

Harmonizing Environmental values and its Protection through Public Interest Litigation.¹

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Abstract

The year 1972 is very imperative for the Environmental Jurisprudence as it has completely changed the way it works. The Stockholm conference is a milestone in the history of the country and other developing countries. The United Nations Convention on the Human Environment, held in Stockholm from 5 to 16 June 1972, considered the need for a common idea and the same principles for promoting and guiding the world's people in conserving and improving human nature. They set clear and cardinal goals to be observed while interacting with nature through man-made development.

Environmental jurisprudence in India was developed through the Public Interest Litigation (PIL) instrument. Under the PIL, the judiciary liberates the concept of locus standi and thus gives people the power to go to justice when the public interest is undermined by the action of a government, organization or individual. PIL played a very important role in shaping the Indian Environmental Law. The Supreme Court not only played a leading role in the application of environmental laws but also interpreted the right to life under Article 21 to include the right to an unhealthy environment and pollution, as a fundamental right. Judicial activism has also helped in upbring Environmental law.

Environment Protection

Under the modern system of environmental protection, the courts use a supportive role in enforcement in administrative agencies. However, there are many new and innovative strategies available to strengthen the role of the courts in environmental protection including abuse, administration and criminal law and conflict of law. In addition, the courts play a role in

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determining the adequacy of the quantification for environmental damage. Prior to the 1980s, only the victim could have access to the justice department and sought a solution to his grievances whereas, any other unaffected person himself could not have done so as a representative of the victim or a clever group. However, by about 1980, India's legal system, especially the field of environmental law, underwent a sea change at sea in relation to its abandonment of food and instead, it adopted new forms of social justice. This period was marked by not only the instability of the administration and the rule of law but also the aggression of the judiciary.

In the context of modern social justice, justice must be realistic in social terms and meet the needs of the time. Environmental protection poses a number of challenges to a developing nation like ours. Administrative and legislative strategies for harmonizing environmental values and development standards must also be structured in a common socio-economic environment. In determining the extent to which the powers and functions of the administrative structures and the balance between nature and development, the courts have an important role to play. Rule 10 of the Rio Declaration of 1992 reads as “Environmental issues are best handled with the participation of all the concerned citizens, at the relevant level.”²

The Stockholm conference on Human Environment led to adoption of the following principles.

- Emphasis on human rights, apartheid and colonialism must be condemned
- Natural resources must be protected
- Earth's ability to produce renewable resources must be maintained
- Wildlife must be protected
- Non-renewable resources must be shared and non-renewable
- Pollution must not exceed the natural ability to clean itself
- Damage to sea pollution should be prevented
- Development is needed to improve the environment
- Developing countries therefore need help
- Developing countries need appropriate export prices to do environmental management
- Environmental policy should not impede development
- Developing countries need funding to improve environmental protection

² UNEP Principle 10 was adopted in 1992.

- Integrated development planning is required
- Reasonable planning should resolve conflicts between nature and development
- Habitats should be designed to eliminate environmental problems
- Governments should plan their own policies for the people
- National institutions should plan for the development of international natural resources
- Science and technology must be used to improve the environment
- Environmental education is important
- Environmental research should be encouraged, especially in developing countries
- Countries may use their own resources as they wish but must not endanger others³

The Indian government had signed up late but voted firmly as agreed. After 1972, the Governments had followed the path of development with great vigor and mandate but with little regard for the protection of the environment. The government did not have a complete plan, apart from industry and on the other hand, the task groups were looking at green land and cheap natural resources without regard to any moral and social responsibility against those communities that protected and maintained such environmental balance. The Supreme Court of India helped with the plight of those people who had to relocate because of mining or industry or were experiencing the negative consequences of any occupation⁴. Prior to the role of the Indian Courts, the Government had no way of dealing with such cases. No perfect law existed before 1986. The Environmental Protection Act came into effect in 1986 after 14 years of the Stockholm Conference. Although the Water Act, 1974 and the Air Act, 1981 were in place, they were not enough to deal with them. The Indian judiciary, in particular, the Supreme Court of India had consolidated Jurisprudence in various cases and developed outstanding principles to be followed by lower courts when dealing with environmental cases. They have tried to fill the vacancy created by the legislature and are crippled by administrative equipment. The Indian judiciary has received the necessary momentum from the Civil Society's response to environmental protection, with some security guards such as M.C. Mehta, International Conventions such as the World Conference, the Kyoto Conference, which last focused on those issues within the Government business. The Indian Judicial Court's interpretation of favoritism while citing environmental protection as a public investment lives on

