



## Constitutional Provisions Relating to the Environment and the Impact of PIL in Safeguarding the Environment in India

N. Srikanth. LLM

Osmania University, Hyderabad

### ABSTRACT

Environmental protection refers to policies and procedures aimed at conserving the natural resources, preserving the current state of natural environment and where possible, reversing its degradation. The question of Environmental protection is a global issue and it is not an isolated problem of any area or nation. India has enacted various laws at almost regular intervals to deal with the problem of environmental degradation. The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection. The chapters directive principles of state policy and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. At the beginning of the 21st Century environment issues have emerged as a major concern for the welfare of the people. The environmental protection is nota new concept in India it is there in our Vedas. The Indian judiciary adopted the technique of public interest litigation (and judicial activism) for the cause of environmental protection in many cases. The Supreme Court & High Courts shaded the inhibitions against refusing strangers to present the petitions on behalf of poor and ignorant individuals. The basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or finances. In PIL a public spirited individual or organization can maintain petition on behalf of poor & ignorant individuals - In the area of environmental protection, PIL has proved to be an effective tool.

**Keywords:** *Environment, PIL, Indian Constitution*

### INTRODUCTION

#### **Environment:**

Environment literally means surrounding and everything that affect an organism during its lifetime is collectively known as its environment.

**Protection:** Refers to policies and procedures aimed at conserving the natural resources, preserving the current state of natural environment and where possible, reversing its degradation.

#### **CONSTITUTIONAL PERSPECTIVE:**

The Constitution of India came into force on 26th January, 1950. Originally, the constitution contains no specific provisions for environmental protection. However, certain specific provisions have been incorporated by the Constitution (Forty Second Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement of the Environment-Fundamental Rights, Directive Principles of State Policy, Fundamental duties and some other Legislative powers.

**Fundamental Rights:-** Part –III of the Indian Constitution, containing Arts. 12 to 35, deals with fundamental rights, Art-15(2)(b), Art.21 and Art.24 provide for specific provision for environmental protection. (Art 32 and 226)

**Article 15(2)(b):-** According to Art. 15(2)(b),“No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to: the use of wells, bathing ghats, roads and places of

public resort, maintained wholly or partly out for state funds or dedicated to the use of general public.(which can be pollution free environment)

**Article 21:-** According to Article 21 of the Indian constitution, “no person shall be deprived of his life or personal liberty except according to procedure established by law.” Art. 21 guarantees a fundamental right to life –a life of dignity to be lived in a proper environment, free of danger of disease and infection (right to live in a healthy environment).

**Article 24:-** Art.24 of the Indian Constitution speaks about exploitation of child labor. It says that “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment,” this provisions is certainly in the interest of public health and part of the environment. Further, Art.39 (e) and 39 (f) under Directive Principles of State Policy provide for the protection of the health and strength of children below the age of 14 years. In People’s Union for Democratic Rights Vs. Union of India(AIR 1982 SC 1473), the Supreme Court held that the prohibition under Art.24 could be enforced against any one, be it the State or private individual. In pursuance of this obligation, parliament enacted the Child Labor (Prohibition and Regulation) Act, 1986. This Act prohibits specifically the employment of children in certain industries.

**Directive Principles of State Policy:-** Part IV of the Indian Constitution, Containing Articles 36 to 51, deals with Directive Principles of State Policy. The directive principles form the fundamental feature and are designed to achieve socio-economic goals.

**Article 39(a),** which was inserted by the Indian Constitution (42nd Amendment) Act, 1976 provides for Equal Justice and Free Legal Aid. It promotes justice on the basis of equal opportunities. It imposes an imperative duty upon the State to provide free legal aid to the poor litigant so as to secure him equal protection of laws against his well – to – do opponent.

**Article 39(b):-** The expression ‘material source’ under Art. 39 (b) means all things, which are capable producing wealth for the community.

**Article 39(1):-** it was amended by the Indian Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children.

**Article 47:-** provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

**Article 48:-** It deals with organization of agriculture and animal husbandry.

**Article 48A:-**it deals with “the State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

**Article 49:-**It deals with protection of monuments and places and objects of national importance.

#### **Fundamental Duties (51-A):- Art. 51-A (a -k)**

**Art. 51–A(g)** specifically deals with the fundamental duty with respect to environment. It provides “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”

#### **Important Laws**

The Indian legislature has enacted numerous pieces of important legislation, including

The Environmental Protection Act 1986;  
 The Air (Prevention and Control of Pollution) Act 1981;  
 The Water (Prevention and Control of Pollution) Act 1974;  
 The Water (Prevention and Control of Pollution) Act 1977;  
 The Wild Life (Protection) Act, 1972;  
 The Public Liability Insurance Act, 1991;  
 The National Environmental Tribunal Act, 1995;  
 The National Environmental Appellate Authority Act, 1997;  
 The Mines and Minerals (Regulation and Development) Act, 1957;  
 The Indian Forest Act of 1927;  
 The Forest (Conservation) Act of 1980;  
 The Atomic Energy Act of 1948,  
 The National Green Tribunal Act-2010 etc., to name a few with explanations:

1986 - The Environment (Protection) Act authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.

