

Environment Protection through Public Interest Litigation-A Judicial Approach

REEMA AGRAWAL

Assistant Professor-II

Department of Law, M.M.H. College, Ghaziabad (U.P.) India

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INTRODUCTION

Environment is the life of all creatures and includes things like water, air, soil, etc. Growth and improvement of humanity depend upon environment. If the environment is not clean and safe then we can't develop. The concept of environmental protection is not new; it has been in existence from prehistoric civilizations. Ancient India's texts highlight that it is the 'dharma' of each individual in the society to protect nature. 'Atharva Veda'; the ancient Hindu Scepters stated "What of thee I dig out let that quickly grow over".¹

Today's world is modern and advanced and includes the use of high technology in every system. But many dangerous chemicals, atomic plants, thermal power and deforestation create hazardous situations. New innovations like, thermal power, atomic plant and so on without any sufficient natural assurance pose another danger to the situations, the aftereffect of which results in issues like global warming, climate change, acid rain, etc. Moreover, according to pattern of Indian legislature to make a number of legislations as opposed to addressing the reason for failure and disappointment, and passing new bills consistently is just like 'old wine in new bottle'. Therefore, there arises a requirement for a comprehensive analysis of the protection of the environment. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been triggered by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive agencies. Devices such as Public Interest Litigation (PIL) have been prominently relied upon to tackle environmental problems, and this approach has its supporters as well as critics.²

Need for environmental laws :

Today we are living in nuclear arena. No one can overlook the harm caused to the environment by the nuclear bombs, dropped by airplanes belonging to the United States on the Japanese urban communities of Hiroshima and Nagasaki amid the last phases of World War II in 1945. Day to day innovation and advancement of technology, apart from development additionally expands the risk to human life. Accordingly, there arises an intense and an acute need of the law to keep pace with the need of the society along with individuals. So now the question of environmental protection is a

matter of worldwide concern, it is not confined to any country or territory.³

Need of Public interest litigation :

Under Article 21 of Indian Constitution, we have a right to live and breathe in a safe and non-polluted environment in fact part iv of our constitution contains directive principles which states that it is the duty of the state to protect the environment {Article 48-A tArticle 51-A (g)}⁴. Our constitution has given various right to us but in case of their infringement, most of us are unable to exercise the remedies available to us since the procedure to avail those remedies is out of our reach and quite expensive and complicated. therefore, Supreme Court thus expanded and liberalized the rule of 'Locus Standi'. As a result of this expansion, all the social activists, NGO's, lawyers, public spirited citizens, etc. are now entitled to file a writ on behalf of the person whose right has been infringed. In addition to this, a court is also entitled to take suo motu cognizance of matters involving the abuse of environment, prisoners, bonded labourers and inmates of mental institutions, through letters addressed to sitting judges.

Supreme Court started Public Interest Litigation (litigation filed in a court of law, for the protection of "Public Interest") to safeguard us against such infringement and entitle every citizen to file a petition for punishing such offender. , the Supreme Court of India has played an active role in dropping the increase of pollution levels through PIL . PIL has proved to be an effective tool for the society .

There are many cases where Supreme Court has issued various guidelines and directions for the protection of environment. Some of the leading cases are:

Ratlam Municipal Council v. Vardhichand

The judgment of the Supreme Court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary constraints., J. Krishna Iyer observed that, "social justice is due to and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning." Thus he recognized PIL as a Constitutional obligation of the courts.

M.C Mehta v/s Union of India⁶

In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

Peoples Union for Democratic Rights v. Union of India⁷

The court now permits Public Interest Litigation or Social Interest Litigation at the instance of "Public spirited citizens" for the enforcement of constitutional and legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps.

Shriram Food and Fertilizer Industries and others⁸

It was held by the Supreme Court that when there is manufacture and sale of hazardous products then necessary steps should be taken for reducing hazard to workman and community living in neighborhood. There was leakage of Oleum gas from one of units of S and as a result several persons were affected and it was alleged that one advocate practicing in Court died. The leakage was from the

caustic chlorine plant. There was prohibiting order under the Factories Act under which the plants were not allowed to work till safety measures were adopted. Number of Expert Committees was appointed to report in the matter. The reports showed that the recommendations were compiled with and the possibility of risk or hazard to the community had been considerably minimized and it was also opined that it was reduced to nil.

