology. The benefits of the nature can be enjoyed by us only when we secure its existence. The environmentalist have focused on inter-generational technique to preserve and protect the riches of nature for the future generation. The court's relentless efforts have paid off and the faith of the people have been retorted by punishing the miscreants. The judiciary is making all efforts to protect the beleaguered environment from further degradation.

PIL AND GOVERNMENT PROTECTION

Environment, the most potent element of human existence is in the state of crises. The nonchalant attitude of the authorities and the people equally have led to unfettered access to environment degradation. The money and power moving hand in hand has scotched the idea of environment protection. The resort, a few people have sorted out is the recue found in the judicial system. The strongest pillar of the democracy seems to be the sole strength of the democratic values. The people have reposed faith in the judicial pedestal so that the miscreants can be punished and in no way can outmaneuver the law. PIL, a public apathy by the public itself to the public protector, the judiciary is the safest and the most secure way to ensure justice against the perpetrators. The public spirited individuals or organizations have maintained petitions to preserve environment, which has turned out to be an effective tool. The new vistas of protection have been propounded by M.C. Mehta, whose outstanding contribution has made the Supreme Court find new horizons of justice for safeguarding environment. The Ganga Pollution case,⁵ closing of tanneries⁶ or polluting rivers by sewerage effluents are some remarkable beacon of hope for the environmentalists. Thus the Supreme Court had to frame mechanisms for safety and security of the natural resources.⁷

His indelible impact on the citizens have inspired them to proceed further with his mission to prevent environment degradation. This concern may be a social interest for few while the others feel deeply saddened and nudge and wink from the top for our nation does not cater environmental issues as national concerns. The hindrance of locus standi was forfeited by M.C. Mehta and Rural Litigation Entitlement Kendra. They laid the foundation of environmental jurisprudence where the court's collective capacity have carved a niche of "protective environment" for the ecology.

⁴ The most notable contributions were made by Justice Krishna Iyer and Justice Bhagwati. Being and American concept, the rule of locus standi has been evolved by judicial perception of "the person aggrieved" so as to include social justice as a basic tenant of the democracy.

⁵ M.C. Mehta v. Union of India, AIR 1115, 1988 SCR (2) 530.

⁶ M.C. Mehta v. Union of India, 1988 SCR 2 (530), 1988 SCC (1) 471.

⁷ Narmada Bachao Andolan v. Union of India, 2000 (10) SCC 664.



The adversities have been many but the astounding response of the judiciary have reposed faith in the justice system of our country. The courts have entertained the environment cases since 1985 through writs by individuals, acting on a pro bono basis. Since then many reforms have been made and we have seen a stupendous growth in environment protection. The indigenous techniques of justice have been benevolently secured both by the Supreme Court and the High Courts.

The Environment (Protection) Act, 1986, provides for the citizens suit provisions under Section 19, a citizen has a right to proceed with any such concern that leads to environment protection. As we know the concern to secure natural resources is a worldwide phenomena, nations are equally bound to observe the guidelines and the principles enacted by various treaties and conventions. Article 253 of the Constitution enables the Parliament to make law based on treaties, agreement or conventions.

LEGAL FRAMEWORK AND ENVIRONMENT PROTECTION

The law has immensely secured and strengthened the environment protection. The social realities of environmental assaults have played a crucial role in developing the law and widening the scope of justice. The Indian Constitution have invariably strengthened the citizens right to justice through writs. The horrendous act of Bhopal Gas Leak case was the most toxic experience in human history of environmental hazards. The poisonous methyl isocyanate created an unimaginable foul play of deaths and danger. The incident was an eyeopener that spoke monotonously about the nutty. The horrifying incidence in the Bhopal led to the passing of the Environment (Protection) Act, 1986. The Act seeks to improve decision making and develop options that are environmentally and socially sound and sustainable.⁸ The Act is an “enabling law” that has statutory provisions to curb environment degradation. The Constitution of India under Article 252 and 253 secures the enactment of the environment related laws in India. The Article 48-A seeks to protect and improve the environment and to safeguard natural resources the forest and wildlife of the country. Apart from the protective provisions, the fundamental duty under Article 51-A(g) imposes duty on every citizen of India to protect and improve the natural environment, including forests, lakes and wildlife and have compassion for living creature.

The expansion of the “locus standi” has enabled the policies and provisions hinge upon the faith in justice through judicial system. The Bhopal Gas Leak case have made the perpetrators liable for the acts they have been sporting fancy. The strong and the powerful themselves fall prey to the temptation of flaunting their status. The judicial system have made a profound effort to ensure environment protection through their concern and blatantly punishing the perpetrators.

