
ENVIRONMENTAL JUSTICE IN INDIA THROUGH THE LENS OF THE CONSTITUTION

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ABSTRACT

In India, environmental justice is the meeting point of social justice and ecological sustainability. In order to ensure that no group especially the marginalized is disproportionately impacted by environmental harm, it refers to the equitable distribution of environmental benefits and burdens among all communities. Despite not being specifically addressed in the beginning, the Indian Constitution has developed into a strong tool for environmental justice and protection. Judicial interpretation, proactive public interest litigation, and the development of environmental jurisprudence based on the right to life under Article 21 have all played a significant role in this evolution. This paper explores the Preamble, the Directive Principles of State Policy (DPSPs), the Fundamental Rights, and the Fundamental Duties all of which are constitutional provisions that are pertinent to environmental justice. It draws attention to the ways in which these elements particularly Article 21 have been construed to protect environmental rights. Articles 48A and 51A(g) were added by significant amendments such as the 42nd Amendment. Environmental justice has been shaped by important cases like *MC Mehta v. Union of India*, *Subhash Kumar v. State of Bihar*, and *Vellore Citizens Welfare Forum v. Union of India*, which established theories like the Polluter Pays Principle and the Precautionary Principle. Through loosened locus standi rules, the judiciary has also increased access to justice, allowing vulnerable communities to use Public Interest Litigations to seek redress. Understanding how institutional and legislative mechanisms support constitutional goals involves examining the roles of organizations such as the National Green Tribunal (NGT), pollution control boards, and environmental laws like the Environment (Protection) Act, 1986. Important case studies that highlight the hardships and triumphs of communities battling for environmental justice are also covered in the paper. There are still issues, like lax enforcement, corporate and political meddling, and the tension between environmental sustainability and development. In order to address these problems, this paper suggests tactics such as judicial reform, community involvement, sustainable urban planning, and the strengthening of legal institutions.

In conclusion, despite not being created with environmental governance in

mind, the Indian Constitution has developed into a potent instrument for advancing environmental justice through creative judicial interpretation. Reiterating constitutional principles, guaranteeing participatory governance, and incorporating environmental justice into the country's larger development objectives are the ways to go forward. Then and only then can we guarantee a future that is truly sustainable and inclusive for all Indian citizens.

Keywords: Sustainable, Governance, Locus Standi, Environmental Justice

INTRODUCTION

Environmental justice claims remain contentious for three reasons. First, in its early years, the mainstream environmental movement ignored social justice and equality issues, and many critics argue that it still does. Early work by scientists and activists concerned about environmental issues was done with little regard to underlying social inequalities that drive differential exposures to pollution and did not incorporate voices of people of color and the working classes in solving them. In fact, there is still debate among environmentalists about whether they should attempt to address these issues or should continue campaigning on issues they are more able to influence. That is, there is not a consensus among environmentalists on whether broadening environmentalism to include justice is always a good idea. Second, documenting the existence of “disproportionate impact” on people of color or poor populations has turned out to not be a simple issue. Because they diverted demands of environmental justice activists, a few studies skeptical of environmental justice claims have gained an extremely high level of attention in research and policy circles. Dozens of studies have piled up as debates evolved on the best ways to solve research problems. Because so much is at stake for policy in how one answers this question, a substantial portion of this review considers this literature. A third reason environmental justice studies are controversial is that it is not immediately obvious what should be done after an injustice has been documented: Addressing environmental injustice with public policy could involve complex and expensive local, national, or perhaps even global interventions. Solutions, such as relocation of affected communities, which is so ardently sought by some local environmental justice groups, are themselves socially and economically disruptive, and these solutions rarely satisfactory in their outcomes. Workplaces protected by better regulations and enforcement of occupational health standards still face plant closure in the face of globalized production.

