



P.I.L. and Environment Protection

DR. MINAL H. UPADHYAY

Principal,

B.K.Mer. Bank Law College, Palanpur

Gujarat (India)

Abstract:

Public interest litigation and judicial activism on environmental issues extends beyond India's Supreme Court. It includes the High Courts of individual states. India's judicial activism on environmental issues has, some suggest, delivered positive effects to the Indian experience. The Supreme Court has, through intense judicial activism, the proponents claim, become a symbol of hope for the people of India. As a result of judicial activism, India's Supreme Court has delivered a new normative regime of rights and insisted that the Indian state cannot act arbitrarily but must act reasonably and in public interest on pain of its action being invalidated by judicial intervention. India's judicial activism on environmental issues has, others suggest, had adverse consequences. Public interest cases are repeatedly filed to block infrastructure projects aimed at solving environmental issues in India, such as but not limiting to water works, expressways, land acquisition for projects, and electricity power generation projects. The litigation routinely delays such projects, often for years, while rampant pollution continues in India, and tens of thousands die from the unintended effects of pollution. Even after a stay related to an infrastructure project is vacated, or a court order gives a green light to certain project, new issues become grounds for court notices and new public interest litigation. Judicial activism in India has, in several key cases, found state-directed economic development ineffective and a failure, then interpreted laws and issued directives that encourage greater competition and free market to reduce environmental pollution. In other cases, the interpretations and directives have preserved industry protection, labor practices and highly polluting state-owned companies detrimental to environmental quality of India.

1. Introduction

Under the modern scheme for environmental management, courts assume a subsidiary role in enforcement to administrative agencies. But, a number of new and innovative techniques are available to bolster the role of the courts in environmental protection including tort, administrative and criminal law along with conflict of law. In addition, courts play a role in determining the adequacy of quantification of environmental damage. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not do so as a proxy for the victim or the aggrieved party. But around 1980, the Indian legal system, particularly the field of environmental law, underwent a sea change in terms of discarding its moribund approach and instead, charting out new horizons of social justice. This period was characterized by not only administrative and legislative activism but also judicial activism.

In a modern welfare state, justice has to address social realities and meet the demands of time. Protection of the environment throws up a host of problems for a developing nation like ours. Administrative and legislative strategies of harmonization of environmental values with developmental values are a must and are to be formulated in the crucible of prevalent socio-economic conditions in the country. In determining the scope of the powers and functions of administrative agencies and in striking a balance between the environmental and development, the courts have a crucial role to play. Principle 10 of Rio Declaration of 1992 specially provides for effective access to judicial and administrative proceedings, including redress and remedy. The judiciaries' anxiety for combating environmental assaults has already been well elucidated. Its concern for the maintenance

and preservation of forests, one of our depleting natural resources has also been highlighted. The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. PIL in Indian Law has been introduced by the Hon'ble judges. The traditional concept of *Locus Standii* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, an environmentally conscious individuals, groups or NGOs now have access to the Supreme Court/High Courts through PIL. The Hon'ble Supreme Court while taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

2. Constitutional Laws and Environmental protection

At present most environmental actions in India are brought under Articles 32 and 226 of the Constitution. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. Nevertheless, class action suits also have their own advantages. The powers of the Supreme Court to issue directions under Article 32 and that of the high courts under Article 226 have attained greater significance in environmental litigation. The Supreme Court of India in numerous matters elaborated the scope of Article 21 of the constitution of India, which deals with **protection of life and personal liberty** - *No person shall be deprived of his life or personal liberty except according to procedure established by Law*. In the matter of *Rural Litigation and Entitlement Kendra Vs State of U.P.* - 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 Constitutional provisions provide the bed-rock for the framing of environmental legislations in the country. Article 48-A of the Constitution deals with the **Protection and Improvement of Environment and Safeguarding of Forests and Wildlife** - *The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country*. On the basis of the said provisions, the Environment (Protection) Act, 1986 and the Wild Life (Protection) Act, 1972 (as amended in 1986) have been enacted by the Parliament. Under Part IV-A of the Directive Principles of State Policy, Fundamental Duties have been added under Article 51-A by the 42nd Amendment of the Constitution in 1976. Under Article 51-A(g) provides the **Fundamental Duties with respect to the environment which includes - To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.**

