

RIGHT TO ENVIRONMENT AND JUDICIAL ENFORCEMENT***Dr. R.SEYON¹**

Environmental problems are cross-disciplinary in character. Law is only one element. But it has a big role to play in environmental protection. The humanity faces overwhelming environmental problems. “The law exists to serve the needs of the society which is governed by it..... It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable... The Courts can, by the process of judicial interpretation, adopt the law to suit the needs of the society². The Indian Supreme Court is rightly regarded as a pioneer in the field of Public interest law. The Supreme Court has set a new constitutional standard at a time when State on its part has completely neglected the human values.

1. Right to Environment

The environment furnishes all the essentials for life and so there has been a close link between the environment and human beings. The healthy living and survival of man depends on how judiciously he manages the natural resources and thus maintains the quality of overall environment around him. The Supreme Court at the apex has evolved green jurisprudence ensuring environmental justice. Once it is established that the right to environment is one of the attributes of *right to life* under Article 21 of the Constitution and therefore, a fundamental right guaranteed under part III of the Constitution of India, there remains no doubt that the *right to environment* like other fundamental rights is enforceable against the state as defined by Article 12. A law which is inconsistent or in derogation of any fundamental right is void by virtue of Article 13 of the Constitution.

By defining *the state* and *law* very widely, the founding fathers ensured that fundamental rights operated over the widest field. The declaration in the Article 13 (1) and (2) making laws consistent with, or contrary to, fundamental rights *pro tanto* void would not, by itself, prevent *the state* from violating fundamental rights, the founding fathers created a new fundamental right by enacting Article 32, which guaranteed the right to move the Supreme Court for the enforcement of fundamental rights.

Fundamental rights have got special status in the scheme of the Constitution and there are, a few exceptions, available to the individuals to protect themselves against the state action. These rights are not meant to protect persons against the conduct of private persons. Private action is and can be taken care of by the ordinary law of the land. It is against the

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2. A Supreme Court Judgment, CAG Reports, March – April 1995

might of the state that the individual needs constitutional protection. Article 12 of the constitution defines the term *state* which includes the Government and Parliament of India; the Government and legislatures of each of the States; all local authorities; and other authorities within the territory of India or under the control of the Government of India. *Other authorities* will include all Constitutional or statutory authorities on whom powers are conferred by law, such as statutory corporations or public corporations.

Thus, the right to environment is one of the attributes of *right to life* under Article 21 of the Constitution and therefore, it can be enforced against the State. A law that is inconsistent or in derogation of a fundamental right is void by virtue of Article 13 of the Constitution. To prevent the State effectively from making infringement of fundamental rights, Article 32 of the Constitution guarantees the right to move the Supreme Court. The *right of life* is available to the individuals to protect themselves against the State action.

2. Judicial Remedies for Environmental Degradation

The Indian Judiciary has embraced activism in environmental protection and enormously enriched the statutory law to protect the environment. The common law remedies available for environmental protection are nuisance, trespass, negligence and strict liability. The statutory remedies in the Indian legal armory for environmental protection, *inter alia*, include : citizen's suit, e.g. an action brought under Section 19 of the *Environment (Protection) Act, 1986*; an action under Section 133 of Code of Criminal Procedure, 1973 for public nuisance covered with the framework of Section 268 of Indian Penal Code, 1860; and an action brought by filing a Writ Petition under Article 32 in the Supreme Court of India or under Article 226 in the High Court Under the Constitution.

3. Environmental Protection Legislations

In India, the role of Judiciary on environmental protection can be explained in the following way: There are many legislations in India having an impact on environment:

1. *The Orissa River (Pollution and Prevention) Act, 1905.*
2. *The River Board Act, 1948.*
3. *The Maharashtra (Prevention of Water Pollution) Act, 1969*
4. *The Merchant Shipping Act, 1948.*
5. *The Water (Prevention and Control of Pollution) Act, 1974.*
6. *The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Marine Zone Act, 1976.*
7. *The Water (Prevention and Control of Pollution) Cess Act, 1977.*
8. *The Bengal Smoke Nuisance Act, 1905.*