The growing threats to our environment through developmental activities has created an

unprecedented crisis. It has resulted in hazards for decent and healthy environment which is so crucial for human existence. The world has come a long way since the first historic effort to diagnose the global environment took place at the UN Conference on Human Environment (Stockholm, 1972). The journey from the Stockholm Conference to the Earth Summit at Rio de Janeiro has led to the recognition that "all human beings are entitled to a healthy and productive life in harmony with nature". The growing awareness about unhampered development has led to numerous international and national efforts to protect the environment. Human beings are the primary victims of environmental damage. Though there is no consensus at the international level regarding securing a right to environment as a fundamental human right, yet efforts have been made in some national jurisdictions to recognize such a right.

This right to environment essentially emanates from the right to life, which is the core of all fundamental human rights. The parameters of this right in the various jurisdictions may be put differently, even as the right itself is still in evolution. This emerging human right, recognized primarily through judicial interpretations, tends to offer a shield against the "developmental terrorism" which is threatening to engulf humankind, among other species, on our fragile planet. The nascent right to environments protection is likely to be frowned upon in developed as well as developing societies, as those seeking it may be dubbed anti-development

The Constitution of India is a dynamic instrument and it has been changing since time it came into force through various judicial instruments or judicial pronouncements.

PROVISIONS OF SAFE AND CLEAN ENVIRONMENT IN THE CONSTITUTION OF INDIA

The Constitution (Forty Second Amendment) Act, 1976, was the first time that the Indian Constitution placed states under an obligation to conserve the environment.

Article 48-A-“State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.”

The amendment also inserted Part VI-A (Fundamental duty) in the constitution, which reads as follows: **Article 51-A (g)** –“It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living

creature. In *Sachidanand Pandey v. State of West Bengal*¹, the supreme court observed whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A (g).”

ENVIRONMENTAL PRINCIPLES ACKNOWLEDGED BY THE SUPREME COURT

Several international environmental law concepts have been derived by the Supreme Court and used as a framework for integrating issues into decision-making. In a nutshell, these principles are:

Principle of Absolute Liability

In *M.C. Mehta v. Union of India (Oleum gas leak case)*² the Court laid down the principle of absolute liability of hazardous dangerous industries. The court recognizing that the right to life of the citizens was adversely affected.

Narmada Bacho Andolan v. Union of India,³ Supreme Court held that, the precautionary principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain.

*Union carbide corporation v. Union of India (The Bhopal case)*⁴ in this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement incoming about, for instance, in getaway of poisonous gas, the enterprise is strictly and incompletely obligated to repay every one of the individuals who are influenced by the accident and such iris risk not subject to any exemptions.

The Polluter Pays Principle

The main object of this principle is to make the polluter liable for the compensation to the victims. According to this principle its on the person to pay the compensation who will be liable for the damages or the pollution caused to the environment.

¹ AIR 1987 SC 1109

² AIR 1987 SC 1086

³ AIR 2000 SC 375

⁴ AIR 1990 SC 273.

In case of Indian Council for Enviro Legal action vs. Union of India⁵, pollution by the leaching of H- Acid and sludge produced by a company named silver chemicals located in Bichhri, a village near Udaipur, Rajasthan along-lasting damage had been caused, to the soil, underground water, inhuman beings, cattle and to the village economy. The Supreme Court held that the company was absolutely liable for the environmental degradation due to leaching of the H-acid and based on the polluter pays principle it directed the company to pay for the restitution of the environmental damage it had caused.

The Precautionary Principle

The precautionary principle says that if any action or project has possible risk which can cause harm to public and environment and the person who is taking that action has knowledge about those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in case when scientific investigation point towards a risk. These protections can be relaxed in the case when person taking action can prove with sound evidence that no harm will result. ⁶

The precautionary principle, was adopted in the Rio declaration, 1992 and subsequently incorporated in international protocols has been recognized by the Supreme Court in several of its directions. The principle implies that even in the absence of full scientific evidence, there is a social responsibility to protect the public from harm when scientific investigation suggests a plausible risk. It is also irrelevant in the context of international justice. ⁷ In S Jagannath v Union of India (Shrimp culture case)⁸, the Supreme Court held that the government authorities must anticipate, prevent and attack the causes of environmental pollution. According to the precautionary principle the burden of proof is on the developer to show that his or her actions are environmentally sound

This theory, along with the "polluter pays principle," was acknowledged as a component of the legal system in the Indian Council for Enviro-Legal Action v. Union of India case, which

⁵ 1996 SC 1446

⁶ Arvind Kumar Singh, "The Role of Indian Judiciary in Protection of Environment in India

⁷ Montreal Protocol on Substances that Deplete the Ozone Layer, 1989; Kyoto Protocol to the United Nations Framework Convention for Climate Change, 2005.