The Environment related Laws enacted by the Parliament under Articles 252 and 253 of the Constitution of India. The Water (Prevention and Control of Pollution) Act, 1974 was promulgated as a Central Legislation under Article 252 of the Constitution. Since, the "water" is listed under the State list; a Resolution from two or more State Assemblies empowering the Parliament to enact the Legislation on the State List was required. The Water (Prevention and Control of Pollution) Act, 1974 became effective at the State level when it was adopted by the concerned State Assemblies. The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were promulgated under Article 253 of the Constitution of India, which empowered the Parliament to enact legislations on such matters as necessary for compliance of International Agreements in which India has been a party. The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement. In the Bhopal Gas case, the Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industries by interpreting the scope of the power under Article 32 to issue directions or orders which ever may be appropriate in appropriate proceedings. According to the Court, this power could be utilized for forging new remedies and fashioning new strategies.

These directions were given by courts for disciplining the developmental processes, keeping in view the demands of ecological security and integrity. In one of the earlier cases, Rural Litigation Kendra, that posed an environment development dilemma, Supreme Court gave directions that were necessary

to avert an ecological imbalance, such as constitution of expert committees to study and to suggest solutions, establishment of a monitoring committee to oversee afforestation programmes and stoppage of mining operations that had an adverse impact on the ecology.

The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. In CERCs case, Laborers' engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards, which were detected after retirement. Whenever industries are closed or relocated, laborers' losing their jobs and people who are thereby dislocated were directed to be properly rehabilitated. The traditional rights of tribal people and fisherman are not neglected when court issue directions for protection of flora and fauna near sanctuaries or for management of costal zones. In *L. K. Koolwal v. State of Rajasthan*, the Rajasthan High Court observed that a citizens duty to protect to protect the environment under Article. 51-A(g) of the Constitution bestows upon the citizens the right to clean environment. The judiciary may go to the extent of asking the government to constitute national and state regulatory boards or environmental courts. In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

In *Indian Council for Environ-legal Action v. Union of India*, Supreme Court felt that such conditions in different parts of the country being better known to them, the high courts would be the appropriate forum to be moved for more effective implementation and monitoring of the anti-pollution law. The liberal use of PIL against assaults on the environment does not mean that the courts, even if it is tainted with bias, ill will or intent to black mailing will entertain every allegation. This amounts to vexatious and frivolous litigation. When the primary purpose for filing a PIL is not public interest, courts will not interfere. In *Subhash Kumar v. State of Bihar*, the Supreme Court upheld that affected persons or even a group of social workers or journalists, but not at the instance of a person or persons who had a bias or personal grudge or enmity could initiate PIL for environmental rights.

The apex court in landmark judgment of *S. P. Gupta v. Union of India*, elucidated in the following words: "but we must hasten to make it clear that the individual who moves to court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold" The right to humane and healthy environment is seen indirectly approved in the MC Mehta group of cases, decided subsequently by the Supreme Court. The first MC Mehta case enlarged the scope of the right to live and said that the state had power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment. Although the second MC Mehta case modified some of the conditions, the third MC Mehta case posed an important question concerning the amount of compensation payable to the victims affected by the leakage of oleum gas from the factory. The Court held that it could entertain a petition under Article 32 of the Constitution and lay down the principles on which the quantum of compensation could be computed and paid. This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activities. The fourth MC Mehta case was regarding the tanning industries located on the banks of Ganga was alleged to be polluting the river. The Court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that failure to do so would entail closure of business. The four MC Mehta cases came before the Supreme Court under Article 32 of the constitution on the initiative of the public-spirited lawyer. He filed the petitions on the behalf of the people who were affected or likely to be affected by some action or inaction. The petitioner had no direct interest in the subject and had suffered no personal injury. Still standing to sue was not raised at the threshold question to be decided by the Court.