9. *The Bombay Smoke Nuisance Act, 1912.*
10. *The Indian Boilers Act, 1923.*
11. *The Mines and Minerals (Regulation and Development) Act, 1947.*
12. *The Factories Act, 1948.*
13. *The Industries (Development and Regulation) Act, 1951.*
14. *The Gujarat Smoke Nuisance Act, 1963.*
15. *The Air (Prevention and Control of Pollution) Act, 1981.*
16. *The Madhya Pradesh Control of Music and Noise Act, 1951.*
17. *The State of Bihar Control of use of Loudspeakers Act, 1955.*
18. *The Rajasthan Noise Control Act, 1963.*
19. *The Elephant Preservation Act, 1879.*
20. *The Indian Fisheries Act, 1891.*
21. *The Wild Birds and Wild Animals Protection Act, 1912.*
22. *The Indian Forest Act, 1927.*
23. *The Bengal Rhinoceros Act, 1932.*
24. *The Haily National Park Act, 1936.*
25. *The Bombay Wild Animals and Wild Birds Protection Act, 1951.*
26. *The Cruelty Against Animals Act, 1962.*
27. *The Wildlife (Protection) Act, 1972.*
28. *The Forest (Conservation) Act, 1980.*
29. *The Kerala Preservation of Trees Act, 1986.*
30. *The Wildlife (Protection) Amendment Act, 1991.*
31. *The Conservation of Forest and Natural Ecosystems Act, 1994.*
32. *The Atomic Energy Act, 1962.*
33. *The Mysore Destructive Insects and Pests Act, 1917.*
34. *The Poison Act, 1919.*
35. *The Drug and Cosmetic Control Act, 1951.*
36. *The Assam Agricultural Pests and Disease Act, 1954.*
37. *The Uttar Pradesh Agriculture Disease and Pests Act, 1954.*
38. *The Kerala Agricultural Disease and Pests Act, 1958.*
39. *The Seeds Act, 1965.*
40. *The Insecticide Act, 1968.*
41. *The Ancient Monuments and Archaeological Sites and Remains Act, 1958.*
42. *The Antiquities and Art Treasure Act, 1972.*
43. *The Ancient Monuments Preservation Act, 1974.*
44. *The Prevention of Food and Adulteration Act, 1954.*
45. *The Bihar Wastelands (Reclamation, Cultivation & Improvement) Act, 1946.*
46. *The Andhra Pradesh Land Improvement Schemes Act, 1949.*
47. *The Acquisition of Land for Flood Control & Prevention of Erosion Act, 1946.*
48. *The Delhi Restriction of Uses of Land Act, 1964.*
49. *The Urban Land (Ceiling & Regulation Act) 1976.*
50. *The Environment (Protection) Act, 1986.*
51. *The Public Liability Insurance Act, 1991.*
52. *The National Environment Tribunal Act, 1995.*
53. *The National Environment Appellate Authority Act, 1997.*
54. *The Biological Diversity Act, 2000*

The purpose of all these environmental laws of India are to control and regulate the environmental pollution.

4. Environmental Justice

The Supreme Court has ruled that right to pollution – free air falls under Article 21 in *Subhash Kumar vs. State of Bihar*³. The right to pollution – free environment has to be conceived of as a *human right* being a facet of right to life guaranteed by Article 21. Let us not forget that while human rights are necessary to promote the personality development of human beings, healthy environment is necessary to safeguard conditions conducive to such a personality development. There is a natural link between environment, development and human rights. It ought to be remembered that human rights are based on mankind's increasing demand for a decent, civilized life in which the inherent dignity of each human being must receive respect and protection. Human rights are fundamental to human nature and therefore the relationship between environment and human rights becomes much too obvious. In other words, human rights and environment are interdependent. As such it can be legitimately argued that the right to an adequate environment is a human right because human species cannot exist on this planet without proper environment.

The Forty-second Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an explicit manner into the Constitution through Articles 48-A and 51-A (g). Furthermore, Article 142 afforded the Supreme Court considerable power to mould its decisions in order that complete justice could be done.

The leading and land-mark cases cited in the Indian environmental legal system are: the *Indian Council for Enviro Legal Action Vs. Union of India*⁴ and the *Vellore Citizens Welfare Forum Vs. Union of India*⁵ Consequently 'GREEN BENCH' in Bombay, Madhya Pradesh, Calcutta, Delhi and Madras have been constituted to deal exclusively with environmental and pollution control cases.