³United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm. 26 principles. <https://www.un.org/en/conferences/environment/stockholm1972>

⁴ Intellectual forum v State of A.P. 2006 3 SCC 549.

the natural side and the businessman must share the fruits of the economy with those communities as the environmental balance also contributed to the industrial outcome. Such strong legal support and the provision of the Indian Ministry of Justice has imitated the entire environmental organization in India and now leads the world. The Indian Environmental Law enacted largely by the Indian Ministry of Justice within the Indian Constitution is a great success after the Stockholm conference.

The failure of state agencies to enforce environmental laws without compliance with polluting practices has led to ongoing land degradation that has affected human health and forced environmentalists and residents of polluted areas and non-governmental organizations to seek legal redress. Of course, the initiative to protect the environment came from the Legislature but the failure of the authorities to enforce environmental laws in India created an opportunity for judicial intervention. The judges made several attempts to resolve the conflict between development and the environment. Environmental jurisprudence in India was developed through the Public Interest Litigation (PIL) instrument.

Under the PIL, the judiciary liberates the concept of locus standi and thus empowers people to go to justice where the public interest is undermined by an act of government organization. Public Interest Litigations (PIL) in India initiated by the Supreme Court appeared on human rights law and environmental law. The Indian Legal PIL was presented by the Honorable Judges. Locus Standi's traditional concept is no longer a place for community-centered community participation. Although not a victim group, environmentalists, groups or NGOs are now able to reach the Supreme Court / High Court through the PIL. The prestigious High Court while considering appeals also relaxed the need for a formal letter of demand to be settled before the Court. Any citizen can apply for a Court order, especially on human rights and environmental issues and even write a simple postcard. The writing process is preferred over the standard suite because it is faster, less expensive and provides direct access to the world's highest courts. However, class action suits also have their advantages. The power of the Supreme Court to issue references under Article 32⁵ and that of higher courts under Article 226⁶ has gained considerable importance in the environmental court.

⁵ Article 32, INDIAN CONSTITUTION

⁶ Article 226, Indian constitution

The Supreme Court of India has expanded in many ways the scope of Article 21 of the Indian constitution, which deals with the protection of health and personal freedom – “*No one shall be arbitrarily deprived of his life or liberty without the consent of the law.*”⁷ The Supreme Court also held that the right to a clean environment and the conservation and protection of natural resources are also recognized under Article 21 of the Constitution of India.⁸ The provisions of the Constitution form the basis for the enactment of environmental laws in the country. Article 48-A of the Constitution deals with the Protection and Development of the Environment and the Protection of Forests and Wildlife - The State shall strive to protect and improve the environment and to protect the country's forests and wildlife and Parliament under Articles 252 and 253 of the Constitution of India.⁹

The Water (Prevention and Control of Pollution) Act, 1974 was promulgated as a General Act under Article 252 of the Constitution since "water" has been listed under the State list. The Water (Prevention and Control of Pollution) Act of 1974 came into force at the State level when it was adopted by the relevant State Assemblies. The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were promulgated under Article 253 of the Indian Constitution, which gave Parliament the power to legislate those matters required to comply with international treaties which India has held. The development of specific goals for the development of a better environment for environmental protection is a remarkable achievement.

In the case of Bhopal Gas Tragedy¹⁰, the Supreme Court established the doctrine of absolute liability for damages caused by hazardous industries by interpreting the magnitude of the force under Article 32 to issue guidelines or orders that may be appropriate to the relevant procedure. According to the Court, this power could be used to develop new solutions and to develop new strategies. These guidelines were issued by the courts by disciplining development procedures, taking into account the requirements of environmental safety and integrity.

In one of the previous cases, Rural Litigation and Entitlement Kendra v State of Uttar Pradesh¹¹, which had a problem with environmental development, the Supreme Court provided guidelines

⁷ Article 21, Indian Constitution.

⁸ MC Mehta v UOI.

⁹ See article 252 and 253 of the Indian Constitution. .

¹⁰ Union Carbide Corporation v UOI, AIR 1990 SC 273.