3. The Catalyst Groups'

Lot of individuals and other parties have contributed immensely in shaping the Environmental jurisprudence. But the development can be attributed mainly to groups namely:

- a) Judges - A few liberal judges took up the task of developing mechanisms for having a check on human rights violation through judicial activism even though there were undercurrents of protest within the judiciary for going against the principle of separation of power;
- b) Lawyers (in particular, M C Mehta) have contributed immensely to the field of environmental jurisprudence, by filing a series of cases and continues to do so;
- c) Non Governmental Organisations (NGOs) - the NGOs have moved the courts on various occasions on violation of human and environmental rights. The role of NGOs in creating environmental consciousness in society, as well as their role in informing the public policies has been crucial;
- d) Individuals - though not many in number but the constant agitation of committed parties to highlight non-action on the part of municipalities has definitely played a part in promoting activism;
- e) Legislature – 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 Public Liability Insurance Act of 1991; 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, to name a few.

4. The Result: Enactments, Rules & Legislative changes

Since 1974, some of the major environmental enactments which have been passed by the Parliament are as follow:

- The Water (Prevention and Control of Pollution) Act, 1974: (6 of 1974)
- The Water(Prevention and Control of Pollution) Cess Act,1977:(36 of 1977)
- The Air (Prevention and Control of Pollution) Act, 1981: (14 of 1981)
- The Environment (Protection) Act, 1986: (29 of 1986)
- The Public Liability Insurance Act, 1991: (6 of 1991)
- The National Environment Tribunal Act, 1995: (27 of 1995)
- The National Environment Appellate Authority Act, 1997: (22 of 1997)

In addition to these Acts, several Rules have also been incorporated under the Environment (Protection) Act, 1986. These Acts and Rules are important guidelines to sort out the environmental problems. Some of the major Rules notified are:

- The Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organism Genetically Engineered or Cells Rules, 1989
- The Hazardous Wastes (Management and Handling) Rules, 1989
- The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
- The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996
- The Bio-Medical Waste (Management and Handling) Rules, 1998
- The Recycled Plastics Manufacture and Usage Rules, 1999
- The Municipal Solid Wastes (Management and Handling) Rules, 2000
- The Noise Pollution (Regulation and Control) Rules, 2000
- The Ozone Depleting Substances (Regulation) Rules, 2000
- The Batteries (Management and Handling) Rules, 2001

The Constitution of India has basic features in respect of the power of judicial review by the Supreme Court. Under Part III of the Constitution, which guarantees fundamental rights to the people and under Part IV, the State is under obligation to implement the Directive Principles. Article 39-A of the Constitution provides “Right of Access to Courts” to the citizens. In exercise of its powers of judicial review, the Court enforces the constitutional and legal rights of the underprivileged by transforming the right to life under Article 21 of the Constitution and by interoperating the Articles 48-A and 51 A (g) of the Constitution. The Hon’ble Supreme Court of India has given a new dimension to the environmental jurisprudence in India with a view to meeting the problems in the environmental field.