Article 21 is the foundation of environment protection which has enabled the cacoon vision to expand in form and potential. Right to life was crucially listed as Right to Clean Environment of the Citizens by the landmark judicial wisdom in *Rural Litigation Kendra, Dehradun v. State of U.P.*,⁹ where the hon’ble court interpreted the right to life with the fourth generation rights, i.e. right to live in clean environment and healthy atmosphere¹⁰ where the duty of the government is to secure the basic rights of the citizens. In the said case the court ordered the closing down permanently of the illegal limestone mining which had caused enormous environment hazards and it is dangerous to the well-being of the humans.

The states and the nations have the responsibility to safeguard the nature and its valuable resources. The duty towards the citizens cannot be override. In *Municipal Council, Ratlam v. Vardhichan*,¹¹ Justice Krishna Iyer expanded environment jurisprudence to secure citizens against unhygienic conditions on the streets of Ratlam. PIL was filed which was entertained by the court as writ petition that reflects the ignorance and callousness of

⁸ *Ambica Quarry works v. State of Gujrat and Others*, 1987 AIR 1073, *State of Bihar v. Murad Ali Khan*, AIR 1981 SC 1, *Research Foundation for Science v. Union of India and others*, (2012) 7 SCC 764.

⁹ 1987

¹⁰ *M.C. Mehta and Another etc. v. Union of India and others*, 1986 SCR (1) 312, *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1999 SC 1502, *T.N. Godavarman Thirumulpad v. Union of India and others*, AIR 1995, M.C. Mehta v. Kamal Nath and others (1996), *Subhash Kumar v. State of Bihar and Others*, (1991).

¹¹ (1980) 4 SCC, 162.



the authorities against public health as a primary duty. The principle objective of the government to secure citizens also enforces the duty on the officers to ensure cleanness irrespective of frivolous plea of financial crunch, as such excuses are poor alibi when people in misery cry for justice. The concept of life as illustrated by the law has been navigated by the judiciary to secure human fad for environment protection. The courts stern reaction can be seen in *Ashok (Dr.) v. Union of India*,¹² where the court brought health hazard due to pollution within Article 21 Right to Life, where insecticides and medicines causing ill-health and endangering life was brought without the purview of protection under the constitutional expression of life.

Indian Penal Code, 1860 also secures the crucial aspect of conservation and preservation of the environment. Chapter XIV, Section 268 defines “Public Nuisance”¹³ an act or omission which causes common injury, annoyance or danger to the public or its well-being, to his property or in the vicinity, where public right is trespassed the person whose such act or omission causes interference to health, safety or comfort of the public at large is public nuisance. Sections 268-294(A) are the provisions that can help to curb the menace of environment protection.

The gigantic problem of pollution needs more edged weapons to defend its existence, hence under Chapter X of the Criminal Procedure Code, 1963 Part B has provided provision for public nuisance which relates to environment pollution. Section 133 of Cr.PC empowers District Magistrate, Sub-Divisional Magistrate, to stop such environment pollution or nuisance on receiving information. The punitive nature of Section 133 of Cr.PC and Section 188 of IPC makes a prohibitory act a mandatory act.¹⁴ With such a temperament judiciary has changed the course of concern towards public benefit. In *Rural Litigation Kendra, Dehradun v. State of U.P. (Doon Valley Case)*,¹⁵ the court entertained the complaint consider epistolary jurisdiction under Article 2 of the Constitution where the concern to protect and preserve Mussorie Hill was reflected. The flora and fauna of the Doon Valley was at stake due to illegal mining. The main purpose of PIL is to compel public bodies to carry out the statutory or constitutional obligation for which precisely they are meant.

These cases have been path finders to the nation where pollution is a problem but preservation is far from reach. The significant developments of PIL has enabled to curb environment degradation. In *T.N. GodavarmanThirumalpad v. Union of India*,¹⁶ the Supreme Court declared its salutary principles to save environment – (i) principle of sustainable development, (ii) precautionary principle. Therefore, the safeguards are to be developed to restore the quality of natural resources. Such is the power and potential of judicial activism that the Supreme Court in *Virender Gaur v. State of Haryana*,¹⁷ declared that environment is a wider term to include within its ambit “hygienic atmosphere and ecological balance”. The Supreme Court’s activist role havemade another positive impact in restoring the Ganga from the menace of pollution. The court ordered the closing of tanneries that discharged untreated effluents into Ganges, a river with social and religious significance, needs to be protected for the sake of ecology and equilibrium in the nature. The courts have been equally cautious to prohibit the misuse of the propound ability of the courts and therefore in *Subhas Kumar v. State of Bihar*,¹⁸ the Supreme Court upheld that, affected persons, groups or any other person could approach the doors of the justice but not a person who had a bias or personal grudge or eneyty could initiate PIL for environment rights. Thus, it is evident that PIL helps to curb the assault against the environment but at the same time ensure that no prejudice hinges upon justice in the court room. Furthermore, in *BijayanandaPatra v. District Magistrate, Cuttack*, the petitioner filed a PIL complaining noise pollution from high-sounding