⁸ AIR 1997 SCC 813

was previously explored. The Supreme Court created the following three principles for the precautionary principle after directly applying it to the facts of the cases in *Vellore Citizen's Welfare Forum v. Union of India* and *Andhra Pradesh Pollution Control Board v. MV Nayudu*

1. The causes of environmental degradation must be anticipated, stopped, and addressed by environmental measures.
2. Delays in action should not be justified by a lack of scientific clarity.
3. It is the actor's responsibility to demonstrate that his behavior is harmless.

It is also commented that the precautionary approach is a principle meant to invert environmental disaster. The principle involves anticipation of environmental harm, adoption of preventive measures, and choice of the least environmentally harmful inactivity.⁹

In *Vijayanagar Education Trust v. Karnataka State Pollution Control Board*¹⁰, the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment. In *M.C. Mehta v. Kamal Nath and Others*¹¹, the Supreme Court applied this doctrine for the first time in India to an environmental problem. Its doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. The court continued that the said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

Principle of Sustainable Development

The World Commission on Environment and Development (WCED), known for its report called the 'Brundtland Report' after its chairperson, emphasizes the idea of sustainable

⁹ P Leelakrishnan et al, "Environmental Expertise and Judicial Review: Need for Strategy Shift and Law Reform", *Journal of the Indian Law Institute*, 357 (1999).

¹⁰ AIR 2002 Kant123

¹¹ (1997) 1 SCC 388

development. According to the Brundtland Report, sustainable development refers to "development that fulfills the needs of the present without undermining the capacity of future generations to satisfy their own needs." It is essential for the judiciary to find a balance between progress and the environment. The Brundtland Commission first articulated the principle of sustainable development (WCED, 1987), which was later adopted in the Rio Declaration of 1992. Although the Rio Declaration is not legally enforceable, it outlined fundamental principles of sustainability.

In *B.K. Srinivasan v State of Karnataka*¹², the court established that 'sustainable development' serves as a key concept for balancing ecological needs with developmental goals, and it has been recognized as part of customary international law, although its key characteristics are still being defined by international law experts. The court mandated that government development agencies apply sustainable development principles, including the precautionary principle, the polluter pays principle, and the new burden of proof established by the court, when making decisions regarding environmental issues. This principle has been included in the National Green Tribunal Act of 2010. In *Rural Litigation and Entitlement Kendra v. State of UP*,¹³ the court addressed the issue of permanent resources belonging to humanity that are not meant to be depleted.

NOTABLE JUDICIAL PRONOUNCEMENTS BY THE SUPREME COURT OF INDIA

There are numbers of the following judgments which clearly highlight the active role of judiciary in environmental protection these are follows:

In the case of *Charan Lal Sahu v Union of India* the Supreme Court said that the right to life guaranteed by article 21 of the constitution includes the right to a wholesome environment.¹⁴

In *Damodhar Rao v. S.O. Municipal Corporation Hyderabad*, the Court decided the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right

¹² (1987) 1 SCC 658

¹³ AIR 1988 SC 107

¹⁴ AIR 1988 SC 107

to life and personal liberty as enshrined in article 21 of the constitution.¹⁵

In the case of *Ratlam Municipal Council v. Vardhichand*¹⁶ it is held that environmental damage will be considered as public nuisance and duty is cast upon public authorities to help mitigate the effect of nuisance through public interest litigation as strong medium. the judgment of the supreme court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary-constraints

In the case of *Delhi Gas Leak case*,¹⁷ the Supreme Court laid down two important principles of law:

1. The authority of the Supreme Court to provide remedial relief for the violation of a fundamental right encompasses the ability to grant compensation.
2. The ruling marked a transformative moment in Indian law by introducing a novel "no fault" liability standard (absolute liability) for industries involved in hazardous activities, leading to significant changes in liability and compensation laws in India. This new standard holds hazardous industries completely accountable for any harm caused by their operations.

