

THE ROLE OF PIL IN ADVANCING ENVIRONMENTAL JUSTICE IN INDIA

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Abstract:

Environmental justice has emerged as a critical global concern in recent decades, particularly in countries grappling with rapid industrialization and urbanization. In the Indian context, where environmental degradation disproportionately impacts vulnerable communities, Public Interest Litigation (PIL) has emerged as a powerful tool in advancing environmental justice. This research paper seeks to analyze and evaluate the role of PIL in addressing environmental injustices in India, examining its effectiveness, limitations, and potential for future advancements. The paper employs a comprehensive and multidisciplinary approach, incorporating legal, social, and environmental perspectives to contextualize the significance of PIL in India's environmental landscape. Through a qualitative and quantitative analysis through sources, landmark PIL cases, and legal frameworks pertaining to environmental protection and justice forms the foundation of this study. The research finds that PIL has played a pivotal role in promoting environmental justice by providing an avenue for concerned citizens and civil society organizations to challenge environmental violations, hold public authorities accountable, and seek redressal for affected communities. To demonstrate the significance of PIL in environmental justice, the research paper delves into a systematic analysis of landmark environmental cases in India that were brought forward through PIL. It critically evaluates the outcomes of these cases, examining their contributions to environmental protection, conservation, and the promotion of sustainable development. However, the research also highlights certain limitations and challenges facing PIL in its pursuit of environmental justice. Procedural delays, inadequate enforcement of court orders, and resource constraints hinder the full realization of PIL's potential. Moreover, the growing complexity of environmental issues demands a nuanced approach, with a focus on participation, inclusivity, and inter-sectoral collaboration. This research paper underscores the vital role of Public Interest Litigation in advancing environmental justice in India. Despite its limitations, PIL has been instrumental in shaping India's environmental jurisprudence and promoting sustainable development. The research concentrate on strengthening the implementation of PIL outcomes, enhancing community engagement, and fostering partnerships between various stakeholders to ensure a more holistic and effective approach to environmental justice.

Keywords: Public Interest Litigation, environmental justice, sustainable development, sustainability, environmental jurisprudence, environmental protection, marginalized communities.

1. Introduction

“The world is reaching the tipping point beyond which climate change may become irreversible. If this happens, we risk denying present and future generations the right to a healthy and sustainable planet – the whole of humanity stands to lose.”

Kofi Annan, Former Secretary-General of UN

During the advent of the industrialization period after post-independence, there were no efficient laws per se for environmental aspects in India. The concept of Public Interest Litigation and its extension of the same also happened post-industrialization. Through the hands of judicial activism, the concept of environmental jurisprudence prevailed in India. Public Interest litigation came as a solution for the non-effectiveness of the application of environmental laws and also to safeguard the interest of environmental rights in effectuating environmental justice in India. The paradigm shift of the connotation that the inequities will only be resorted through the hands of legislature and executive have changed and judiciary has stepped in promoting social justice in uplifting basic principles of human rights and natural law. The unfolding scenario in India epitomizes the complex intersection of developmental aspirations and environmental imperatives. The pursuit of economic growth has often resulted in the unbridled exploitation of natural resources, leading to far-reaching ecological consequences that disproportionately affect marginalized communities. These vulnerable populations, often lacking the means to assert their rights, bear the brunt of environmental degradation, exacerbating the existing disparities. Against this backdrop, Public Interest Litigation has emerged as a transformative legal strategy that empowers concerned citizens and organizations to advocate for environmental justice on behalf of those who would otherwise remain voiceless. The role of Public Interest Litigation in advancing environmental justice in India is a testament to the transformative potential of legal activism in the face of pressing ecological and social challenges. Through the journey of 75 years, access to court was not something which was so prudent in nature but it evolved through advent of the transformation of public interest litigation and with enacting and implementing new laws justifying the very notion of environmental jurisprudence and justice.