¹² (1997) 5 SCC 10. This case relates to Section 27 of the Insecticides Act of 1968.

¹³ Section 268 of the Indian Penal Code defines Public Nuisance as, a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which may necessarily interference to the peace of an individual.

¹⁴ S.C. Shastri, *Environment Law*, Eastern Book Ltd., 2011, 78.

¹⁵ 1985.

¹⁶ (2002) 10 SCC 606.

¹⁷ (1995) 2 SCC 577.

¹⁸ AIR 2000 Ori 70.



explosive fireworks. The court defined the term “noise” and observed the adverse effect of noise on health hazards and further the court interpreted the noise as pollutant because it contaminates environment, causes nuisance and affects the health of a person and if the “noise” exceed the limit it offends the basic tenets of Article 21.

The court invariably secured the citizens interest by examining the scope of Article 51-A(g), in *L.K. Koolwal v. State*,¹⁹ Rajasthan High Court in this leading case determined that the Municipal authorities are charged with the “primary duty” to clean public streets. The court gave relevance to the co-existence of rights and duties, whereby the maintenance of health and sanitation is the obligation of the municipalities.

In another case *M.C. Mehta v. Union of India*,²⁰ the Supreme Court held that air pollution in Delhi caused by vehicular emission violates Article 21 whereby the court directed all commercial vehicles operating in Delhi to switch to CNG fuel mode for safeguarding health of the people. In *Vellore Citizen's Welfare Forum v. Union of India*,²¹ the Supreme Court allowed the petition filed by the public spirited social organization to protect the health of the residents of Vellore. The Supreme Court in its three judge bench conceptualized doctrine of “burden of proof”. The concept helped to impose responsibility and onus on the wrongdoers. The court further directed State High Court's to set up Green Bench to deal with environment matters. Further in the (*TajTrapezium Case*) *M.C. Mehta v. Union of India*,²² the precautionary principle was directly applied. The old concept that ecology and development cannot go together was set aside and new principle of labour environmental jurisprudence for the protection of ancient monument TajMahal was developed. The concern and the commitment of the judiciary can also be ascertained by *M.C. Mehta v. Union of India*, which has become a guiding force today. The Supreme Court suggested setting up of “Environmental Courts” on regional basis for the first time.

In a PIL initiated by M.C. Mehta, a pioneer of green litigations in *M.C. Mehta v. Kamal Nath*,²³ the Supreme Court developed the scope of Article 32 and made a stupendous attempt to curb the malfeasance and pay “exemplary damages” so that it may act as deterrence for others. Justice Saghir Ahmed considered pollution as a civil wrong which demands punishing of the perpetrators.

Environment protection was processed with social concern. The social pressure too can proceed to preserve ecology through new means and methods. In *M.C. Mehta v. Union of India*,²⁴ the public interest litigation was lamented against lack of government will to promote awareness about ecological imbalance. The court ordered the central and state government to spread awareness through mass media and communication. The environment messages be spread through cinema halls, radio and TV. In addition to the commendable effort the court in *Council for Environment Legal Action v. Union of India*,²⁵ further directed that environment as a subject be made compulsory in schools and colleges. These enabling efforts would bring a beacon of hope for preserving ecology and biodiversity.

The court in *India Council of Enviro-Legal Action v. Union of India*,²⁶ reiterated the rule laid down in *Oleum Gas Leak case* and imposed absolute liability in reversing the damaged ecology which is the part of sustainable development. The court not only focused on protection but also preserving the natural resources for next generation as well inherited, was laid down in *State of H.P. v. Ganesh Wood*.²⁷ Another precedent for preserving the environment was laid down in *Jagannath v. Union of India*,²⁸ where the PIL was filed by the Gram Swaraj Movement, an NGO whose concern was to protect ecological imbalance caused due to intensive

¹⁹ AIR 1988

²⁰ AIR 2001 SC 1948.

²¹ AIR 1996 SC 2715.

