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PIL: A Necessity in Protection and Preservation of Environment

RACHNA KUMARI¹ AND SAGRIKA PRADHAN²

ABSTRACT

*“This litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment, ecology and the wildlife should be shared by the government.”*³

The fundamental aim behind each research paper is to recognize the current situation and study the nature and degree of till date advancements in different ecological sculptures through different laws and shows and different issues in regards to the court choice and legal procedure. This paper incorporates job of officials and different enactments identified with Environment Protection and preservation in India. It further sets the stage to banter about legal methodology with uncommon reference to Public Interest Litigation and the landmark judgement by Judiciary of India. At last the paper gives certain proposal explored through exploration for additional improvement in the area of Environment Protection and preservation in India and the role of Public Interest Litigation in it.

I. INTRODUCTION

“Environmental concern is now firmly embedded in public life: in education, medicine and law; in journalism, literature and art.”- Barry Commoner⁴

The earth is the inception of life on earth which comprises of all five elements and it decides the nearness, advancement, and improvement of humankind and the work they do. The idea of ecological insurance and protection isn't new. It has been intrinsic for some ancient human advancement. Ancient Indian books features that it is the 'dharma' of every person in the general public to secure nature and the term 'nature' incorporates land, water, trees and creatures which are critical to us.

Man is both the creator and destroyer of his condition, which gives him physical sustenance

¹ Author is a student at KIIT School of Law, Bhubneshwar, India.

² Author is a student at KIIT School of Law, Bhubneshwar, India.

³ Tarun Bharat Sangh, Alwar v. Union of India, 1993 SCR (3) 21

⁴ Barry Commoner, *Barry Commoner quotes*, BRAINY QUOTES (July, 10, 2020, 10:44 AM), https://www.brainyquote.com/quotes/barry_commoner_260812.

and bears him the best chance to mould himself into profound being. The most trademark highlight of the Indian ecological law is the significant pretended by the Public Interest Litigation. Most of the environment cases in India since 1985 have been brought under the steady gaze of the court as writ petitions, ordinarily by people following up on free premise. In India PIL framework was started by PN Bhagwati and J Iyer through their milestone decisions made a clear way to continue with PIL. On numerous occasions the Indian Laws have gone ahead and taken a stab at adjusting to the elements of the need. Anyway their progress stage has consistently been hopeless. There's a lot done, yet the reality can't be denied that a ton is yet to be done. The rapid melting of ice caps, polluted water bodies, epidemics arising due to that unfit water and air are nothing but a 'wake up' calls. The article further discusses about the role of Law making body on the protection and preservation of the Environment with reference to Public Interest Litigation.

II. ROLE OF JUDICIARY IN DEVELOPING ENVIRONMENT JURISPRUDENCE

“The black ebony staves of judiciary which has thumped time and again for protection of man miniature against excruciating blows of evil is known on the aspiration for protecting environment”.

Professor Upendra Baxi, who has often supported the judicial activism in India, has also said that the “Supreme Court of India” has often become “Supreme Court for Indians”. Indian judiciary has always taken a proactive role in striking a balance between development and environment. Healthy environment is very important to entertain Right to life which is an inseparable part under Article 21 of the Indian Constitution in veracious spirit⁵. In **Charan Lal Sahu case**⁶ Supreme Court held that the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment. It is also the duty of the state to protect the environment as embodied under article 48-A, 39 (e) and 47 of the Indian Constitution. The Stockholm Conference 1972 facilitated the 42nd Amendment Act 1972 which introduced certain environmental duties both on the part of the citizens (Article 51A (g) and on the state (Article 48A). In **Narmada Bachao Andolan vs. Union of India and Ors**⁷, 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 embodied in Article 21 of the Constitution of India. In the historic **case of oleum gas leak**⁸, Supreme Court ordered the

⁵A. Kumar Singh, *Role of Judiciary in Environmental Protection*, LEGALDESIRE (Jul. 1, 2020, 09:21 PM), <https://legaldesire.com/role-of-judiciary-in-environmental-protection/>

⁶Charan Lal Sahu v. Union of India, 1990 AIR 1480.

⁷Narmada Bachao Andolan v. Union of India and ors, [2000] 10 SCC 664

⁸MC Mehta v. Union of India, [2000] 1987 A.I.R. 1086

management to pay compensation to the victims of the gas leak. The “absolute liability” of a hazardous chemical manufacturer to give compensation to all those affected by an accident was introduced in this case and it was the first time compensation was paid to victims.

III. ROLE OF PIL IN PROTECTION AND PRESERVATION OF ENVIRONMENT

Environmental Jurisprudence incorporates the laws, both legal and statutory, concerning differed parts of natural assurance and economical turn of events. Ecological law has seen impressive improvement over the most recent two decades in India. India is a developing nation where negligence in environment protection and preservation throws up a host of problems. Most of the environment related cases are brought to the court under article 32 and 226 of the Indian Constitution. The writ procedure is favoured over the regular suit since it is fast, moderately cheap and moreover offers direct access to the highest court of the country. Judiciary’s endeavour and effective instrumentality has been proved in *Doon valley case*⁹, *Oleum gas leak case*¹⁰ as well as *the Ganga pollution case*¹¹. In the matter of *Rural Litigation and Entitlement Kendra Vs State of U.P.*¹² - the Hon’ble Supreme court held that the right to unpolluted environment and preservation and protection of nature’s gifts has also been conceded under Article 21 of the Constitution of India.

The formulation of certain principles to develop the better regime for protecting the environment is a remarkable achievement. In this consideration Justice Bhagawati cited in the case of *S.P Gupta V. Union of India*¹³ that: “The Court needs to advance new techniques and devise new methodologies for the reason of giving access to equity to enormous masses of individuals who are denied their fundamental human rights and to whom opportunity and freedom have no importance”. Taking this into precedence many doctrines were evolved to attain remarkable achievement of judicial review in India.