2. Public Interest Litigation

American academician Abram Chayes was the first person to define “what is public interest litigation”. He used the phrase “public law litigation” to define the method used by lawyers while in practice to advocate social dynamics and change which brings new changes in the legal fraternity through social commutation¹. Through the years of development, the basic notion of Public Interest Litigation has been reformed in the Indian Legal System beyond adversarial conflicts between parties. Landmark judgements and opinion of the honorable justices in Supreme Court and High court has significantly molded the very concept of Public Interest Litigation and its jurisprudence in India. Deliberating with basic definition of Public Interest Litigation it denotes that it is a legal mechanism that allows individuals or organizations to approach the courts seeking remedies or redressal for issues that have broader societal implications or affect the public interest at large. PIL is an innovative legal concept that aims to ensure access to justice for marginalized or vulnerable sections of society and to address systemic issues that might otherwise don't pass through the lens of justice systems. Perspicuity in public life and fair judicial action are the right answer to check increasing peril of infringement of legal right. ² Public Interest Litigation through the perspicuity propounds the very nature of jurisprudence which talks about the states responsibility and accountability in the matter of constitutional and legal right per se in the matter of violation of the same in consonance with the weaker elements.

Public Interest Litigation has its own dynamics and its changing in nature. Unlike traditional litigation where only directly affected parties can file cases, PIL allows anyone – an individual, organization, or even a public-spirited citizen – to approach the court if they believe a larger public interest or constitutional right is at stake. It serves as a mechanism to ensure that justice is accessible to those who might otherwise lack the means or resources to engage in legal proceedings. It enables individuals and groups, particularly from disadvantaged backgrounds, to seek legal remedies for societal problems. PIL plays a pivotal role in safeguarding fundamental rights enshrined in the Indian Constitution. It helps in challenging actions or policies that infringe upon these rights, thereby maintaining a balance between individual liberties and collective welfare. It cases typically address issues of public importance, such as environmental protection, human rights violations, gender equality, corruption, health, and education. The issues raised in PIL cases often have far-reaching consequences for society. PIL has been associated with a more proactive role of the judiciary in safeguarding fundamental rights and ensuring accountability of government bodies. Courts often issue directions, orders, and guidelines to address the issues raised in PIL petitions. It has led to the evolution of innovative legal procedures and principles. The courts have relaxed procedural norms to make justice more accessible and swift in PIL cases, such as allowing letters and newspaper articles to be treated as petitions. It is used both to prevent harm and to seek remedies after harm has occurred. For instance, it can be used to stop illegal construction in environmentally sensitive areas or to seek compensation for victims of a chemical disaster.

Public Interest Litigation has played a crucial role in shaping Indian jurisprudence by addressing societal concerns that might have been overlooked by traditional litigation. It has brought attention to issues of governance, transparency, human rights, and environmental protection, fostering a more just and equitable society. However, while PIL has been widely hailed for its positive impact, there have also been debates about the potential misuse of the mechanism and concerns about judicial overreach.

3. Evolution of Environmental Jurisprudence in India

Supreme Court of India connoted in the question of Article 21³ of Indian Constitution “Right to Life and Liberty” means that, which alone makes it impossible to live, leave aside what makes life livable, must be deemed to be an integral part of the right to life⁴. Whenever we refer to the word environmentalism we tend to start the timeline of the same from Stockholm Conference (1972). But the very notion of environmentalism existed in India from ancient times and it's not a new concept which came out of serendipity after the West vested on it. The concept of environmentalism was not mandated upon us as a white man's burden it did exist in our ancient civilization before even they can imagine.

3.1 Ancient Period

Ancient India has a rich history of environmental awareness and practices that can be considered early forms of environmentalism. Many aspects of ancient Indian culture, spirituality, and philosophy emphasized the interconnectedness of humans and nature. Ancient Indian texts and teachings emphasized the equitable distribution of natural resources. The concept of “Dharma,” which encompassed duties and responsibilities, extended to caring for the environment and ensuring that resources were shared fairly among all members of society, regardless of their social status. The Vedas, ancient Indian scriptures, contain hymns that express reverence for various elements of nature such as water, air, fire, and earth. These hymns reflect a deep appreciation for the natural world and its role in sustaining life. Rig Veda talks about how it was necessary to balance the operation of natural phenomenon's and it was advocated through legislating duties behest on Mitra, Varuna, Indra, Maruts and Aditya. Forests held great importance in ancient Indian societies. The concept of “Vanaprastha,” a stage of life in which individuals retired to the forest to lead a simple and contemplative existence, reflected the value placed on nature's solitude and the need for sustainable resource use.