One of the most important judicial pronouncements with regard to environment is the fundamental right to water. The fundamental right to water has involved in India, not through legislative action but through judicial interpretation. in *Narmada Bacho Andolan v. Union of India and Ors.*, the Supreme Court of India held that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life.¹⁸

THE ROLE OF PUBLIC INTEREST LITIGATION (PIL) IN ENVIRONMENTAL MATTERS IN INDIA

¹⁵ AIR 1987 AP 171

¹⁶ AIR1980SC1622

¹⁷ AIR1987SC965

¹⁸ Narain, Vrinda. "Water as a Fundamental Right: A Perspective from India." *Vermont Law Review* 34, no. 4 (2010): 917-926

Public Interest Litigation (PIL) has played a transformative and instrumental role in the development of environmental jurisprudence in India. Emerging from the broader framework of human rights litigation and judicial activism, PIL has enabled the Indian judiciary particularly the Supreme Court and various High Courts to expand the scope of environmental protection beyond traditional legal frameworks. By allowing any public-spirited individual or organization to approach the court on behalf of affected communities or ecological concerns, PIL has effectively democratized environmental justice in the country.

The liberal interpretation of locus standi by activist judges like Justice V.R. Krishna Iyer and Justice P.N. Bhagwati in the early 1980s paved the way for environmental PILs. Recognizing that marginalized populations often lack the resources or knowledge to seek legal redress, the courts opened their doors to cases filed on behalf of the voiceless, including not only the poor and disenfranchised but also the environment itself. This expansion of judicial access laid the foundation for a body of environmental jurisprudence that prioritizes ecological preservation, sustainable development, and intergenerational equity.

In environmental matters, PILs have served as a crucial mechanism for holding both state and non-state actors accountable for ecological degradation. The judiciary, using its constitutional mandate under Articles 21, 48A, and 51A(g), has interpreted the right to a clean and healthy environment as an integral component of the fundamental right to life under Article 21 of the Constitution. Landmark judgments such as **M.C. Mehta v. Union of India**, dealing with issues like pollution control, industrial hazards, vehicular emissions, and conservation of natural resources, have emerged from PILs and have shaped the legal landscape of environmental governance in India.

Moreover, PILs have enabled the courts to apply and evolve key environmental principles such as the **precautionary principle**, the **polluter pays principle**, and the **public trust doctrine**, thereby embedding international environmental norms into the Indian legal system. In doing so, the judiciary has not merely interpreted existing laws but has actively participated in law-making by filling legislative and policy gaps.

The proactive judicial approach through PILs has also led to the institutionalization of environmental governance mechanisms such as environmental impact assessments, pollution control boards, and regulatory bodies. Through continuous monitoring and directions issued in PIL cases, the courts have ensured implementation and compliance with environmental

standards.

In essence, PIL has served as a powerful tool in the hands of the judiciary to promote environmental justice in India. It has facilitated the protection of natural ecosystems, safeguarded the rights of future generations, and reinforced the constitutional commitment to ecological balance. By integrating legal innovation with social conscience, the Indian judiciary has used PILs not only to enforce environmental law but also to elevate environmental protection as a constitutional and moral imperative.

AWARENESS REGARDING ENVIRONMENT

Supreme Court in many cases directed the union government to issue directions to all the State governments and the union territories to enforce through authorities as a condition for license on all cinema halls, to obligatory display free of expense two slides/messages on environment amid each show.

ENFORCEMENT MECHANISM RELATING TO ENVIRONMENT CONCERNS AND SANCTIONS

The Supreme Court of India, utilizing the mechanism of public interest litigation, has effectively contributed to the process of social reform. By employing various innovative judicial methods, the Court has sought to uphold citizens' right to life in a broad sense and, more specifically, the right to a clean and sanitary environment. Given the inherent nature of PIL cases, the courts frequently need to issue comprehensive directives to address situations requiring urgent intervention. At times, this may entail assuming control over administrative functions in the relevant area from the executive branch. Additionally, the Court is tasked with ensuring that the relevant polluters or authorities accurately comply with its directives.