Special mention must be made to *Rural Litigation and Entitlement Kenda Dehradun and others Vs. State of Uttar Pradesh*⁶, and *Devaki Nandan Pandey Vs. Union of India and others*⁷, as the first case in India relating to Environmental and Ecological balance, wherein LIME STONE QUARRIES ordered to be closed down for causing imbalance to ecology and hazard to healthy environment.

3. (1991) 1 SCC 598

4. AIR 1996 SC 1445 & AIR SC 1069

5. AIR 1996 SC 2175 (F.B)

6. AIR 1985 SC 652

7. AIR 1987 SC 359

With reference to *pollution caused by the Tanneries* to the Agriculturists, the landmark cases are *Calcutta Tanneries Case*⁸, and *Vellore Citizens Welfare Forum Case*⁹ related to the Tanneries in Vellore District.

Special mention must be made to the Judgment delivered in *M.C.Metha (Taj Trapezium Matter) v. Union of India*, applying sustainable development and precautionary principle with the whole purpose to stop Air Pollution by banishing core / coal from TTZ resulting for change over to the natural gas as industrial fuel by 292 industries and degradation of TAJMAHAL due to environment pollution to be prevented.

In *Bhopal Gas Tragedy case*¹⁰, the Supreme Court held that the rights to life and liberty and against pollution through air and water are traceable to Article 21 as also the fundamental duties enshrined under Articles 48-A and 51-G of the Constitution.

In *Jaganath v. Union of India & others*¹¹, the Supreme Court (while dealing with Ecology and Shrimp prawn Fishing culture industries in coastal areas) held sea-coast and beaches are gifts of nature and any activity polluting the same cannot be permitted.

The Green Bench of the Madras High Court ordered closure of the STERILITE INDUSTRIES, TUTICORIN for non-compliance and directed to reopen after compliance and implementation of the direction and conditions imposed and after the Expert Committee's Report.

With reference to pollution caused by Tanneries in the Palar River Basin and Dindugal, Green Bench of Madras High Court directed the tanners to pay the compensation in bi-monthly installments after classifying the polluter Tanners into three categories and in some cases ordered closer for non-compliance and non-payment.

In *Murli S.Deora v. Union of India*¹², the Supreme Court gave utmost importance to the health of the public affected by smoking and banned smoking in public places. It was stated that non-smokers cannot be compelled to become helpless victims of pollution caused by cigarette smoke.

Noise affects the quality of life. Earlier, jurisprudence never viewed noise as an element adverse to quality of life. An important case with respect to noise pollution is *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn*¹³. It was held in this

8. 1997 (2) SCC 411

9. 1996 (5) SCC 647; AIR 1996 SC 2175 (FB)

10. 1980 (1) SCC 687

11. 1997 (2) SCC 87; AIR 1997 SC 811

12. (2001) 8 SCC 765

13. (2007) 7 SCC 282

case that no religion prescribes that prayer should be offered by disturbing the peace of others by using amplifiers or by beating of drums. In a Civilized society, in the name of religion, activities which disturb old and infirm persons, students or children having their sleep in the early hours or during day time cannot be permitted. It was also held that rights of the aged, sick people and children below the age of six years, who are sensitive, are required to be honoured.

In *State of H.P. v. Ganesh Wood Products*¹⁴, the Supreme Court invalidated forest – based industry, recognizing the principle of intergenerational equity as being central to the conservation of forest resources and sustainable development. The court also noted in *Indian Council for Enviro – Legal Action v. Union of India*¹⁵, that the principle of intergenerational equity would be violated if there were a substantial adverse ecological effect caused by industry.

In *Francis Caralie Mullin v. Administrator, Union Territory of Delhi*¹⁶, the Supreme Court stated that “the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and fixing and coming along with fellow beings”¹⁷

In *Subhash Kumar v. State of Bihar*¹⁸, the court observed that: “Right to live is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution – free water and air for full enjoyment of life. If anything endangers or impairs the quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the constitution ...”¹⁹

Pursuant to the observations of the Supreme Court of India in four judgments, namely, *M.C.Mehta v. Union of India*²⁰; *Indian Council for Environmental – Legal Action v. Union of India*²¹; *A.P. Pollution Control Board v. M.V.Nayudu*²² and *A.P. Pollution Control Board v.M.V.Nayudu II*²³, the Law Commission in its 184th Report (Also “186th Report on Proposal to constitute Environmental Courts” the Law Commission of India, 2003) had recommended to set up *multi – faceted* Environmental Court in each State of India with

14. (1995) 6 SCC 363

15. CRZ Notification case, (1996) 5 SCC 281

16. (1981) 1 SCC 608

17. SCC PP. 618-19, para 8

18. 1991 (1) SCC 598

19. SCC p604, para 7

20. 1986 (2) SCC 176

21. 1996 (3) SCC 212

22. 1999 (2) SCC 718

23. 2001 (2) SCC 62

judicial and technical / scientific experts as they exist in Australia, New Zealand and other countries.