Traditional practices such as Ayurveda (natural medicine) and Yoga were deeply rooted in nature-based knowledge. Ayurveda utilized plants and herbs for healing, emphasizing a holistic approach to health. Yoga, while primarily a spiritual practice, also encouraged mindfulness and awareness of one's environment. The shloka “Mitrasyaaham chakshushaa sarvaani bhootaani sameekshe.” connoted that “May whatever I extract from thee, O Earth replenish quickly”, and the earth's replenishing idea is advocated by the Rig Vedic seers. Kautilya is said to have gone a step further and determined punishments on the basis of the

¹ Abram Chayes, “The role of the judge in Public Law Litigation”, 89 Harvard Law Review 1281 (May 1976)

² Jasveen Kaur, Public Interest Litigation

³ Indian Constitution

⁴ 1964 AIR 703, 1964 SCR (2) 363

importance of a particular part of a tree¹. If one were to scourge the numerous texts, written in Sanskrit, which details different aspects of governance, one would definitely stumble upon a reference being made to 'paryavaranam', which is the term that was used in ancient India to describe our surroundings².

One does find umpteen references being made to environmental awareness³, with examples from Harappa and Mohenjodaro confirming that cities were even built by taking into consideration environmental concerns⁴. While the terminology and contemporary framing of environmental justice were not present in ancient India, the underlying values and practices demonstrate a strong resonance with the concept. The holistic worldview that emphasized interconnectedness, equality, and responsible resource management formed the foundation for a kind of environmental justice that sought to harmonize human needs with those of the environment and future generations.

3.2 British Era

Many changes may be traced back to the British colonial influence on India and their arrival into the country. They introduced a completely new approach to environmental protection, and it is impossible to ignore the fact that these actions were taken with an obscure objective in mind: to exploit India's abundant resources, which will enable them to maintain control over India and serve as a source of income. The most notable early move was the Forest Policy of 1855, where Lord Dalhousie used to control the trade in teak since it was regarded as state property. During British colonial rule, natural resources were often exploited for economic gain. Policies and laws were framed with revenue generation in mind, leading to overexploitation of forests, water bodies, and other resources. The colonial administration had minimal concern for environmental protection and often lacked comprehensive regulations to mitigate the negative environmental impacts of their policies and projects. The exploitative environmental practices during British colonial rule were driven by economic interests, often without considering the long-term consequences for India's environment and communities.

Many of these practices left a lasting impact on the country's ecosystems, soil fertility, and socio-economic fabric. The exploitative policies disrupted traditional Indian livelihoods, particularly those dependent on the land and forests. Communities were displaced, and traditional practices were disrupted, leading to social and economic upheavals. This situation prompted some local leaders and intellectuals to start recognizing the adverse impacts of environmental degradation⁵. As awareness of the negative consequences of exploitation grew, the British administration attempted to address some of the environmental issues through conservation measures⁶. The establishment of forest reserves and wildlife sanctuaries marked the beginning of colonial conservation efforts. However, these measures often disregarded local knowledge and practices, leading to conflicts with indigenous communities⁷. Over time, a sense of environmental consciousness started to develop among certain sections of society, including Indian intellectuals, reformers, and political leaders. This was influenced by the recognition of the interdependence between environmental well-being and human well-being.

3.3 Post- Independence

After gaining independence in 1947, India embarked on a journey of evolving environmental consciousness and action. The concept of environmentalism in post-independence India underwent a transformative journey, driven by changing perspectives, growing awareness, legislative reforms, and a commitment to sustainable development. In the initial years after independence, India's focus was primarily on economic development. However, as industrialization increased, so did pollution concerns. The adoption of the Indian Constitution was significant in and of itself, and it is noteworthy that Article 21⁸, which addressed the right to life and personal liberty, was rapidly seen as a vault of rights in the Indian legal system. The 1950s and 1960s witnessed the emergence of awareness regarding environmental degradation. During that time, the *raison d'être* behind enacting The National Forest Policy of 1952 was to raise the amount of land covered by forests in India to 100 million hectares, or 33% of the country's total land area. It was one of the earliest legislation enacted by Indian Legislature in forwarding environmental protection. Early legislative efforts like the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, laid the groundwork for pollution control and environmental protection.