5. Landmarks in Public Interest Litigations

1. Taj Pollution Matter: M.C.Mehta Vs Union Of India (UOI)& Ors. W.P. (C) No.13381/1984
2. Ganga Pollution Matter: Writ Petition (Civil) No. 3727/1985 (M.C.Mehta Vs UOI & Ors.)
3. Vehicular Pollution in Delhi: Writ Petition (Civil) No.13029/1985 (M.C.Mehta Vs UOI & Ors.)
4. Pollution by Industries in Delhi: M.C.Mehta Vs Union of India & Ors. Writ Petition (Civil) No.4677/1985,
5. Pollution in river Yamuna: Writ Petition (Civil) No.725/1994, News Item ‘HT’, dated 18.7.1994, A.Q.F.M. Yamuna Vs Central Pollution Control Board & Ors.
6. Pollution in Noida, Ghaziabad area: Writ Petition (Civil) No.914/1996, Sector 14 Residents’ Welfare Association & Ors. Vs State of Delhi & Ors.
7. Noise pollution by firecrackers: Writ Petition (Civil) No.72/1998 (Noise Pollution– Implementation of the laws for restricting use of loudspeakers and high volume producing sound systems) Vs UOI & Ors.
8. Import of Hazardous waste: Writ Petition (Civil) No. 657/1995 (Research Foundation for Science, Technology and Natural Resource Policy Vs UOI & Ors.)
9. POLLUTION IN PORBANDAR, GUJARAT: Dr. Kiran Bedi Vs Union of India & Ors. Writ Petition (Civil) No. 26/98
10. Management of municipal solid waste: Writ Petition (Civil) No.286/1994, Dr. B.L. Wadehra Vs Union of India & Ors.
11. Management of solid waste in class-1 cities – Writ Petition (Civil) No.888/1996 (Almitra H.Patel Vs Union of India & Ors.)
12. Pollution in Medak District, Andhra Pradesh: Writ Petition (Civil) No.1056/1990 (Indian Council for Enviro Legal Action & Others Vs. UOI & Others)
13. Pollution by Chemical industries in Gajraula Area: Writ Petition (Civil) No.418/1998 (Imtiaz Ahmad Vs UOI & Ors.) – Pollution by Chemical Industries in Gajraula area
14. Pollution of Gomti River: Writ Petition (Civil) No. 327/1990 (Vineet Kumar Mathur Vs UOI & Ors.)
15. The formulation of different authorities: Various Authorities have been constituted under the Environment (Protection) Act, 1986 in compliance with the directions of the Hon’ble Supreme Court during the pendency of the public interest litigations. These Authorities have been constituted for specific assignments, which are:
 - (1) *The Dahanu Taluka Environment Protection Authority* – In the District of Thane, Maharashtra, to protect the ecologically fragile areas in Dahanu Taluka and to control pollution in the area (Constituted on 19.12.1996);
 - (2) *The Central Ground Water Authority* - For the purpose of regulation and control of Ground Water Management and Development (Constituted on 14.1.1997);
 - (3) *Aqua Culture Authority* – To deal with the situation created by the shrimp culture industry in the Coastal States and Union Territories (Constituted on 6.2.1997);
 - (4) *The Water Quality Assessment Authority* - To direct the agencies (Govt./local bodies/non-Governmental) for taking action in accordance with the powers and functions of the Authority (Constituted on 29.5.2001);

- (5) *The Environment Pollution (Prevention and Control) Authority* for NCR of Delhi - for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (Constituted on 29.01.1998);
- (6) *The loss of Ecology (Prevention and Payments of Compensation) Authority* for the State of Tamil Nadu; to assess the loss to the ecology and environment in the affected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families (Constituted on 30.9.1996); and
- (7) *The Taj Trapezium Zone Pollution (Prevention and Control) Authority*- The Authority should within the geographical limits of Agra Division in the Taj Trapezium Zone in the State of Uttar Pradesh, to monitor progress of the implementation of various schemes for protection of the Taj Mahal and programmes for protection and improvement of the environment in the said area (Constituted on 17.5.1999).

6. The Supreme Court's Activist Role

The Supreme Court of India is undoubtedly the most activist court in the world, which has led it to issue sweeping decisions in favor of environmental protection. In the Ganges water pollution case, a bench of the Supreme Court, while directing that several tanneries be closed down for discharging untreated effluents into the Ganges river, held that "we are conscious that closure of tanneries may bring unemployment (and) loss of revenue, but life, health and ecology have greater importance to the people." *M. C. Mehta v. Union of India (Kanpur Tanneries) 1988*. The justices appear to have exceeded their constitutional boundaries (and customary separation of powers) in at least two areas, however. In the so-called Delhi Pollution Case (2002), the Court preempted executive authority over air pollution and ordered all bus companies in the capital city of Delhi to power their buses with compressed natural gas (CNG) rather than petroleum or diesel fuel. In *T. N. Godavarman Thirumulkpad v. Union of India*, instituted in 1995, the Supreme Court took on the issue of forest cover and found itself issuing orders dealing with the rights of forest dwellers, employment in the wood products and timber industries, and the respective powers of federal and state forestry officials. The case is on a "continuing mandamus," meaning that the case remains open for court orders and actions relating to it; the Court has issued new orders flowing from the case virtually every week since 1995.