The Supreme Court recognizes the need for development and proper utilization of the natural resources for the betterment of society. However, this cannot be done at the expense of the environment itself. In *State of Tamil Nadu v. Hindstone*²⁴, the Supreme Court has held that rivers, forests, minerals and such other resources constitute a nation's natural resources. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way.

In *N.Balakrishnan & others v. State of Tamil Nadu and the District Collector of Karur*²⁵, this Court held that sands which are deposited for several centuries are the natural resources to serve the benefit of the public and cannot be permitted to be exploited for commercial reasons indiscriminately since these resources, once removed, cannot be replaced in the next generation. The consequence of absence of sand in the river bed would seriously affect the ecology and the environment and hence, the Court upheld the ban on the use of machineries so as to remove sand. The Court has also directed the Government to de-limit the river banks, ban the removal of sand below a particular level, form a River Management Committee and remove the encroachments on the river bed.

In *Varadharajalu Naidu & Others v. District Collector of Tiruvellore*²⁶, the respondents were directed to take immediate action for arresting unlawful quarrying and to restore the river to its natural formation.

In the very recent case of *T.N.Godavarman Thirumulpad v. Union of India*²⁷, a case concerning conservation of forests, Justice Y.K.Sabharwal, held: "... considering the compulsions of the States and the depletion of forest, legislative measures have shifted the responsibility from States to the Centre. Moreover any threat to the ecology can lead to violation of the right of enjoyment of healthy life guaranteed under Article 21, which is required to be protected. The Constitution enjoins upon this Court a duty to protect the environment.

In its efforts to protect the environment, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle, polluter pays principle; the doctrine of strict and absolute liability, the exemplary damages principle, the pollution fine principle and intergenerational equity principle apart from the existing law of

24. AIR 1981 SC 711

25. Writ Petition Nos. 10632 of 1998 and 837 of 1999, by an order dated 14.07.1999

26. Writ Petition No. 9205 of 1999, by order dated 18.09.1999

27. 2006 (14) SCALE 87

land. Another guiding principle has been that of adopting a model of *sustainable development*. The consistent position adopted by the Courts as enunciated in one of its judgments has been that there can neither be development at the cost of the environment nor environment at the cost of development.

A striking example of amplifying the law to enhance personal rights and fundamental rights is the judgment of the Supreme Court in “Mrs. Meneka Gandhi’s passport case” (*Mrs. Maneka Gandhi v. Union of India and Another*²⁸). There, the legislation governing grant of passport was interpreted in a manner so as to enhance the rights of personal freedom and personal liberty.

5. Right to Environment as a Third Generation of Human Rights

Generally, Human Rights are classified into²⁹:

1. Civil and Political Rights (First Generation)
2. Economic, Social and Cultural Rights (Second Generation)
3. Rights of Solidarity (Third Generation)

While the first generation negative obligation on the State insists not to interfere in the freedom and liberties of individuals; the second generation of rights imposes positive duty on the State to fulfill social, economic and cultural needs of the people. As a result of apparent preference of the Western Countries for the Civil and Political rights and of the socialistic states for the economic, social and cultural rights – both categories of Human Rights reveal *political colourisation*.

The third generation of Human Rights presupposes common and solidarity efforts by all members of World Community. Its concept was first formulated in 1972. Since solidarity rights are treated as collective rights like right to environment, this right cannot be confined to individuals rather affects every person on earth. The result being the *collective rights* has to prevail over individual rights.

The rights of the third generation as called solidarity rights are related not so much to the usual catalogue of negative or positive liberties as to integration of efforts and common dependence within the group i.e., the solidarity. The subject of solidarity rights are the individuals, the local and regional collectivities and the international human society. Such a *multi-level concept* is a response to the rights of synthesis.