²² (1986) 2 SCC 176 (Popularly known as Shriram Food and Fertiliser Case of Delhi).

²³ (2000) 6 SCC 213.

²⁴ AIR 1992 SCC 137.

²⁵ AIR 1996) 5 SCC 281.

²⁶ AIR 1996) 5 SCC 281.

²⁷ AIR 1996

²⁸ AIR (1997) 2 SCC 811.



and semi-intensive type of prawn farming in the ecologically fragile coastal areas. The court laid down that stern action be made to stop any such activity that leads to environment degradation.

The *Delhi Garbage Case*,²⁹ the Hon'ble Justice Kuldip Singh has observed that the authorities entrusted with the work of pollution control cannot be permitted to sit back with folded hands on the pretext that they lack financial resources to protect the environment. Thus the court has held that the citizens have the right to live in a hygienic atmosphere and ecological balance is the duty on every state which cannot be evaded by any means.

PIL AND THE PRINCIPLES EVOLVED

The incongruities among the authorities have led to more severe concerns about the environment protection. The courts have evolved various modes to curb the menace of environment degradation. The principles have been evolved by the courts to have a symptomatic episode of learning lesson from the miscreants. The meticulous effort of the judiciary cannot be ignored for the benefit of the mankind.

The Polluter Pay Principle: In *Indian Council for Enviro-Legal Action v. Union of India*,³⁰ the "Polluter Pays Principle" was explained that once the activity carried on is hazardous or inherently dangerous, the person is liable for such loss caused to other person by his activity whether he took reasonable care or not. The principle imposes "absolute liability" for harm to the environment as part of sustainable development.

The principle was explained by the Supreme Court in *Deepak Nitrite Ltd. v. State of Gujrat*, that explained, for the application of the principle the damage has to be caused to man and material or to the environment by the industrial unit by their activity.

The Precautionary Principle: The 11th Principle of the UN General Assembly Resolution on World Charter for Nature, 1982 emphasized for "Precautionary Principle". In *Vellore Citizens Welfare Forum v. Union of India*,³¹ the principle was applied whereby the court directed comprehensive directions for maintaining standards as prescribed by the Environment (Protection) Act, 1986 and ordered installation of pollution control devices before they continue to work in the area.

The Principle of Public Trust: The concept was evolved in *M.C. Mehta v. Kamal Nath*,³² declared unequivocally that the state is the trustee of all national resources which are by nature meant for public use and enjoyment. The state as a trustee is under a legal duty to protect the natural resources and they cannot be converted into private ownership. The task of the government under Article 48-A is the ecological balance created for the protection of natural resources.³³ The principle seeks to ensure that state protects the natural environment and improve the quality of environment has degraded.

Inter-Generational Equity: The principle of inter-generational equity implies commitment to equity with future generations. In 1972 the UN Stockholm Conference on the Human Environment recognized that we had a responsibility to "protect and improve" the environment for both present and future generations. In *State of H.P. v. Ganesh Wood Products*,³⁴ the court considered the permission to Katha factories granted by the government from Khair trees. The availability of resources cannot be exposed, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generation.

CONCLUSION

Judiciary has eloquently made a remarkable effort to restore environment from further degradation and maintain ecological balance. The Supreme Court's active role has enabled to evolve green litigation regime and create new approach for environment protection. The Supreme Court's commitment towards preservation of the ecology has enabled serious provisions to be formulated by the legislators to ensure sustainable development.

²⁹ B.L. Wadehra v. Union of India, (1996) 2 SCC 594.

³⁰ (1996) 3 SCC 212.

³¹ (1996) 5 SCC 647.

³² (1997) 1 SCC 388.

³³ Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P., 1986 Supp. SCC 517.

³⁴ (1995) 3 SCC 363.



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Let's not limit ourselves to the technical dispute about who decides the roster and how. The judiciary has been cautious about its duty, therefore in *Narmada BachaoAndolan v. Union of India*,³⁵ the Supreme Court observed that just because a petition is term as PIL does not mean that ordinary principle of laches will not apply. The court asserted that it cannot disturb a third party interest created on account of delay. Thus, the judicial activism in India has had a great impact in giving direct to environment protection and preserving the natural resources by punishing the perpetrators.

The solution to save ecology does not lies solely in judicial activism, we as the beneficiaries are equally responsible for safeguarding the nature and its resources. Recently, a five year old girl from Sri Nagar, Jannat is on her mission to ailing Dal Lake into heaven again. These small steps can help keep the lake clear and various other measures can be taken to avoid any impediment to save mother nature.

³⁵ (2000) 10 SCC 664.