It was held that pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place; the caustic chlorine plant should be allowed to be restarted by the management subject to certain stringent conditions, which were specified.

M C Mehta vs. Union of India⁹

Supreme Court directed to government to constitute a committee to monitor Taj Mahal and Yamuna River. Supreme Court warned 212 industrial units that they will be shut down if they adopt anti environment means. Districtmagistrate Agra ordered for the closing of 140 industrial units in order to protect Jai mahal and other monuments.

M.C Mehta vs. Union of India and others¹⁰

A taxi driver sleeps at a cabstand in New Delhi. It was the beginning of green litigation in India. A prominent decision was made in a petition that raised the problem of extensive vehicular air pollution in Delhi. The Court was faced with considerable statistical evidence of increasing levels of hazardous emissions on account of the use of diesel as a fuel by commercial vehicles. The Supreme Court decided to make a decisive intervention in this matter and ordered government-run buses to shift to the use of Compressed Natural Gas (CNG), an environment-friendly fuel. 34 This was followed some time later by another order that required privately-run 'auto rickshaws' (three-wheeler vehicles which meet local transportation needs) to shift to the use of CNG. At the time, this decision was criticized as an unwarranted intrusion into the functions of the pollution control authorities, but it has now come to be widely acknowledged that it is only because of this judicial intervention that air pollution in Delhi has

M.C. Mehta vs. Kamalnath and others¹¹

It was held by the Supreme Court that as per Article 21 of Indian Constitution, polluting any element of environment like air, water and soil is injurious and troublesome for life. An illusory compensation can be imposed on a person polluting the environment but court clearly stated that fine cannot be imposed unless the accused is proved guilty.

M.C. Mehta vs. Union of India¹²

In this case, as per Article 32 of the Indian Constitution, the petition was to.....the constitutional bench of Supreme Court through the three bench judges of Supreme Court who had earlier passed a judgement in this case because when the petition was heard in its real sense, many important constitutional questions were raised at that time.

Rural Litigation and Entitlementcentre Dehradun Vs. Uttar Pradesh¹³

In this case, by presenting a Public Interest Litigation (PIL), the court was informed that due to digging of stone mines in Dehradun, the surrounding environment had got polluted and even the nearby residents were getting harmed.

Court constituted a committee to investigate into the matter and after seeing the report of committee, the court ordered to stop the work of digging the stone mines.

M.C. Mehta vs. Union of India¹⁴

In this case, the court by accepting a Public Interest case held that only Law can't play the primary role in protection of environment unless there is an exchange of social pressure and social acceptance or will.

The court ordered the central and state government to deliver the notice and message concerning environment in cinema halls and spread this information through radio and T.V.

The court further directed that the license of cinema halls should be cancelled if they do not show the slides concerning the environment in cinema halls.

UGC was also advised to think of making environment as a mandatory subject in the college.
Council For Environment Legal Action V. Union Of India¹⁵

In this case, a Public Interest Litigation was filed by a registered voluntary organisation regarding economic degradation in coastal area. Supreme Court issued appropriate orders and directions for enforcing the laws to protect ecology.

Subhash Kumar v. State of Bihar¹⁶

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

M.C. Mehta and Another v. Union of India and Others¹⁷

The court in this case has clearly laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no such harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The court directed that the enterprise must adopt highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. and amp; Others¹⁸

It was observed that every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to take recourse to Article 32 of the Constitution.

Vellore Citizens Welfare Forum v. Union of India and amp; others¹⁹

This court ruled that precautionary principle and the polluter pays principle are part of the environmental law of the country. This court declared Articles 47, 48A and 51A (g) to be part of the constitutional mandate to protect and improve the environment. The Supreme Court of India, in Vellore Citizens Forum Case, developed the following three concepts for the precautionary principle:

- Environmental measures must anticipate, prevent and attack the causes of environmental degradation
- Lack of scientific certainty should not be used as a reason for postponing measures
- Onus of proof is on the actor to show that his action is benign

Essar Oil Ltd. v. Halar Utkarsh Samiti and amp; Others²⁰

While maintaining the balance between economic development and environmental protection, the court observed as under:

Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the 4th principle says “man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors.