Sometimes it amounts to taking over the direction of administration .in the area' concerned from the executive.¹⁹ Moreover, the Court has to see that there is faithful compliance with its directions by the concerned polluters or authorities. Therefore, the Court has devised a technique of monitoring mechanism and periodic reporting to the Court.

The urgency involved in petitions advocating for the enforcement of citizens' rights to a clean

¹⁹ S.K. Agrawala. *Public Interest Litigation in India: A Critique* (Tripathi Bombay. 1985), p. 32.

and sanitary environment necessitates the establishment of fact-finding commissions or expert panels, along with the issuance of interim orders, even prior to a determination on those rights. This was evident in both the Doon Valley case and the Shriram Gas Leakage incident. In the latter situation, the Court ordered the closure of the caustic chlorine facility, established a compensation scheme for victims, and subsequently permitted the plant to reopen under strict conditions, all within ten weeks following the gas leak, without first resolving the issue of jurisdiction under Article 32 to order relief against a private-corporations.²⁰

Sanctions

Apart from all the provisions there is no strict mechanism with related to environment crimes. Despite all this the Court often remains helpless as its action depends upon violations of orders being brought to its notice by the petitioner. For instance, in *Bandhlta Mukti Morcha* case, the petitioner brought to the notice of the Court non-compliance with its 21 directions (passed on 16 December; 1983) by the Haryana Government. But the court only chose to warn that "we shall take a serious view of the matter if any of these directions are not properly carried out by the Central Government or the State of Haryana."²¹

CONCLUSION AND RECOMMENDATIONS

In conclusion, the examination of the aforementioned cases highlights the instrumental role played by the Indian judiciary in the development and enforcement of environmental law. In situations where statutory frameworks are either insufficient or absent, the Supreme Court and various High Courts have acted as catalysts for environmental governance through judicial activism. This interventionist approach has not only helped to fill legislative voids but has also set important precedents that guide the future course of environmental protection in India.

Judicial innovation, especially through the mechanism of Public Interest Litigation (PIL), has become a defining feature of environmental jurisprudence in the country. PILs have democratized access to justice by enabling individuals and organizations to approach the courts on behalf of affected communities or ecological interests, even in the absence of direct personal harm. Through such cases, the judiciary has addressed issues such as deforestation, illegal

²⁰ Cnningham, "Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience", 29 Journal of the Indian Law Institute 494 (1987) at 516-517.

²¹ AIR 1984 SC 802 at p. 834

mining, air and water pollution, and loss of biodiversity. In many instances, the courts have ordered the cessation of environmentally destructive activities and mandated the restoration of ecological balance, thereby affirming their role as custodians of environmental rights.

Furthermore, the judiciary has consistently emphasized the intrinsic value of natural resources and the importance of their conservation for present and future generations. Recognizing that many environmental damages are irreversible, the courts have underscored the need for a precautionary and preventive approach to environmental management. This reflects a shift from a purely anthropocentric view of nature to one that also recognizes the ecological and intrinsic significance of the environment.

Complementing judicial efforts, the role of the media in fostering environmental awareness cannot be understated. As a powerful tool of mass communication, the media influences public opinion, shapes attitudes, and often brings environmental issues to the forefront of public discourse. By highlighting instances of environmental degradation and governmental inaction, media outlets have contributed significantly to the accountability of both state and non-state actors.

Finally, the importance of institutionalizing regular environmental inspections and audits is paramount. A robust and independent inspection mechanism would serve as a preventive measure, allowing for the early identification and mitigation of activities harmful to the environment. Such a system would reinforce the legal and administrative framework aimed at safeguarding ecological integrity. Together, these developments reflect a maturing environmental consciousness in India, where legal, societal, and institutional actors collaboratively contribute to environmental protection. The evolving jurisprudence, supported by active citizen participation and media engagement, indicates a progressive shift towards integrating environmental sustainability into the broader framework of justice and governance