The inclusion of Article 48-A⁹ in the Directive Principles of State Policy and Article 51-A(g)¹⁰ in the Fundamental Duties of India marked a major improvement when our Constitution was amended in 1976. These two articles unambiguously urge for the preservation and enhancement of the environment. The 1970s marked a turning point when concerns about biodiversity loss, deforestation, and ecological balance gained prominence. The emphasis began shifting from mere pollution control to conservation and sustainable development. The enactment of the Forest (Conservation) Act, 1980, and the establishment of national parks and wildlife sanctuaries reflected this shift. In the case of Municipal Council, Ratlam v. Shri Vardichand and

¹ C.M. Jariwala, "Changing Dimensions of Indian Environmental Law", in Law and Environment (P. Leelakrishnan (ed.), Lucknow: Eastern Book Co., 1992) p.1 at 2

² See, Rajani Rao U, Environmental Awareness in Ancient India, International Journal of Life Sciences Research (2014), p.1. Available at <https://philpapers.org/rec/RAJEAI>, [Accessed on 10th August, 2023].

³ Renu Tanwar, Environment Conservation in Ancient India, 21 IOSR-JHSS 1, Sep. 2016. Also see, John Roach, Mohenjo Daro, available at <https://www.nationalgeographic.com/history/article/mohenjo-daro>, [Accessed on 10th August 2023].

⁴ Jonathan Mark Kenoyer, "The Indus Valley Tradition of Pakistan and Western India", 5 Journal of World Prehistory 42 (1991). Also see, <https://www.downtoearth.org.in/coverage/did-ecological-impropriety-lead-to-the-end-31286>, [Accessed on 10th August 2023]

⁵ Gadgil M., Guha R. (2003). This fissured land: An ecological history of India. New Delhi: Oxford University Press.

⁶ Ibid

⁷ See also Guha R., Gadgil M. (1989). State forestry and social conflicts in British India. Past & Present, 123 (May), 141–177.

⁸ Indian Constitution

⁹ Ibid

¹⁰ Ibid

others¹, Supreme Court felt the need of obduracy in the matter of environmental protection. This case was a serendipity in establishing environmentalism in India taking a proactive step as it linked dignity and decency in terms sustaining life in a clean and protected environment without public nuisance.

India's participation in global environmental dialogues, including the United Nations Framework Convention on Climate Change (UNFCCC), brought climate change to the forefront of environmental concerns. The country's efforts to balance economic development with carbon emissions reduction became a key aspect of its environmental policy. The concept of environmentalism expanded to include participation from local communities and stakeholders. This was evident in projects like the Joint Forest Management (JFM) program, which involved local communities in forest conservation and management. The time period from 1970 – 2005 saw a paradigm shift in the outlook of Indian legal system and executives in the matter of environmental protection. Mammoth amount of public interest litigation flooded the court in establishing environmental justice, also during this time the legislature also came up with certain amendments and acts keeping in mind the very nature of environmentalism and promotion of the same. Constitution² which acted as a pillar in providing environmental justice went through major amendments and honorable courts through the lens of judicial activism extended the scope of certain articles³ in constitution in evincing the importance of environmentalism and environmental rights establishing environmental justice in India. The evolving concept of environmentalism in India continues to grapple with contemporary challenges such as urbanization, waste management, and sustainable resource use. Initiatives like the Swachh Bharat Abhiyan (Clean India Campaign) and promotion of renewable energy sources showcase India's commitment to addressing these challenges.

4. Constitutional Provisions and Environmental Protection

The Constitution of India stands as a guiding beacon, not only for matters of governance and individual rights but also for the vital cause of environmental protection. Enshrined within its articles and principles are provisions that underscore the nation's commitment to safeguarding its natural resources, biodiversity, and ecological balance. As a country grappling with the complex challenges of industrialization, urbanization, and population growth, India's constitutional framework plays a pivotal role in ensuring sustainable development while preserving its rich environmental heritage. The first head of state to give a keynote address at the inaugural International Conference on Human Environment in Stockholm⁴ in 1972 was Mrs. Indira Gandhi, the then-prime minister of India. She expressed grave worry about environmental deterioration and eco-imbalances. She also stressed the need for an integrated strategy to address the interconnected issues of poverty, population growth, and pollution. The Stockholm Declaration, commonly referred to as the Magna Carta on Human Environment, was signed by India as well. As a result, in order to keep its pledge from the Stockholm Conference, the legislature introduced the 42nd Amendment to the Constitution in 1976⁵, which included two provisions specifically dealing to environmental conservation and improvement. Through the power conferred by Constitution of India under Article 32 and 226⁶, Supreme Court aid and advice matters bearing social issues which don't have strict concept of locus standi due to which the very scope of article 21 has been expanded promoting environmental justice. Parliament enact laws regarding environment under Articles 253 and 252 of the Indian Constitution. This two articles divides the power between central government and state government to legislate laws and implement the same, thus when central government legislated the Water (Prevention and Control of Pollution) Act in 1974 they were aided by resolutions by two states as it is a mandate if any law is made in lieu of any subject which is under state list the central government would need two resolution from two states at least to legislate law regarding the same⁷.