¹¹ AIR 1985 SC 652.

needed to prevent environmental inequalities, such as the constitutional committee of experts to study and recommend solutions, the establishment of a monitoring committee to oversee deforestation programs.¹² This particular has introduced a new dimension to right to life and extended its version to include right to health and hygienic condition. This was a case where the Supreme Court ordered to protect the environment and to maintain the balance with the right of people to live in a healthy environment.

In *L. K. Koolwal v. State of Rajasthan*¹³, the High Court of Rajasthan noted that it is the duty of citizens to protect the environment under Article. 51-A (g) of the Constitution gives citizens the right to sanitation. Judges can go so far as to ask the government to set up national boards or national courts. In many cases, the courts have issued guidelines to remind law enforcement officials of their role in protecting the environment. Therefore, guidelines were given to local organizations, especially municipal officials, to remove garbage and waste and clean up towns and cities. In *Indian Council for Enviro-legal Action v Union of India*¹⁴, the Supreme Court recognized that such cases in different parts of the country are better known to the states and therefore, the high courts will be the appropriate forum to successfully implement and enforce anti-pollution legislation.

The free use of PIL in natural disasters does not mean that the courts, even if they are tainted by prejudice, hatred or intent to send blacks, will please all allegations. This is similar to counter-intuitive cases. When the primary purpose of filing a PIL is not in the public interest, the courts will not interfere. The Supreme Court affirmed that the people involved or even a group of social workers or journalists, but not the person or persons who had racism or personal hatred or hatred could start a PIL environmental rights.

Supreme Court in the landmark case of *SP Gupta v. Union of India*, clarified by the following words: "but we must be quick to make it clear that a person who goes to court to seek legal redress in such circumstances must be well-behaved in order to ensure the cause of justice and if he or she takes his or her private gain the court should not allow itself to act on behalf of that person and must dismiss its application at the Border."¹⁵

¹² AIR 1985 SC 652.

¹³ AIR 1988 Raj 2.

¹⁴ AIR 1996 SC 1446.

¹⁵ AIR 1982 SC.

Recent Case laws on Environment Protection through Public Interest Litigation developments

The use of PIL has increased over time and environmental awareness has greatly increased the number of PILs administered annually. Some of the key decisions were taken where PIL has been filed are:

Madras HC 2022¹⁶

The Chief Justice of Madras High Court recently in April 2022 stated that Tamil Nadu Pollution Control Board should not limit or restrict itself when it comes to prosecute the civic bodies for causing environmental pollution either by dumping waste/ garbage or letting the untreated sewage enter into the rivers. No should be barred from the law, the law is equally applicable to the civic bodies as it applies to the individuals when it comes to breach of environmental laws.

Anand Singh Negi v State of Uttarakhand¹⁷

The PIL was filed based on the contention that whether industries could operate without getting the environmental clearance and no objection certificate with the prior consent of the government to establish and operate the unit? HC outrightly dismissed the PIL and held that no industries can work without the environmental clearance.

Vellore Citizens Welfare Forum v Union of India¹⁸

In this case an NGO called the Vellore Citizens Welfare Forum filed a petition - Public Interest Litigation (PIL) - under Article 32 of the Indian Constitution which guarantees the right to appeal to the Supreme Court through appropriate constitutional enforcement rights. The application was directed at pollution caused by the release of large quantities of untreated skin water and other industries in the Tamil Nadu region, which resulted in a large drinking water source for use and irrigation, the Palar River, being polluted, which resulted in access to clean water. A report presented to the Supreme Court noted that 176 chemicals were found in the waste products and that approximately 35,000 hectares of land around the tanning band and especially in 59 villages

¹⁶Legal Correspondent, *Prosecute civic bodies too for violating environmental laws, CJ tells TNPCB*, The Hindu, April 4, 2022.

¹⁷WP (PIL) no. 104 of 2019.

¹⁸ 1996 5 SCR 241.

in the Vellore, Thiruvanthapur, and Ranipat counties were deemed unsuitable for farming. It was found that 350 of the 467 wells in the area were not suitable for use or irrigation. It also noted the non-compliance by dermatologists in relation to the Government's directive to prescribe General Medicinal Plants for Use in the Waste Management.

