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2nd Year, BA LL.B.**ANALYSIS ON LANDMARK ENVIRONMENTAL PUBLIC INTEREST
LITIGATION****Introduction**

The greatest issue in our generation is and will always be Climate Change and conserving our environment. Our efforts might not make Earth a paradise, but it will surely prevent us from hell. The mounting scientific evidence suggests would be otherwise inevitable. With governments all over the world, especially developing countries have engaged in a race to the bottom. Race to bottom is compromising basic standards for the welfare of its citizens in an attempt to raise investment to the country. This prevents governments from creating binding laws that enforce environmental regulations. Here is the role of judiciary in securing a safe and liveable environment. The actions of Court's have largely been through Public Interest Litigations filed by public spirited citizens in the interest of the less fortunate. This has led to over hundreds of such petition before the Supreme Court prior to the twenty first century.¹ This is a testimony of people's belief in the judiciary. However, not all decisions were of the same nature or welcomed. This article aims to look into the landmark judgements on environmental matters filed through Public Interest Litigation.

Jurisprudential Origin of PIL in Environment Cases

¹ Sahu, Geetanjoy. "PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS IN INDIA: Contributions and Complications." The Indian Journal of Political Science, vol. 69, no. 4, 2008, pp. 745–758. JSTOR, www.jstor.org/stable/41856466. Accessed 1 Aug. 2021.

The history of Public Interest Litigation in India was largely through the efforts of two visionary judges of the Supreme Court, Former Chief Justice PN Bhagwati and Justice VR Krishna Iyer. The effort began as early as 1973, in the report presented on Legal Aid where Public Interest Litigations were deliberated for the first time, and later on various other reports such as Committee on Judicare (1977). Prior to which only aggrieved or injured parties could approach the court.

Around the world public participation in Environment cases started through the channel of common law nuisance and particularly Public Nuisance. The United States Supreme Court on it's the earliest proponents when it granted an injunction in a 1907 case against setting up a factory which realised hazardous substances there by polluting the air.² The action was brought on the grounds of Public Nuisance by the State Attorney General, State of Georgia. Justice Oliver Wendall Holmes in his concurring judgement in the case recognised that importance of public interest is much greater than of any private party. A case with much similarity was decided by the Indian Supreme Court in 1980. The two-judge bench of the Supreme Court which included Justice Krishna Iyer, focused on the Constitution's vision in the preamble and recognised the need for public interest litigation.³ It held the right of citizens through Section 133 of Criminal Procedure Code (CrPC) to approach the magistrate to enforce action against public nuisance, in this case against Ratlam Municipality. The judgement also expressed its opinion on the duty of the state to ensure a safe environment for its citizens.

Early Landmark Judgements

The first PIL filed in an environmental issue through the way of Article 32 was in Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1985), popularly known as Dehradun Limestone Quarry Case. The three-judge bench including CJ PN Bhagwati took cognizance of the importance of the judgement as it was first time the Supreme Court had to decide the correct balance between environmental and ecological necessity of the local population and the economic welfare of the country at large. The issue was the balance of economic benefit of the project which was undisputed, and loss of lives caused by the project of mining. The Court considered various expert opinion on the technical risks of such activities and the danger to life caused by it and categorized into A, B and C. A being safe

² Georgia v. Tennessee Copper Company, 206 U.S. 230, 239 (1907).

³ Municipal Council, Ratlam v. Shri Vardichan and Ors, (1980) 4 Supreme Court Cases 162: 1980 Supreme Court Cases (Cri) 933

from harming humans, B safe after technical experts are satisfied and C recklessly unsafe. The Court decided to shutdown all mines under Category C despite the large number of employment lost due to it, while permitting A to carry out mining. B can proceed only after certain examination and considerations were done. The decision centred on the fact that the life of individuals cannot be in threat for furthering economic purposes.⁴ The Supreme Court's decision needs to be appreciated in the light that the country did not even have a proper legislation protecting its citizens from such an action. It was bold for the reason of the large economic costs of the project construction did not deter the court from ensuring safety to the lives of its citizens.

The next important PIL, was filed by MC Mehta in the year 1985 regarding the pollution of river Ganga caused by the effluents of industries surrounded by it. The Supreme Court after preliminary published parts of petition on papers asking industrialist to give reason as not grant directions against it. This effectively ensured the necessary contributors were present for the proceedings. The Court looked onto various legislation from the then recently Environmental Protection Act, 1986, the Constitutional duties of the State in Article 48 A and of citizens in Article 51 A. The Court also observed the Prime Minister's role in the Stockholm Declaration of 1972. It also criticized the government on failing to properly implement the duties of the boards constituted under EPA and Water Act, 1974. It then went on to laid down series of technological measures to be taken by industries within a period failing to which, it will be forced to shut down. It ruled out arguments of the cost of such technology as an excuse from implanting it. This decision significantly did two measures, criticize the inaction of executive bodies in ensuring compliance and further leading the way in putting forward compliance directions with the help of expert reports.⁵