The Indian judiciary, particularly the Supreme Court, has played a pivotal role in expanding the scope of Article 21⁸ to include environmental concerns. In landmark cases, the Court has recognized that a clean and healthy environment is integral to ensuring the right to life with dignity. In the case of *Subhash Kumar v. State of Bihar* (1991)⁹, the Supreme Court held that the right to life under Article 21 includes the right to live in a healthy environment. The Court stressed that the government has a constitutional obligation to protect and improve the environment for the well-being of its citizens. Article 14¹⁰ also encompasses the principle of non-arbitrariness, which means that governmental actions should not be unreasonable, unfair, or capricious. In the context of environmental protection, this principle aligns with the concept of sustainable development. The judiciary has emphasized that policies and decisions related to environmental management and resource allocation must be rational, well-informed, and in the best interest of the present and future generations. The principle of non-arbitrariness also underscores the need for regulatory measures and enforcement mechanisms that prevent indiscriminate exploitation of natural resources, overdevelopment, and practices that harm the environment. By ensuring that decisions are based on scientific evidence and long-term sustainability, Article 14¹¹ contributes to responsible environmental governance.

Article 48A of the Indian Constitution is a pivotal provision that reflects the nation's commitment to environmental conservation and sustainable development. Added by the 42nd Amendment Act in 1976, Article 48A places a constitutional duty on the State to protect and improve the environment, safeguard forests and wildlife, and promote the principles of ecological balance¹². While Article 48A enshrines the principles of environmental protection in the Constitution, its effective

¹ (1980) 4 SCC 162

² Indian Constitution

³ Ibid

⁴ Stockholm Declaration

⁵ 42nd Amendment Indian Constitution

⁶ Indian Constitution

⁷ P.I.L. and Environment Protection, Dr. Mrinal Upadhyay, Vol. 2, Issue: 3, March 2014 (IJRSMI) ISSN: 2321 - 2853

⁸ Supra 20

⁹ 1991 SCC (1) 598

¹⁰ Supra 20

¹¹ Indian Constitution

¹² Constitutional Provision and Environmental Protection, Indian Bar Association, Accessed on 13th August 2023, <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>

implementation has faced challenges. Balancing economic development with environmental concerns, ensuring compliance with regulations, and addressing conflicts between various stakeholders have proven complex tasks. Article 51A(g) serves as a call to action for citizens to actively engage in safeguarding the environment. It promotes environmental awareness, encouraging citizens to understand the significance of natural resources, biodiversity, and ecological balance. By recognizing the duty to protect and improve the natural environment, this provision aims to foster a sense of responsibility and ownership among citizens towards the ecological heritage of the country¹.