Judgement

- In the case of the Vellore Tanneries, the Supreme Court for the first time introduced the principle of 'rules of conduct' in Indian law, and set out the essential aspects of the law of caution in Indian law.
- Court instructed the Central Government to establish an authority under the Environmental Protection Act, which would address the situation created by the skins and other polluting industries in the province of Tamil Nadu. This authority should apply the 'monitoring process' and the 'paying pollution law' and should identify environmental losses and individuals / families suffering from pollution, as well as assess the amount of compensation to be received from polluters for rehabilitation and compensation for individuals.
- It further directed the closure of all tanning machines that failed to comply with Government directives to set up non-standard or non-standard medicinal plants, over a period of time and the most polluting industries from now onwards were not allowed to be established in illegal areas.

Taj Trapezium case 1987¹⁹

There was a case between M C. Mehta and anr v Union of India popularly known as the Taj Trapezium case. The petition was filed by M.C. Mehta, and the application was filed with the report titled "Impact Environmental of Mathura Refinery" (Varadharajan Committee). The applicant has stated that the reasons for the decline in the memorial were the chemical, refining and foundations industries. Various emissions of oxygen-like sulfur dioxide gasses have resulted in damage to the monument. The mixture turned to acid rain, as a result of which moisture in the atmosphere was retained resulting in "Acid rain". Such rains where they damage the marbles placed on the Taj Mahal. This gradually damaged the monument. The damage was very noticeable,

¹⁹ 1997 AIR SC 734.

as it turned out that it was yellow on the marble. In some places along the Taj Mahal, there were brown and black areas and were easily enlarged by Yellow Dots. If the damage was not serious enough and would soon lead to serious damage to the monument. It was on the verge of destruction due to the negative effects of pollution. Some of the most effective measures need to be taken to save the Taj Mahal from tarnishing its global reputation. The applicant therefore asked the court to take steps to preserve the monument.

A report called “Inventory and Assessment of Pollution Emission in and around Agra-Mathura Region”²⁰ was published by the Central Board for Prevention and Control of Water pollution. They have declared a certain level of pollution by statistics, which has led to it becoming very high. The report also suggested further steps. According to the report, thermal power stations need to be shut down and accordingly, diesel fuel had to be installed on the railway tracks.

Judgment of the Supreme Court:

- Monitoring System was considered. In this process certain environmental measures were taken by the national government and the official authorities. According to this principle of expectation, prevention and attack are the causes of environmental degradation. In the event of serious and irreversible damage, the absence of science should not be considered a reason to postpone measures to prevent environmental damage.
- Article 21 of the Indian constitution guarantees the protection of health and personal freedom. Likewise, Articles 47, 48A and 51A (g) of the constitution state the promotion of public health and environmental protection.

Therefore, the court ruled that Taj was ordained for destruction and injury and such damage was caused not only by traditional causes but also by various social and economic factors. The court ordered those industries that are not in a position to receive gas connections should stop operating with the help of coke / coal at TTZ and may be required to relocate.

Conclusion

²⁰ Central Board for the prevention and control of water pollution, *Inventory and Assessment of pollution emission in and around Agra-Mathura region*, Indian Environment Portal, 1982 January 01.

The PIL in India was established and initiated with the expertise of the judiciary to develop new solutions and to innovate by defining and enforcing the mandate of the Indian constitution. Three constitutional powers have played a key role in undermining India's environmental protection. The first is the fundamental right to life and liberty (Article 21).²¹ The second is the guiding principle of a national policy that protects and enhances the environment and protects national and wildlife forests (Section 48A).²² Final work is an important task for citizens to protect and improve the environment, including forests, lakes, rivers and wildlife and to be sympathetic to living things (Section 51A (g))²³ Along with the rise of PIL, India's Supreme Court has expanded the scope of constitutional provisions and integrated human rights and the environment in order to create a new environmental law.

Lastly, the use of PIL as a comprehensive, human-centered approach to accessing justice has become a 'turning wheel' for victims of environmental degradation. The PIL does not have the features of litigation of common law, which includes the division of disputes. The PIL does not reflect the imposition of human rights on any one person, but rather, promotes and ensures the public interest that needs to be addressed in violation of the constitutional or legal rights of individuals, communities or society - especially the poor, ignorant or disadvantaged.

"Violence is not merely restricted to physical violence rather curtailing the gift of nature to the future generations is also a form of violence".²⁴

²¹ INDIA CONST. art 21.

²² INDIA CONST. art 48A.

²³ INDIA CONST. art 51A(g)

²⁴ Social Activist Ms. Jayanti Das in Jayanti Das v State of Odisha, WP (C) No. 14046 of 2022.