- **THE POLLUTER PAYS PRINCIPLE:** In India, the ‘polluter pays principle’ was for the first time applied and defined in the 1996 case of Indian council of *Enviro-legal action vs. Union of India*¹⁴. The financial responsibility of taking prevention and controlling measures for the pollution caused should rest upon the industry which caused pollution. The financial burden cannot be shifted to the shoulders of the government neither in preventing nor in correcting the dent. This case has been held to be a sound

⁹Rural Litigation and Entitlement Kendra vs. State of U.P, 1988 SCR (3) 169

¹⁰*Id.* at 5.

¹¹MC Mehta v. Union of India, 1988 A.I.R. 115.

¹²*Id.* At 6.

¹³SP Gupta v. Union of India, A.I.R. 1982 SC 149.

¹⁴Enviro Legal Action v. Union of India, 1996 A.I.R. SC 1446.

guideline by this Court in Indian Council for Environment - *Legal Action vs. Union of India*¹⁵, also called Calcutta Tanneries case, the Court applied this Principle. The Court included issues identifying with contamination brought about by around 550 tanneries situated in the abutting regions in the eastern edge of the city of Kolkata.¹⁶

- **PRECAUTIONARY PRINCIPLE:** The Precautionary Principle recognizes that delaying action until there is compelling evidence of harm will often mean that it is then too costly or impossible to avert the threat. Use of the principle promotes action to avert risks of serious or irreversible harm to the environment in such cases. The Principle is based on the recognition that a false prediction that a human activity will not result in significant environmental harm will typically be more harmful to society than a false prediction that it will result in significant environmental harm. The Principle therefore provides a fundamental policy basis to anticipate, avoid and mitigate threats to the environment. The Court applied the 'Precautionary Principle' as explained by it in *Vellore Citizen Welfare Forum vs. Union of India*¹⁷ and opined that "The ecological estimates must envision, forestall and assault the reasons for natural debasement.
- **PUBLIC TRUST DOCTRINE:** The Public Trust Doctrine may provide the means for increasing the effectiveness of environmental impact assessment laws. Thus, under this doctrine, the State has a duty as a trustee under Art 48A of the Indian Constitution to protect and improve the environment and safeguard the forests and wildlife of the country. In the case of, *M.I. Builders vs. Radhey Shyam Sahu*¹⁸, the Supreme Court has applied the open trust Doctrine.
- **SUSTAINABLE DEVELOPMENT:** In the case of, *M C Mehta v. Union of India*¹⁹ while taking note of the disastrous effects that the emissions from the Mathura Oil Refinery had on the *Taj Mahal* Supreme Court applied the principle of sustainable development to the case and apart from passing various directions stepped in to execute and surprise the resultant actions.

The Environmental Jurisprudence in India created through the instrument of Public Interest Litigation. Under the PIL, the legal executive changed the idea of *locus standi* and in this manner engaged the individuals to move towards the legal executive when the open intrigue

¹⁵MC Mehta v. Union of India, 1987 4 SCC 463.

¹⁶Ranvir, *Polluter Pay Principle*, LEGAL SERVICE INDIA (Jul. 10, 2020, 11:40 AM), <http://www.legalserviceindia.com/legal/article-3933-polluter-pay-principle.html>

¹⁷Vellore Citizens Welfare Forum v. Union of India, A.I.R. 1996 SC 2715

¹⁸MI Builders Pvt. Ltd. vs. Radhey Shyam, A.I.R. 1999 SC 2468

¹⁹*Id.* 5

is hurt by either the activity of the state, association or person. One of a kind element of the Indian ecological law is the significant pretended by the PIL. In *M.C Mehta v. Union of India*²⁰, the Supreme Court figured the "tenet of Absolute Liability" for the damage brought about by risky industry by deciphering the extent of the force under Article 32 to give headings, orders 'whichever maybe appropriate' in 'appropriate proceedings'.

There are many individuals and other parties who contributed immensely in shaping the Environmental jurisprudence and played the role of a catalyst. Thus as a result the Indian legislature has enacted numerous pieces of important legislation, including the Environmental Protection Act 1986; the Air (Prevention and Control of Pollution) Act 1981; The Water (Prevention and Control of Pollution) Act 1974; The Water (Prevention and Control of Pollution) Act 1977; The Wild Life (Protection) Act of 1972; The National Environmental Tribunal Act of 1995; The National Environmental Appellate Authority Act of 1997; The Mines and Minerals (Regulation and Development) Act of 1957; The Indian Forest Act of 1927; The Forest (Conservation) Act of 1980; The Atomic Energy Act of 1948 and many more.

IV. CONCLUSION

“Any member of the public having sufficient interest can maintain an action for judicial redress for public inquiry arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision.” - Bhagwati, J in *S.P Gupta v Union of India*²¹.

After doing a proficient amount of research work on Role of Public Interest Litigation in Protection and Preservation of the Environment. I could procure the fact that the nature and extent of PIL guarantees that community rights and interest related with the earth and its biodiversity are adequately protected. The community rights and interests concern dominant part of individuals who are denied of their privileges to access to equity due to the ignorance, neediness, remoteness and social and monetary inconvenience. As such our Judiciary has played the instrument of PIL successfully for the reason for natural assurance. Thus, PIL has end up being an incredible weapon in the possession of higher courts for security of condition and our Judicial system has absolutely used this weapon of PIL in most ideal way, it should be valued that the endeavors of the courts can just make minimal progress except if there is

²⁰*Id.* 5

²¹*Id.* 10

social, political and financial change in the Government just as of individuals towards sticking to a model of sustainable development is for us to keep up our duty to the insurance of our condition.