The objective of Hazardous Waste (Management and Handling) Rules 1989 is to control the generation, collection, treatment, import, storage and handling of hazardous waste.

- The Public Liability Insurance Act and Rules and Amendment, 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substances.
- The Municipal Solid Wastes (Management and Handling) Rules, 2000, apply to every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.
- The Noise Pollution (Regulation and Control) (Amendment) Rules 2002 lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion.
- 1927 - The Indian Forest Act and Amendment, 1984, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty lovable on timber and other forest produce.
- 1948 – The Factories Act and Amendment in 1987 was the first to express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes.

### Impact of PIL to safeguard the environment

A writ petition can be filed to the Supreme Court under Art.32 and the High Court under Art.226, in the case of a violation of a fundamental right. Since the right to a whole some environment has been recognized as implied fundamental rights, the writ petitions are often restored to in environment cases. Generally, the writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus (a writ to command action by a public authority when an authority id vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains, clean street and clear garbage (Rampal Vs. State of Rajasthan) likewise, a state pollution control board may be compelled to take action against an industry discharging pollutants beyond the permissible level. When a fundamental right, which

includes right to wholesome environment is violated Art.32 and Art.226 provide appropriate remedy.

Public interest litigation describes legal actions brought to protect or enforce rights enjoyed by members of the public or large parts fit. In a public interest case, the subject matter of litigation is typically a grievances against the violation of basic human rights of the poor and helpless or about or about the content or conduct of government policy this litigation is not strictly adversarial (in a adversarial procedure, each party produces his own evidence tested by cross-examination by other side) and in it a judge play a large role in organizing and shaping the litigation and in supervising the implementation of relief.

Since the 1980s Public Interest Litigation (PIL) has altered both the litigation landscape and the role of the higher judiciary in India. Supreme Court and High Court judges were asked to deal with public grievances over flagrant human rights violations by the state or to vindicate the public policies embodied in statutes or constitutional provisions. This new type of judicial business is collectively called public interest litigation.

### LANDMARK CASE LAWS:

#### OLEUM GAS LEAK CASE:

This is a landmark judgment in which the principle of Absolute Liability was laid down. The fertilizer plant was situated very close to human habitation and the court held that the carrying on of a hazardous industry in such proximity to population could not be permitted and the factory was relocated. The deep pocket principle was also laid down in the instant case. This judgment also ushered in a period of dramatic legislative progress in India. The Parliament added an entirely new chapter to the 1948 Factory Act, incorporating sections almost verbatim from the Judgment. The Public Liability Insurance Act was passed and the policy for the abatement of Pollution Control was established. Moreover, the Environment Protection Act was passed and the Policy for the Abatement of Pollution Control was established.

#### THE BHOPAL GAS LEAK CASE

The Bhopal disaster raised complex legal questions about the liability of parent companies for the acts of their subsidiaries, the responsibilities of multinational corporations engaged in hazardous activities, the transfer of hazardous technologies and the applicable

principles of liability. Bhopal was inspirational factor for the judicial innovation in the area of evolving principles of corporate liability for use of hazardous technology.

On December 3, 1984, highly toxic methyl isocyanides (MIC), which had been manufactured and stored in Union Carbide's chemical plant in Bhopal, escaped into the atmosphere and killed over 3,500 people and seriously injured about 2 lakh people.

The Bhopal gas leak disaster (Processing of Claims) Act, 1985 was passed by parliament to ensure that the claims arising out of the Bhopal disaster were dealt with speedily, effectively, equitably and to the best advantage of the claimants.

### **HIGH COURT JUDGMENT:**

Justice Seth used English Rules of procedure to create an entitlement to interim compensation (i.e. it is permissible for courts to grant relief of interim payment under the substantive law of torts). Under the English rules, interim relief granted in personal injury cases if a prima facie case is made out. He said that "more than prima facie case have been made out" against the Carbide.

He observed that the principle of absolute liability without exceptions laid down in M.C. Mehta case applied more vigorously to the Bhopal suit. He holds that Carbide is financially a viable corporation with \$ 6.5 billion unencumbered asset and \$200 millions encumbered assets plus an insurance which could cover up to \$250 millions worth of damages. Given carbide's resources, it is eminently just that it meet a part of its liability by interim compensation (Rs.250cr.)

### **THE GANGA WATER POLLUTION CASE:**

M C Mehta V. Union of India, AIR 1988 SC 1037

Three landmark judgments and a number of Orders against polluting industries numbering more than fifty thousand in the Ganga basin passed from time to time. A substantial success has been achieved by way of creating awareness and controlling pollution in the river Ganges. In this case, apart from industries, more than 250 towns and cities have been ordered to put sewage treatment plants.