Nature conservation including wild life must, therefore, receive importance in planning for economic developments”. These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that “economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life”.

Karnataka Industrial Areas Development Board v. Sri C. Kenchappa and Others²¹

It was observed that there has to be balance between sustainable development and environment. This Court observed that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment; State Industrial Areas Development Board to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

Managing Director, A.P.S.R.T.C. v. S. P. Satyanarayana²²

This Court referred to the White Paper published by the Government of India that the vehicular pollution contributes 70% of the air pollution as compared to 20% in 1970. This Court gave comprehensive directions to reduce the air pollution on the recommendation of an Expert Committee of BhureLal appointed by this Court.

Re. Noise Pollution²³

This Court was dealing with the issue of noise pollution. This Court was of the opinion that there is need for creating general awareness towards the hazardous effects of noise pollution. Particularly, in our country the people generally lack consciousness of the ill effects which noise pollution creates and how the society including they themselves stand to benefit by preventing generation and emission of noise pollution.

Indian Council for Envirolegal Action v. Union of India and amp; Others²⁴

The main grievance in the petition is that a notification dated 19.2.1991 declaring coastal stretches as Coastal Regulation Zones which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. The court observed that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to

preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and *vice versa*, but there should be development while taking due care and ensuring the protection of environment.

Narmada Bachao Andolan v. Union of India and Ors.²⁵

The Supreme Court of India upheld that “Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India ... and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life.

A. Jagannath v. Union of India²⁶

This Court dealt with a public interest petition filed by the Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker section of society, wherein the petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.2.1991 and stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas. This Court passed significant directions as under:

1. The Central Government shall constitute an authority conferring on the said authority all the powers necessary to protect the ecologically fragile coastal areas, seashore, waterfront and other coastal areas and specially to deal with the situation created by the shrimp culture industry in coastal States.
2. The authority so constituted by the Central Government shall implement “the Precautionary principle” and “the Polluter Pays” principles.
3. The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarswami report) which are practised in the coastal low lying areas.
4. All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997.
5. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of the shrimp culture ponds.
6. No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed up within 1000 meter of Chilka Lake and Pulicat Lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu).
7. Aquaculture industry/shrimp culture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and demolished before March 31, 1997.
8. The Court also directed that the shrimp industries functioning within 1000 meter from the Coastal Regulation Zone shall be liable to compensate the affected persons on the basis of the “polluter pays” principle.
9. The authority was directed to compute the compensation under two heads namely, for reversing the ecology and for payment to individuals.
10. The compensation amount recovered from the polluters shall be deposited under a separate head called “Environment Protection Fund” and shall be utilised for compensating the

affected persons as identified by the authority and also for restoring the damaged environment.

Conclusion and suggestions:

After discussing the above cases, we can say judicial activism in respect of protection of environment is notable. The Supreme Court is quite active and issued several directions and different legal provisions for environmental protection through the application of public Interest Litigation. The Supreme Court is constantly trying to fill the gaps which have been left by the legislation. Through our judicial activism Supreme Court recommended many new ideas for the protection of environment. These new innovations by the judicial activism open the numerous approaches to help the country. In India, the courts are tremendously aware and cautious about the special nature of environmental rights, considering that the loss of natural resources can't be renewed.

There are some recommendations which need to be considered:

– As we all know that media is the most powerful weapon in today's scenario. So, why not to make use of it when it comes to protection of our environment. We must take advantage of the reach and power of the media to create awareness among the public and to communicate the need of protecting our environment from this devil called pollution. We must telecast the clippings of various judgements and directions given by the courts regarding the protection of our environment since people are generally unaware of such directions and thus do not take any steps which can contribute towards our vision of a pollution free country.

– If we want to fulfill our vision of a clean and green country then we must issue stringent guidelines for the lawbreakers. A huge amount of penalty must be imposed on the person who does not follow the given directions of the court or anyhow contribute in polluting the environment.

– Another step which we can take is to create separate courts which can deal with the matters of environmental protection so that all the issues concerning environmental degradation can be resolved and given speedy justice.

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