Judicial Tools Created by the Supreme Court

a) Absolute Liability

The Bhopal Gas Tragedy had shaken the nation due it's after drastic effects and causalities. However, within a short span the Oleum Gas Leak happened in Delhi. MC Mehta once filed a PIL for closure of certain plants and additionally compensation for the victims. The Court told that even a letter to a judge could be looked upon as a petition for compensation,

⁴ Rural Litigation and Entitlement Kendra, Dehradun and Ors v. State of UP and Ors, (1985) 2 Supreme Court Cases 431

⁵ MC Mehta v. Union of India, AIR 1988 SC 1037

liberalising the access to the Court to marginalised who may be unable to afford the Court expenses. It also extended the meaning of 'State' under Article 12 to include 'Private Corporations' which are under control and regulation of State. The judgement became a historic point in Indian Jurisprudence for its creation of Absolute Liability and the departure from Strict Liability approach. While Strict Liability developed in *Ryland v. Fletcher* gave tortious liability for escape in case of non-natural use of land in the absence of maximum safeguards to avoid that risk and not beyond that. The Supreme Court felt the law is ill-suited for modern times where dangerous industrial activities are bound to be used and it would be unfair for victims to face the burnt if escape occurs despite maximum precautions and safeguards.⁶ This lacune of law gave rise to the doctrine of absolute liability. The Supreme Court did a balancing act ensuring that the economic welfare does not suffer by restraining all dangerous industrial activities from takes place and ensuring in case of escape, victims are not without relief.

b) Continuous Mandamus

Compliance to the orders passed by the Court have being a tricky issue in environmental cases due to the large economic benefit of defaulting on such compliance in guise of technological difficulties. The Supreme Court recognised this in two important cases and created what would be later known as 'continuous mandamus'.

In the case popularly known as *Bichhri*, there were chemical factories in the village of Bichhri emitting harmful substances such as highly toxic sludge. They did not have any license or any treatment plants for the same. A PIL was filed by an environmental organisation on behalf of the villagers. The Supreme Court ordered compliance and made sure that the executive bodies are responsible. It also advised the central government to create a National authority on recovery for the loss caused by such activities and it allowed the High Courts to hear the recovery plans of various states.⁷ It also accepted the principle of 'Polluter Pays' for the first time. Despite the judgement in 1996, the case went on till 2011 as defendants made applications to escape from liability.⁸

The other case was the *Vellore Citizen's Welfare Forum v. Union of India* case in which Leather Tanneries were functioning without any treatment of the effluents. These tanneries

⁶ *MC Mehta v. Union of India*, (1987) 1 Supreme Court Cases 395: 1987 Supreme Court Cases (L&S) 37

⁷ *Indian Council For Enviro-Legal Action and Ors v. Union of India and Ors.* (1996) 3 Supreme Court Cases 212

⁸ "Mihika Poddar & Bhavya Nahar, 'Continuing Mandamus' – A Judicial Innovation to Bridge the Right-Remedy Gap, 10 NUJS L. REV (2017)

were causing huge environmental problems making the land near by unfit for cultivation and making water unfit consumption. These tanneries are of international significance due to their products and is a huge earner of foreign exchange in the country. The Supreme Court, however held the importance of Sustainable Development and the significance of Earth Summit of Rio 1992. It introduced new principles of environmental law in India such as the Precautionary Principle, which lay the burden of proof on the polluter that the activities do not harm the environment. It also mandated the compliance and had fined all tanneries. The fines will be used to constitute an 'Environment Protection Fund' which will be used to compensate victims and reverse the ecological damage caused. The Supreme Court also asked the Madras High Court to constitute a particular bench called the 'Green Bench' to hear matters and give orders related to its progress and compliance.⁹

The government in two cases, started to adopt internationally recognised principles of environment into domestic Indian laws. It also set up the practice of checking up on the progress of its orders and giving power to High Courts to make further orders in case of lack of compliance. It is particularly useful when the vested interest of powerful groups tries to bribe around executives responsible for enforcing such orders as the reward for such would be huge for these industries.

After this, similar kind of actions have been taken in other environmental matters. Most notably in cases of tree felling in the Forests. In a writ brought before the Supreme Court, it ordered a complete ban on felling of trees in the North-eastern States. Further, States require of permission of use of forest land for non-forest purposes from the Central Government and cannot decide on its own.¹⁰ The matter continues to be heard by the Supreme Court order intervention whenever it feels so, such as constituting a high-powered committee for a particular region or closing down unlicensed mills of a State.¹¹

c) Liberal Interpretation of Article 21

When the Supreme Court was approached for challenging the safety and issues regarding the Tehri Dam, it delivered a landmark judgement interpreting Article 21 – Right to Life and Liberty to safeguard the rights of citizens. In this case the Court examined various documents such as the Yokohama Strategy of United Nations International Decade of Natural Disaster

⁹ Vellore Citizens' Welfare Forum v. Union of India and Ors, (1996) 5 Supreme Court Cases 647