5. Public Interest Litigation as a solution

Public Interest Litigation came as solution to the environmental problems which earlier couldn't accommodate a practicable solution. The studies conducted by A.V Raja in his studies critically analyzed the reports and judgments and it was found that in giving justice and establishing environmental justice Supreme Court has executed it in very profound manner especially in Delhi². It was found in the studies also that there was lack of motivation to file for a private suit as the award and order given out of the same is negligible per se in compare to the widespread effect of environmental degradation and pollution³. Advent of Public Interest in environmental matters extended the very concept of person aggrieved keeping in lieu the very notion of Justice Bhagawati and Justice Iyer describing the PIL that it meant to accommodate the ones who are affected to file a PIL on behalf of the ones who are from backward community and can't reach the doors of court easily to lay hold of justice⁴. For the concerned people it is always expensive to file a private suit, not only the cost oriented approach keeps a blank side for the affected ones, the method of rejection and plead proving the basis of affectability also makes its vexed. PIL came as a solution to lose the burden from the shoulder for the affected ones as it very bare in nature and does not involve the problem of following the hierarchal order⁵ as PIL is filed under Article 32⁶ and it is directly approachable to the honorable Supreme Court. Constitution of India not only limits its original jurisdictional power to 32⁷ but also lends it to the state high courts under article 226⁸, where the same right of execution can take place with a bare nature in a less cost oriented process. This shift democratized the legal process and expanded the scope of litigation to address broader social issues, including environmental degradation. The establishment of PIL created a platform for citizens and environmental activists to raise their voices against ecological threats, pollution, deforestation, and other environmental issues that affected communities across the country. Environmental concerns, often complex and requiring expertise, were effectively brought to the forefront through PIL petitions, ensuring that the judiciary was made aware of pressing ecological challenges. PIL has provided a route for citizens to access justice even when they lack resources or the legal acumen required for traditional litigation. Environmental activists and NGOs have utilized PIL to draw attention to instances of environmental neglect, government inaction, and violations of environmental laws. By acting as a voice for those who couldn't otherwise seek redress, PIL has enabled environmental advocacy at a significant scale.

Public Interest Litigation has revolutionized environmental justice through their landmark judgments in India by providing a platform for citizens, activists, and NGOs to raise their voices and hold authorities accountable. Through PIL, the courts have established precedents that hold governments, industries, and individuals accountable for environmental damage. The 'Polluter Pays' principle, which holds polluting entities financially liable for environmental harm, was introduced in the *M.C. Mehta v. Union of India*⁹ case, setting a benchmark for environmental accountability. PIL cases have led to a more nuanced understanding of balancing development with environmental concerns. The judiciary has emphasized sustainable development and the need to harmonize economic growth with ecological protection. In cases like *Vellore Citizens Welfare Forum v. Union of India* (1996)¹⁰, the court emphasized that industries should adopt cleaner technologies to mitigate environmental impacts. Through PIL, the judiciary has become a guardian of environmental rights, ensuring that the principles of justice are upheld, and environmental concerns are addressed for the collective well-being of society¹¹.

6. Landmark Cases and its Theories

6.1 Polluters Pay Principle and Absolute Liability

The case of *M.C. Mehta v. Union of India* (1987)¹² is a pivotal landmark in Indian environmental jurisprudence that played a significant role in establishing environmental protection norms and principles. This case revolved around the leakage of oleum gas from a factory owned by Shriram Foods and Fertilizers in Delhi. The case led to the introduction of the 'Polluter Pays' principle and set important precedents for environmental accountability and justice. One of the most significant outcomes of the case was the introduction of the 'Polluter Pays' principle. The Supreme Court of India held that industries engaged in hazardous activities are strictly liable for environmental damage caused by their operations. This principle emphasized that the financial burden of remediation and compensation for pollution should be borne by the polluter, rather than the affected community or the government. The case reinforced the precautionary principle, emphasizing that industries must take proactive measures to prevent and mitigate potential environmental harm. The court highlighted the need for preventive action to avoid accidents and pollution. The court established the concept of "absolute liability," which holds industries strictly liable for any

¹ Ibid

² Angara V. Raja & Francis Xavier, *Economic Efficiency and Public Interest Litigations (PIL): Lessons from India* (Munich Personal RePEc Archive, MPRA Paper No. 3870, 2007)

³ Ibid

⁴ "On behalf" does not mean that it was in consultation with or with the consent of the affected people. Any concerned citizen who felt that an injustice was being perpetuated on large sections of society could move the courts.

⁵ Satya P. Sathe, *Judicial Activism: The Indian Experience*, 6 WASH. U. J. L. & POL'Y 29, 84-87 (2001).

⁶ Indian Constitution

⁷ Ibid

⁸ Ibid

⁹ 1987 (1) SCC 395

¹⁰ 1996 (5) SCC 647

¹¹ *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* Jamie Cassels, *The American Journal of Comparative Law*, Summer, 1989, Vol. 37, No. 3 (Summer, 1989), pp. 495-519

¹² *Supra* 35

harm caused by their hazardous activities, regardless of their level of care or negligence. This concept shifted the burden of proof from the affected parties to the polluting industries, ensuring that they are held accountable for any adverse environmental impact.