28. AIR 1978 SC 597

29. Kahemendra Mani Tripathi, *Right to Environment as a Third Generation Human Rights: Some Reflections*, Naya Deep, Vol. VI, Issue 2, Apr.2005, p.155.

The United Nations Conference on Environment and Development, Rio-de-Janeiro, 1992 is a landmark in developing “Right to Environment as a Human Right. The Rio Conference strengthened the idea advocated in the Stockholm conference on Human Environment, 1972.

6. Environmental Jurisprudence:

In India, provisions of national constitutions or environmental statutes, have allowed the courts to take a highly proactive role in environmental protection as exposed by a plethora of case laws:

Ratlam Case – *Municipal Council, Ratlam v. Vardhichand*³⁰; Dehradun Quarrying Case-*Rural Litigation and Entitlement Kendra v. State of UP*³¹; Shri Ram Fertilizer Company Case- *M.C. Mehta v. Union of India*³²; *M.C. Mehta v. Union Of India*³³; *M.C. Mehta v. Union of India*³⁴; Radiation Case Or Irish Butter Case - *Dr. Shiva Rao Shantaram Wagle v. Union of India*³⁵; Ganga Pollution (Tanneries) Case *M.C.Mehta v. Union of India*³⁶; Ganga Pollution (Municipalities) Case - *M.C.Mehta v. Union of India*³⁷; Bhopal Case – *Union Carbide Corporation v. Union of India*³⁸; *Charan Lal Sah v. Union of India*³⁹; Taj Mahal Case-*M.C.Mehta v. Union of India and Others*⁴⁰; (Kuldip Singh, J. and Faizaluddin, J); Forests - *T.N.Godavarman Tirumulpad v. Union of India and others*⁴¹; Aqua Culture- *S. Jagannath v. Union of India*⁴²; Tannery Pollution-*Vellore Citizens Welfare Forum v. Union of India*⁴³; Indiscriminate withdrawal of underground water- *M.C. Mehta v. Union of India*⁴⁴; Shiting/Relocation/Closure from SCC 388) of Hazarduous/ Noxious / Heavy / Large Industries from Delhi – *M.C. Mehta v. Union of India*⁴⁵; Precautionary Principle and Principle of sustainable Development *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India*⁴⁶;

The envirojurisprudence, built up by the judicial adventurism is praise worthy. Constitutional Courts, in the area of administration of envirojustice, have taken a lead and

30. AIR 1980 SC 1622

31. AIR 1987 SC 2187

32. AIR 1987 SC 965

33. AIR 1987 SC 982

34. AIR 1987 SC 1086

35. AIR 1988 SC 952

36. AIR 1988 SC 1037

37. AIR 1988 SC 1115

38. AIR 1990 SC 273

39. AIR 1990 SC 1480

40. Writ Petition (civil) no. 13381 of 1984 Supreme Court decided on December 30, 1996

41. AIR 1997 SC 1233

42. (1997) 2 SCC 87; AIR 1997 SC 811

43. (1996) 5 SCC; 647

44. (1997) 11 SCC 312

45. (1997) 1 SCC 327

46. (1997) 3 SCC 715

stood tall before the other two wings of the State i.e., the legislature and the executive. Indian Supreme Court, in this area, is working on three principles as guidelines to decide the complex environmental issues. These principles are polluter-pays, precautionary principle and sustainable development. To reach up to this stage the higher judiciary began with the relaxation of the rule of *locus standi*⁴⁷ and the departure of 'proof of injury' doctrines. This in effect created a new form of legal action also known as *public interest litigation* or *social action litigation*, most suitable to environmental cases because these cases are concerned with the rights of the community rather than the individual. Though addition of citizen's suit in India is a welcome step, yet rare cases have been filed by the ordinary citizens in the sphere of environmental protection.

7. Public Interest Litigation and Environmental Protection:

PIL has also helped in the development of legal principles such as the *Polluter Pays* principle (*M.C.Mehta v. Union of India*⁴⁸; *Indian Council for Enviro – Legal Action v. Union of India*⁴⁹; '*Vellore Citizens' Welfare Forum v. Union of India*⁵⁰; *ReBhavani River – Sakthi Sugars Ltd.*⁵¹; *S.Jagannath v. Union of India*⁵², the *precautionary principle* (*M.C.Mehta v. Union of India*⁵³; *M.C.Mehta v. State of Tamilnadu*⁵⁴), and the principle of *award of compensation* for constitutional wrongs (*NilabatiBehera v. State of Orissa*⁵⁵; *Punjab & Haryana High Court Bar Assn. v. State of Punjab*⁵⁶; *Navkiran Singh v. State of Punjab*⁵⁷; *Paramjit Kaur v. State of Punjab*⁵⁸). The court pointed out that these principles had been accepted as part of the environmental law of the country (*AP Pollution Control Board v. M.V.Nayudu*⁵⁹).