¹⁰ TN Godavarman Thirumulkpad v. Union of India and Ors (1997) 2 Supreme Court Cases 267

¹¹ TN Godavarman Thirumulkpad v. Union of India and Ors (1997) 3 Supreme Court Cases 312

Destruction and decided that project should continue but only after strictly examination done and guarantee provided by the Ministry of Environment and Forest regarding its safety and maintaining ecological balance. It also entrusted the High Court of Uttarakhand to strictly ensure compliance and adherence to the guidelines is done by the government. The failure to do so will lead to ordering of halting all engineering work. This judgment also held that the Right to life includes right to live in a clean environment and also the right to development. It also held the right of those displaced by the project having the right to decent life and earn livelihood in the rehabilitated locations in Article 21. In order to do so the rehabilitation should be within six months and should be given with compensation and minimum disturbance. Also ensuring that the poor are not taken advantage by the affluent with the construction of such a project. The judgement laid down comprehensively dealt with the issue on all fronts but most importantly expanding the scope of Article 21 in environmental cases.¹²

Judgements which Faced Criticism

While the Supreme Court decisions have often favoured citizens and the environment, they have been instances where it had decided not to intervene for which it had faced extreme criticism from many environmentalists, activists, writers, lawyers and public at large.

The first case of the Supreme Court which drew sharp criticism was in the Narmada Bacchao Andolan Case. In this case a writ was filed by those from the affected community to stop the construction of a dam on the river Narmada. The Court after initially ordering to halt the construction, in its final judgement decided to take no action. The judgement primarily evolved around that the executive is the decision maker, and the Court can only interfere in failure of action.¹³ Renowned novelist Arundathy Roy became the sharpest critique of the judgement for which she was summoned to court and imprisoned for Contempt.¹⁴

In recent years, there has been widespread protest against Supreme and various High Court's decisions to not interfere with the decisions of the government on environmental issues. Most notable among them is the case of Vanashakti and Others v. Union of India, in which the Construction of Mumbai Metro Shed required cutting of trees in Aarey Colony. This is an area of ecological creatures. This is an area yet to be classified as reserved forest and hence

¹² ND Jayal and Ors v. Union of India and Ors (2004) 9 Supreme Court Cases 362: 2003 SCC OnLine SC 937

¹³ Narmada Bacchao Andolan v. Union of India and Ors (2000) 10 Supreme Court Cases 644

¹⁴ Frontline, *Of Contempt and Criticism*, March 16, 2002, available at <https://frontline.thehindu.com/other/article30244288.ece> (Last visited on August 2, 2021)

the Court decided to not stay the construction. The Bombay High Court has also ordered 'Compensatory Afforestation', planting trees equivalent or more to the trees cut down as a cost for development.¹⁵This is a device to minimise ecological impact. However, this too has faced criticism as to how one can compensate nature and that too after wilfully cutting down trees.¹⁶

Similarly, the recent petition on challenging the environmental clearance granted to the New Parliament Building, the Central Vista Project. The issue was that environmental clearance was granted despite number of objections raised by various environmentalist. The Supreme Court refrained from taking any action, even rejected the facts put forward by the petitioners.¹⁷This too was subject to widespread criticism from various parts as full-fledged assessment did not take place and its true environment impact might remain unknown.

Conclusion

The Supreme Court of India has largely enlarged the rights of citizens through the form of PILs particularly in the 1980 and 1990s by bringing variety of judicial tools such as absolute liability, applying international principles of environment law such as precautionary principle and polluter pays, with the invention of continuous mandamus to ensure there is proper compliance being made and ensuring the functioning of the executive. The Supreme Court also later on expanding the rights of citizens given under article 21 played an important safeguard against encroachment of their environment. The Supreme Court efforts in bringing in these doctrines, principles and its jurisprudence has proven to be extraordinarily progressive and bold considering the fact that often the defendant was the executive bodies of the state and government themselves. However, the recent judgments have been a cause of worry, especially the recent development of compensatory afforestation and non-interference in executive actions. Active intervention and ensuring compliance are the need of the hour as the skies darker with pollution each passing, the water gets contaminated by effluents and dried up by climate change. All of this further leading loss of ecology and threat to humanity itself in its near future. Hence, the role of judiciary and PILs is necessary for securing a safe

¹⁵ Vanashakti and Ors v. Union of India and Ors, 2019 SCC OnLine Bom 2386: (2019) 6 Bom CR 1: 6 AIR Bom R 417

¹⁶ Times of India, *You Need to Put a Value on the Services that Aarey Offers to Mumbai*, December 29 2019 Available at <https://timesofindia.indiatimes.com/city/mumbai/you-need-to-put-a-value-on-the-services-that-aarey-offers-the-city/articleshow/73013178.cms> (Last visited on August 2, 2021)

¹⁷ Rajeev Suri v. Delhi Development Authority and Ors, 2021 SCC OnLine SC 7

and healthy environment, one which is guaranteed to all under Article 21 Right to Life and Liberty.



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