6.2 Environmental Protection as Fundamental Right

The case of *Subhash Kumar v. State of Bihar*¹ is a landmark judgment in Indian environmental jurisprudence that played a pivotal role in establishing the right to a clean environment as an integral part of the right to life under Article 21 of the Indian Constitution. This case marked a significant step towards recognizing environmental protection as a fundamental right and highlighted the close connection between environmental well-being and the dignity of human life. The court expanded the scope of the case to address broader issues of environmental pollution, sanitation, and the right to a clean environment. The Supreme Court held that the right to life under Article 21 includes the right to a clean environment. The court emphasized that a clean and healthy environment is necessary for the enjoyment of life with dignity. The judgment underscored the responsibility of the government to ensure that citizens are provided with a clean environment. The court stated that it is the duty of the State to take effective measures to prevent environmental pollution and degradation. The court directed the government to take immediate steps to prevent pollution and ensure that hospitals and other establishments maintain proper sanitation and hygiene. The judgment stressed the need for regular monitoring and enforcement of pollution control measures.

6.3 Environment Sustainability

The case of *Vellore Citizens Welfare Forum v. Union of India*² is a significant landmark in Indian environmental jurisprudence that played a crucial role in strengthening environmental protection measures and highlighting the need for responsible industrial practices. This case centered on pollution and industrial activities in the Vellore district of Tamil Nadu and set important precedents for balancing economic development with environmental sustainability. The case emphasized the principle that economic development should not come at the expense of the environment. The court recognized that industries have a responsibility to adopt environmentally friendly technologies and practices to minimize pollution and ecological harm. The court emphasized the importance of environmental impact assessments (EIAs) before granting clearances to developmental projects. The judgment called for rigorous scrutiny of projects' potential environmental impacts and the establishment of monitoring mechanisms to ensure compliance with environmental norms. The Vellore Citizens Welfare Forum case had a lasting impact on India's approach to environmental protection. It established the importance of sustainable development and responsible industrial practices.

6.4 Prevention Principle

The case of *T.N. Godavarman Thirumulpad v. Union of India*³, commonly referred to as the "Forest Case," is a significant legal milestone in the establishment of environmentalism and forest conservation in India. This case revolved around the protection and conservation of forests in the country and laid the foundation for several key principles and regulations related to environmental preservation. The case focused on the need for comprehensive forest conservation and the enforcement of existing laws related to forests and wildlife. The Supreme Court emphasized the importance of safeguarding forest ecosystems for ecological balance, biodiversity, and the well-being of local communities. The case emphasized the requirement for obtaining environmental clearances for any developmental or industrial projects that could potentially impact forest areas. This decision ensured that projects underwent thorough environmental impact assessments before approval. One of the pivotal orders issued by the Supreme Court was a ban on the felling of trees in forests without proper permissions. This order aimed to curb rampant deforestation and promote sustainable forest management. To offset the environmental impact of developmental activities, the Supreme Court directed the establishment of a Compensatory Afforestation Fund Management and Planning Authority (CAMPA). This fund was created to facilitate compensatory afforestation and reforestation. The case led to the formation of various monitoring committees to oversee the implementation of orders and to ensure compliance with forest conservation laws. These committees were responsible for reporting violations and suggesting corrective measures. The *T.N. Godavarman Thirumulpad* case⁴ had a profound impact on environmental jurisprudence in India. It established the concept of "intergenerational equity," underscoring the responsibility to preserve natural resources for future generations. The case also highlighted the judiciary's role in enforcing environmental laws and ensuring the sustainable use of resources.

6.5 Environmentalism

The case of *Lilly Thomas v. Union of India*⁵ is a notable legal milestone in promoting environmentalism and conservation in India. The case primarily centered on the protection of the iconic Taj Mahal from the harmful effects of pollution. This landmark case highlighted the significance of preserving cultural heritage and the environment, leading to measures aimed at reducing pollution and safeguarding historical monuments. The case highlighted the adverse impact of air pollution on the white marble of the Taj Mahal, causing discoloration and deterioration of the monument's aesthetic and structural integrity. The Supreme Court issued a series of directive orders to address pollution and protect the Taj Mahal. These orders aimed to curb pollution sources and implement measures to improve air quality around the monument. The court ordered the closure or relocation of industries that were contributing to air pollution near the Taj Mahal. This step aimed to reduce particulate matter and pollutants that were affecting the monument. The Lilly Thomas case had a lasting impact on environmental protection efforts in India, particularly in relation to heritage conservation. The case demonstrated the judiciary's commitment to

¹ AIR 1991 SC 420

² AIR 1996 SC 2715

³ (1997) 2 SCC 267

⁴ Ibid

⁵ (2000) 6 SCC 224

safeguarding the environment and cultural treasures from pollution. It also highlighted the need for integrated policies that consider both environmental and cultural aspects.