Six hundred tanneries operating in highly congested residential area of Kolkata have been shifted out of the City and relocated in a planned Leather Complex in the

State of West Bengal. A large number of industries were closed down by the Court and were allowed to reopen only after these industries set up effluent treatment plants and controlled pollution. As a result of these directions millions of people have been saved from the effects of air and water pollution in Ganga basin covering 8 states in India.

**IN TAJMAHAL'S CASE-M C Mehta V. Union of India, AIR 1997, SC 734)**

Taj Mahal, one of the wonders of the world and the pride of India was facing serious threat from pollution caused by Mathura Refinery, iron foundries, glass and other chemical industries. As a result of very high toxic emissions from these industries, the Taj Mahal and 255 other historic monuments within the Taj trapezium were facing serious threat because of acid rain.

The Petition was filed in the year 1984. The Supreme Court of India delivered a historic Judgment in December 1996. The apex Court gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).

The Supreme Court treated the letter as writ petition under Art. 32 of the Indian Constitution and directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. The respondents contended / argued that the write petition was registered in 1983 and the Environment (Protection) Act was passed in 1986 and hence the criminal proceedings cannot be initiated with retrospective effect. The court rejected the contention of the respondents and held that the provisions of procedural law shall apply to ordinary criminal cases and not to the environmental cases. The court directed the Central and State Governments to take necessary steps to prevent illegal mining and to re-afforestation in the area of mining.

In **L.K Kollwal Vs State of Rajasthan**, a simple writ petition by citizens of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observes that when every citizen owes a constitutional duty to protect the environment (Art.51A), the citizen must be also entitled to enlist the court's aid in enforcing that duty against recalcitrant State agencies. The Court gave the administration six month to clean up the entire city, and dismissed the plea of lack of funds and staff.

The Public Trust Doctrine, evolved in **M.C. Mehta v. Kamal Nath**, states that certain common properties such as rivers, forests, seashores and the air were held by



Government in Trusteeship for the free and unimpeded use of the general public. Granting lease to a motel located at the bank of the River Beas would interfere with the natural flow of the water and that the State Government had breached the public trust doctrine.

*In Maneka Gandhi Vs Union of India, the Supreme Court while elucidating on the importance of the 'right to life' under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity (Bhagwati J.)*

In Ramdas Shenoy Vs The Chief Officer, Town Municipal Council, Udipi a rate tax payer's right to challenge an illegal sanction to convert a building into a cinema was upheld by Supreme Court.

In Mahesh R Desai V. Union of India, a journalist complained to the Supreme Court that the national coastline was being sullied by unplanned development that violated a Central Government directive. The Supreme Court registered the letter as a petition, requested the court's legal aid committee to appoint a lawyer for the petition and issued notice to the Union Government and the government of the all States.

### Conclusions

The Indian judiciary plays a remarkable role in uplifting the goal of preservation through its various landmark decisions and the Acts and laws which provides a platform so as that one cannot exploit the nature and its gift for his or her greedy needs. Also there is vast participation of individual that can be seen through various movement such as chipko movement and various others. Others measures such as educational camps, and other movements such as swachta abhiyaan should be introduced more further-Environment is the gift of nature and we have to respect it. However, since the environment is a complex, variable and extensive system, protecting the environment is a hard and enduring task. It is impossible that all the existing pollution problems in the environmental can completely be resolved in the next decade. A wonderful and quality environment must be achieved by continuous planning,

governmental policies, efforts of the enterprises and public participation.

It is the responsibility of everyone to protect our environment. Let us fulfill our responsibilities in environmental protection, creating a quality ecological environment and sharing wonderful green living together.

### References

- 1) Dr. J. N. Pandey, The constitutional law of india, 47<sup>th</sup> Edision, 2010, Central Law Agency, Allahbad
- 2) Dr. Subhas Kashyap, Constitutional law of india, 2008, Universal Law Publishing Co. Delhi:
- 3) Vehicular Pollution in Delhi: Writ Petition (Civil) No.13029/1985 (M.C. Mehta Vs UOI &Ors.)
- 4) Pollution by Industries in Delhi: M.C.MehtaVs Union of India &Ors. Writ Petition (Civil) No.4677/1985,
- 5) Pollution in river Yamuna: Writ Petition (Civil) No.725/1994, News Item 'HT', dated 18.7.1994, A.Q.F.M. Yamuna Vs Central Pollution Control Board &Ors.
- 6) Pollution in Noida, Ghaziabad area: Writ Petition (Civil) No.914/1996, Sector 14 Residents' Welfare Association &Ors. Vs State of Delhi &Ors.
- 7) Noise pollution by firecrackers: Writ Petition (Civil) No.72/1998 (Noise Pollution–Implementation of the laws for restricting use of loudspeakers and high volume producing sound systems) Vs UOI &Ors.
- 8) Import of Hazardous waste: Writ Petition (Civil) No. 657/1995 (Research Foundation for Science, Technology and Natural Resource Policy Vs UOI &Ors.)
- 9) Writ Petition (Civil) No. 26/98
- 10) www.Hindhusthantimes.com
- 11) www.Lawmic.nic.com
- 12) www.timesofindia.indiatimes.com