CHAPTER VII

A QUEST FOR ENVIROJUSTICE AND JUDICIAL ACTIVISM

7.1 Introduction

India, like most developing countries, is faced with the daunting challenge of developing itself rapidly, while at the same time preserving and protecting its environment. Major environmental problems have resulted in India from the use (and more often the misuse) of its natural resource base. Legislative and regulatory responses to environmental problems have been adopted in India—especially in the wake of the Bhopal tragedy which is clearly the world's worst industrial disaster. But the judicial approaches to environmental problems which have also followed, have been especially interesting in India for a variety of reasons, which are relevant to the challenges facing courts today, in developing and developed countries alike.\textsuperscript{474}

Since 1972, India has carefully crafted an extensive body of environmental jurisprudence. Through the work of legislature, along with the judiciary, the importance of environmental protection is being considered in all aspects of the law.\textsuperscript{475} The judiciary in particular has been extremely active in developing this ideal. By declaring a fundamental right to a healthy environment\textsuperscript{476} and liberalizing \textit{locus standi}\textsuperscript{477} requirements, the judiciary has become active and influential in this developing country.

The increasing intervention of Court in environmental governance, however, is being seen as a part of the pro-active role of the Supreme Court in the form of continual creation of successive strategies to uphold rule of law, enforce fundamental rights of the citizens and constitutional propriety aimed at the protection and improvement of environment. Unlike other litigations, the frequency and different types of orders/directions passed periodically by the Supreme Court in environmental litigation and its continuous engagement with

\textsuperscript{474} Dias, Ayesha. Judicial Activism in Development and Enforcement of environmental Law: Some Comparative Insights from The Indian Experience. (6 J. Envtl. L. 1994, p 243
\textsuperscript{475} See, Divan Shyam and Rosencranz Armin, Environmental Law and Policy in India, ed. 2\textsuperscript{nd} 2001
\textsuperscript{476} See, the forty second amendment to the Indian Constitution in 1978.
\textsuperscript{477} It refers to right to bring an action or to be heard in a given forum” Black’s Law Dictionary ed. 7\textsuperscript{th}, 2000,p763
environmental issues has evolved a series of innovative methods in environmental jurisprudence. A number of distinctive innovative methods are identifiable, each of which is novel and in some cases contrary to the traditional legalistic understanding of the judicial function. These innovative methods, for instance, include entertaining petitions on behalf of the affected party and inanimate objects, taking *suo motu* action against the polluter, expanding the sphere of litigation, expanding the meaning of existing Constitutional provisions, applying international environmental principles to domestic environmental problems, appointing expert committee to give inputs and monitoring implementation of judicial decisions, making spot visit to assess the environmental problem at the ground level, appointing *amicus curiae* to speak on behalf of the environment, and encouraging petitioners and lawyers to draw the attention of Court about environmental problems through cash award. It is important to note that these judicial innovations have become part of the larger Indian jurisprudence ever since the Court has started intervening in the affairs of executive in the post-emergency period. The innovative methods initiated in resolving environmental litigation, however, have been almost entirely dominating the environmental jurisprudence process for more than the last twenty years.

The present chapter critically analyzes the role of Indian judiciary in attaining envirojustice in India. For this the judiciary has employed various methods like expansion of *locus standi* and encouraging public interest litigation, implementing the principles of sustainable development, widening the scope of constitutional provisions through dynamic interpretation of them. The provisions of independence of judiciary and power of judicial review of the judiciary have empowered the Indian judiciary to play active role in achieving

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480 See Gobind Das, ‘The Supreme Court: An Overview’, in B.N. Kripal et al. (eds), *Supreme But NotInfallible* (New Delhi: Oxford University Press, 2001). The author argues that the Indian Supreme Court had always been uncomfortable with former Prime Minister of India, Mrs. Indira Gandhi’s regime; during the late sixties her economic and political policies were struck down in the Bank Nationalisation and Prvay Purse cases; in the early seventies the Court was locked in the Kesavananda battle and again in her election cases; when the Court supported her emergency in the Shukla case and Detenu case it was executed by public opinion; and during the Janata rule the Court was confirming legal attempts for her political extinction in the Special Courts Bill and Assembly Dissolution cases. Whenever the Court opposed her policies it had to pay the penalty in the form of suppressions of judges and constitutional amendments. In the post-emergency period (1975-77), the Court decided not to interfere with the major political and economic decisions of government and opened up new fields of interest and different areas of judicial activities; it chose the poor, the helpless, the oppressed in the name of social justice, constitutional conscience, and the rule of law.
481 See, Sahu, Geetanjoy, Implications of Indian Supreme Court’s Innovations for Environmental Jurisprudence, at http://www.ecoinsee.org/fbconf/sub%20G/geetanjoy.pdf
enviro justice in India. The implementation of environmental law in India reveals the craft and creativity of Indian judiciary.

7.2 Environmental Jurisprudence and Judicial Activism in India

In the past thirty years, the government of India has developed a comprehensive structure of policies for environmental protection and assessment of environmental impacts. Moreover, India has incorporated constitutional guarantees for the protection of the environment. Most significantly, the environmentally sympathetic stance of India’s judiciary has created innovative procedural remedies even where they are not provided for under existing legislation. In its interpretation of cases, India’s judiciary has expanded the role of the courts, in its commitment to rectify perceived problems within other branches of the government. This expanded role of courts has earned the name of Judicial Activism in India.