The wide reach of PIL is best demonstrated by reference to some areas like human rights and environment in which courts have made particularly significant pronouncements.

8. Balancing the rights: Right to Development and Right to Environment:

47. *Bangalore Medical Trust v. B.S.Muddappa* (1991) 4 SCC 54; also *D.D.Vyas v. Ghaziabad Development Authority* AIR 1993 ALL 57. AIR 1993 Orissa 152. In this case a writ of mandamus was issued by the court against local authorities even though the petitioner was merely a visitor in the locality.

48. (1987) 1 SCC 395 at 405

49. (1996) 3 SCC 212

50. (1996) 5 SCFC 647

51. (1998) 6 SCC 335

52. 1996 (g) SCALE 167

53. (1996) 4 SCC 750; (1996) 4 SCC 351 and 750; (1997) 8 SCC 770; 1996(1) SCALE SP – 22; (1997) 11 SCC 227, 312 and 327

54. (1996) 6 SCC 756

55. (1993) 2 SCC 746

56. (1994) 1 SCC 616

57. (1995) 4 SCC 591

58. (1996) 7 SCC 20

59. 1999(1) SCALE 140

Development is being achieved at the cost of environment degradation. In other words, the states while giving the *Right to development* from one hand has started hampering the *Right to environment* from the other. While exercising the right to development, the constitution makers included environment speed breakers in that direction. Naturally, *Indian constitution turns out to be the rarest constitution of the world containing specific provisions for environmental protection*. Initially Constitution of India did not contain any specific provision for the protection of environment. But eventually in 1972 India's prime minister, Late Mrs. Indira Gandhi attended the U.N. Conference on human environment at Stockholm, which promulgated the resolution of mankind's responsibility to protect and improve the environment for present and future generation. *Polluter pays* is one of the principles of the various constitutional and other statutory provisions.

After the *42nd Amendment act* of 1976 environmental protection received a Constitutional Mandate and the directive principles of state policy and fundamental duties chapters were laid down which clearly evince that the protection and improvement of environment is a national obligation of the entire country.⁶⁰ In a way, the strategy of "Sustainable Development" reconciles the conflict between two rights (ie, Right to environment and Right to development) and prevents to exercise these rights at the extreme.

The environment impact assessment (EIA) is a legal strategy to reconcile the conflict between environment and development and to argument *Sustainable Development*, which has been recognized even by the planning commission in its 7th five year plan.

The Supreme Court included the right to whole some environment under art. 21 of the constitution in *Rural Litigation and Entitlement Kendra Dehardun v. State of U.P.*⁶¹ It was the first reported case of its kind in the country invoking the issue relating to right to pollution free environment and ecological imbalance. The Court has interpreted that the right to life as a right to have a living atmosphere, congenial human existence.

Further, in *Tarun Bharat Singh v. Union of India case*⁶², the Supreme Court recognized the PIL brought by Social Action group complaining against illegal permission of the Rajasthan govt. for large scale mining operation causing environmental damage. The court directed to stop mining within a limited radium and convert all open areas into green belts.

60. Shveta Dhaliwal (ed.,) Human rights advocacy: Global Approaches, Local experiences, Punjab, Rajiv Gandhi National University of law, 2010.

61. AIR 1985 SC 652

62. AIR 1993 SC 293

Later on, in *State of Karnataka v. B.Krishna Bhat case*⁶³, the court issued directions for shifting all slaughter houses outside city, since slaughter houses within city were causing risk to health of residents and causing hardship for creation of hygienic conditions.

I. PIL and Environmental Litigation in 1980's Decade

M.C.Mehta, an Advocate, has brought to the court series of issues as a petitioner and a pioneer in PIL. In *M.C.Mehta(1) v. Union of India*⁶⁴, for the first time, seminal questions were raised of far reaching importance concerning the true scope ambit of Article 21 and of the jurisdictional basis of Article 32. The Apex Court was called upon to evolve norms and principles for determining liability of large enterprises engaged in manufacture and sale of hazardous products and the basis on which damages in case of such liability should be quantified. In *M.C.Mehta(2) v. Union of India*⁶⁵, the court held the Mahapalika responsible for the pollution of river Ganga near Kanpur and directed to get the tanneries shifted to a place outside the city.