7. Evolution of Doctrines

The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement of judicial review in India.

1. The Polluter Pays Principle
2. Precautionary Principle
3. Public Trust Doctrine
4. Sustainable Development

8. Judicial Approval of Development Projects

The Supreme Court's assumption of executive power in these cases contrasts with the judiciary's invariable approval of, or deference to, the executive regarding *all* large infrastructure projects. Notwithstanding the occasional court defense of clean air, water, and forests, and protection of people's access to common or protected spaces, there seems to be an inherent predevelopment bias in the High Courts and the Supreme Court. In the cases of the Tehri (TBVSS v. Uttar Pradesh, 1992) and Narmada (Narmada Bachao Andolan v. Union of India, 2000) dams and the Dahanu Power Plant, (Dahanu Taluka Environment Protection Group v. BSES, 1991) the respective judges emphasized that it is not the job of the Court to interfere in these development activities because they raised scientific and technical issues and policy matters, which are best left to the executive agencies. The views expressed by judges in all environmental litigation concerning infrastructure projects have supported the government's assertion that it must carry out its development activities, such as dams and power plants, in the national interest. In these cases, the judges seem complicit with the executive branch in

subordinating environment to development. For example, in the Tehri Dam case, the government's own expert committee had identified several violations of the conditions that the MOE imposed on the project before granting an environmental clearance, but the majority judgment allowed the government to construct the dam anyway. Similarly, in the Dahanu case, the Supreme Court did not follow the MoEF's Appraisal Committee report, which declared that Dahanu was unsuitable for the construction of a thermal power plant as it did not meet environmental guidelines. In the Narmada Dam case, the dissent urged that construction of the dam should not be allowed because it violated environmental guidelines, and the government had not provided for rehabilitation and resettlement of the project-affected people. But the majority judgment allowed the construction of the dam and found the government's report on rehabilitation and resettlement measures sufficient. With the Supreme Court finally beginning to wonder whether it has overstepped its Constitutional mandate, Indian lawyers and scholars ought to re-examine the most flagrant example of such judicial activism, namely Godavarman, which has affected all forest cover, all forest dwellers and the timber and wood products industries throughout India for more than 15 years. While the concern for forest conservation provided the initial justification for judicial intervention, it has led the Supreme Court to effectively take over the day-to-day governance of many aspects of Indian forests, far beyond anything that may be justified constitutionally. The outcomes for the forests have been mixed, and the jurisprudence is of questionable quality, highlighting the dangers of judicial overreach.

9. Conclusion

Thus, even a cursory study of the judgments of the Indian courts especially the Supreme Court would reflect the consistent commitment of the courts towards the protection of the environment. Very often the courts have had to not only lay down the law but also closely monitor its implementation due to the political compulsions of the Government. The executive needs to show stronger commitment towards implementation of environment related laws. However, it needs to be appreciated that the efforts of the courts can only achieve marginal success unless there is social, political and economic change in the Government as well as of people towards adhering to a model of sustainable development as to maintain our commitment to the protection of our environment.

References

1. Comparative Analysis of Environmental Activism through Constitutional Rights, Two Case Studies: India and Hong Kong" by Sukanya Pani, National Academy of Legal Studies and Research (NALSAR), University of Law, Hyderabad, India, December 2002
2. Article 48A- "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country"
3. Article 51 A- Fundamental duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
4. Central Pollution Control Board: Report, India. Central Pollution Control Board: Report, India & "Comparative Analysis of Environmental Activism through Constitutional Rights, Two Case Studies: India and Hong Kong" by Sukanya Pani, National Academy of Legal Studies and Research (NALSAR), University of Law, Hyderabad, India, December 2002.
5. National Academy of Legal Studies and Research (NALSAR), University of Law, Hyderabad, India,
6. PIL newsletter, Central Pollution Control Board, India, 2002 & Mr M.C. Mehta was a public spirited lawyer not affected by "injured" in these cases
7. T N Godavarman Thirumulpad (107) v. Union of India (2008) SCC 222.