There are many more cases such as *Sachidananda Pandey v. State of West Bengal*¹ where the Supreme Court placed a prodigious importance of Directive Principle of State Policy and Fundamental Duties per se in the matters of environmentalism via Article² 49A and 51A³. Also in the case of *Virender Gaur v. State of Haryana*⁴ the Supreme Court defined the thinner and thick conception what is meant by environment pollution and environmental pollutant⁵, also the court tried to strike out the difference in both the terms and critically pointed out that both this terms are not exhaustive in nature as given in the act⁶. All the cases highlighted above marked the growing significance of Public Interest Litigation (PIL) as a mechanism to address environmental issues. PIL empowered citizens and environmental activists to approach the courts on behalf of affected communities, making environmental protection a shared responsibility.

7. Leading Map

Environmental justice and the protection of environmental rights are crucial aspects of sustainable development. While India has made strides in environmental legislation and policy, there have been significant shortcomings in the efforts of the legislative and executive branches to establish robust environmental justice and safeguard environmental rights. The failures of the Indian legislature and executive in establishing robust environmental justice and safeguarding environmental rights are evident in the degradation of natural resources, the loss of biodiversity, and the negative impact on the health and well-being of citizens. It's important to note that the promotion of environmental justice involves a complex interplay between all three branches of the government – the legislature, the executive, and the judiciary, while the judiciary has indeed played a significant role in shaping environmental jurisprudence in India. To address these failures, a shift towards a more sustainable and balanced approach is imperative. Despite enacting comprehensive environmental laws, the executive's enforcement efforts have often fallen short. Regulatory agencies tasked with monitoring and controlling pollution have faced resource constraints, leading to inadequate enforcement. The legislature has sometimes prioritized economic growth over environmental conservation. Policies and projects are often approved without thorough environmental impact assessments (EIAs), leading to negative consequences for communities and ecosystems. The legislature's failure to enforce sustainable urban planning practices and the executive's inability to provide basic amenities have contributed to congestion, pollution, and poor quality of life in many cities.

7.1 Suggestions

Environmental justice is a pressing concern in modern India, where rapid industrialization, urbanization, and development often come at the cost of the environment. To address this issue, it's imperative for both the legislature and executives to collaborate and work together to ensure a balanced approach that promotes sustainable development while safeguarding the environment. The legislature, consisting of elected representatives, plays a vital role in crafting laws and policies that govern environmental protection and conservation. It should work to enact comprehensive laws that address diverse environmental challenges such as air and water pollution, deforestation, waste management, and climate change. Executives, comprising the administrative machinery, are responsible for implementing laws and policies. They should ensure that environmental regulations are enforced rigorously and that violators face appropriate penalties. This includes monitoring industrial emissions, waste disposal practices, and land use planning. Decision-makers should rely on accurate and up-to-date environmental data to formulate effective policies. Collaborative efforts can lead to the creation of comprehensive databases for informed decision-making. Both branches (Legislature and Executive) should invest in training programs for government officials and employees to enhance their understanding of environmental issues and management techniques. Environmental justice in India requires a cohesive effort between the legislature and executives. While the legislature sets the legal framework, executives play a pivotal role in executing policies on the ground. Through collaboration, effective policies, and a shared commitment to environmental sustainability, the government can promote a future where development and environmental protection go hand in hand, ensuring a healthier and more sustainable India for generations to come.

¹ AIR 1987 SC 1109

² Indian Constitution

³ ENVIRONMENTAL JURISPRUDENCE IN INDIA: A JOURNEY TOWARDS ATTAINING ECO-CENTRIC IDEALS, DR. MANJERI SUBIN SUNDER RAJ, REVISTA CATALANA DE DRET AMBIENTAL Vol. XIII Núm. 1 (2022): 1 – 56

⁴ 105(1995) 2 SCC 571.

⁵ Ibid

⁶ Environment (Protection) Act of 1986