The concept of *compensation for environmental degradation* has evolved at a snails pace over a period.⁶⁶ It started with the strict liability principle followed by the absolute liability principle and then compensation under Article 32 and finally the polluter pays principle;

The polluter pays principles means two things:

1. The polluter should pay for the administration of the pollution control system.
2. The polluter should pay for the consequence of the pollution.

This concept was further elaborated in the *Vellore Tanneries Pollution Case* as follows:

“The *polluter pays principle* as interpreted by this court means that the absolute liability for harm to environment extends not only to compensate the victims of pollution but also the cost of restoring to the environment degradation. Remediation of the damaged environment is part of the process of Sustainable Development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost for reversing the damaged ecology”⁶⁷.

63. AIR 2003 Kant.428

64. 1986 2 SCC 176

65. 1988 1 SCC 471

66. Rohan Bagai, *Judicial Activism & Environmental Jurisprudence in India*, Legal Service India.com
<http://www.legalserviceindia.com/articles/3.htm>

67. *Vellore citizens Welfare Forum v. Union of India*, (1996) 5 SCFC 647

II. PIL and environmental litigation in 1990's Decade

In *Mukti Sangharsh Movement v. State of Maharashtra*⁶⁸, a PIL was initiated to prevent reckless exploitation of a Kerala river running through some parts of Maharashtra and ultimately joining river Krishna. To minimize the exploitation of sand from the river, it was suggested towards the identification of suitable sites for sand excavation and exploitation should be confined to such sites only.

III. PIL and environment issue in 2000 and onwards

In *Narmada Bachao Andolan v. Union of India*⁶⁹, the court held the view that rehabilitation of dwellers to a new location with better facilities than which they had enjoyed in their original hamlets would not result in violation of their fundamental right under art. 21. The court expressed that it is a matter of grave concern if even after half a century of freedom, water potentialities are not exploited and water is not made available to people and such a situation is violation of right to life under Art. 21.

9. Suggestions

The growing threats posed by environmental crimes are alarming. The State should play a key role in combating environmental crime. The following are some of the recommendations to curb environmental crimes. They are

- Environmental crimes should be treated as a time critical issue and it should be given a substantial, committed and sustained global response.
- Encourage the application of existing national criminal laws, proceeds of crime and seizure of assets legislation against environmental criminals
- Develop a new environmental crime enforcement units to develop investigations and operations targeting criminal networks
- Create adequate political commitment to tackle environmental crimes.
- Provide technical assistance to police to combat environmental crimes.
- Take steps to combat corruption at all levels. Unless corrupt officials are tackled, efforts to combat environmental crime will be impeded.
- The executive wing of the government needs to show stronger commitment towards implementation of environment related laws.

68. 1990 SCC 37

69. AIR 2000 SC 3751 p. 3787, 3804

- Needed a social, political and economic change in the Government as well as of people towards environmental protection.
- Citizens should lead a life in harmony with nature and development which does not harm the environment.
- River sand is important for human being. Everywhere unscrupulous elements are emptying the river beds of sand. Rivers now become victims of indiscriminate sand mining. Unregulated sand mining devoured the river bed. Rivers in India are seriously sick. The scientific and technological progress of man, at present, encroaches endlessly on nature. The need of the hour is to amend the *Sand Act*, 2001 and other legislations incorporating severe' punitive measures against illegal sand – miners. District Level Expert Committees and Teams comprising Revenue and Police officials are also to be formed to combat illegal sand mining. Public Awareness about evil effects of illegal sand mining has to be widely encouraged. A New Sand Mining Policy based on Sustainable Development has to be evolved throughout the country. In fact, sand is more important from the point of view of environment than from the point of view of commerce.

The Supreme Court and various High Courts have adopted positive approach towards environmental protection and through their judgments; they have supplemented and strengthened the laws against environmental pollution. It is respectfully submitted that the lower judiciary is yet to play its real and active role towards environmental protection and it should come forward to follow the footsteps of the Supreme Court and various High Courts in sustaining the ecological overtones.

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