7.2.1 Judicial Activism-Meaning

The term judicial activism has been used in a wide range of circumstances. Activism denotes the circumstances where a body or authority engages in purposeful and determined activity to achieve desired objects. In this process that body or authority takes the side of a policy or objectives. Analysed from this angle, judicial activism means the process of judiciary taking side of some controversial issue. But the judiciary is supposed to be an independent, impartial arbitrator, which essentially involves remaining unbiased while giving decision. Thus it is possible that this view gives rise to the notion that judicial activism is some new phenomenon that has swept through the judiciary possibly attributable to the kind of judges that sit on benches.

According to Merriam-Webster’s Dictionary of Law, Judicial activism is the practice in the judiciary of protecting or expanding individual rights through the decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent.

\footnote{See, Du Bois, Francois., Social Justice and the Judicial Enforcement of Environmental Rights and Duties, in Human Rights Approaches to Environmental Protection 153
According to Black’s Law Dictionary judicial activism is "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent”

Justice V.G. Palishkar defines judicial activism, as the process of law making by judges. It means an active interpretation of existing legislation by a judge, made with a view to enhance the utility of that legislation for social betterment. Another view taken is that there cannot be and there is no judicial activism per se. The judiciary has always remained active and in no instance it can afford to remain passive. Judicial activism is inherent in judicial review itself. It is not an aberration but is a normal phenomenon and judicial review is bound to mature into judicial review. It is not possible for the Supreme Court to have activist suddenly over two decades, it has taken the court much longer to change its self-perception before it could change the equation with the other organs of the Government.

The usage of term "judicial activism" has become commonplace in evaluations of the Court's functioning, and the Court has acquired the reputation of being "one of the world's most powerful judicial bodies" whose judges "play an unprecedented governing role."

“A Court giving a new meaning to a provision so as to suit the changing social or economic conditions or expanding the horizons of the rights of the individuals said to be an activist court. Judicial activism can be positive as well as negative. A court engaged in altering the power relations to make them more equitable is said to be positively activist and a court using its ingenuity to maintain the status quo is said to be negatively activist.” The Indian Supreme Court has evolved from the positivist court to an activist court over the last sixty years. This change has not taken place suddenly in last three decades. It has taken longer than that for the court to acquire its present position and it has had to go through many stresses and strains. The journey towards activism has been slow and imperceptible. This transformation in the role of court has synchronized with the political and socio economic

484 Vadodaria, R.R., Constitutional Crisis and Judicial Activism, Indian Bar review, volume 27(1): 2000, p 69
485 Sathe. S.P.; Judicial Activism in India, Ed. 2nd, 2003, Oxford University Press p.6
487 Supra 485, p.5
change that came about in India during last sixty years. The increased role of the court was legitimized by the increasing new political and socio economic challenges in India.

During 1950s and early 60s, the court seemed to share the Nehruvian vision of socialist India as evident in its decision on the rights of Industrial labour and regulation and control of economy. During this period the court tried to fill in the interstices left by the text of the Constitution. The main role of the Supreme Court was of a technocrat responding to legal queries. Again the concentration was on the issue of parliament’s power to amend the constitution. The conflict between the parliament for amending the constitution and the supreme court as guardian of constitution was clearly seen in a series of judgments delivered by the court in 1950s, 60s and 70s. From the very beginning the Supreme Court has tried to follow the principles of socio economic justice enshrined in the Indian Constitution. Balancing the constitutional goal of welfare justice socio-economic justice, the Indian judiciary has adapted itself to the changing needs of the developing nation. The socio-economic factors and the problems of developing democracy compelled the judiciary to come forward and bridge the gap between the law as it is and law as it ought to be.

The Judicial activism in the field of environmental law started its journey in 1990s. The Bhopal Gas Disaster took place in 1986 and a need was felt to act vigorously for environmental problems. It does not mean that the legislature was not concerned about the environmental issues before Bhopal tragedy. Taking note of the United Nations conference on Human Environment (Stockholm), 1972 and the growing awareness for the environmental protection and eco-imbalance the Indian Parliament has passed a historic Constitutional amendment in 1976. This 42nd Amendment Act incorporated two significant Articles i.e. Article 48-A and Article 51-A (G) to protect and improve the Environment. But the judicial vigil for environment protection got momentum in 1980s and 1990s with the expansion of locus standi and wide interpretation of Article 21 by the Court. The constitutional scheme of Independence of judiciary and the Supreme Court’s power of judicial review of legislative or administrative action expanded the scope of judicial activism in India.
There are three sources of judicial activism. The primary sources of judicial activism lies in the principle rule of law. The second source is judicial review which is the charter for judicial activism. The other recent source is article 142 of the constitution from which began the era of PIL. It is interesting to note that the Supreme Court has observed that no statute can limit the powers of the Supreme Court to give directions if it feels they are required to ensure ‘Complete Justice” in any matter. The only thing that the court should be cautious of is that it does not trample upon some other provision of the constitution while exercising this power under Article 142(1). Thus, the words to do complete justice have been used as a justification as well as a source of judicial activism.

7.2.2 Basis of Judicial Activism

The edifice of the Indian democracy is built on the three main pillars –Legislature, Executive and Judiciary. These three institutions are independent and equal and one cannot encroach or interfere with the functions of others. The Constitution of India has adopted the doctrine of separation of power but it is doubtful whether our constitution has succeeded in defining with clarity the functional limitations of each of the organs. It is not the weakness of the Indian constitution but it is a merit that certain matters are left to be evolved through experiences and emerging issues from time to time. Flexibility has been given to each organ of the democracy to adapt itself to the changing need of the society. No organ is above the other but there are situations when one organ may assume controlling or corrective role in relation to another organ. This flexibility has given rise to the judicial activism in India. It does not mean that the legislature is subordinate to the judiciary but two feature of Indian constitution had allowed Judiciary to play a vital role in Indian democracy. The first is the division and distribution of powers between the Parliament and the state legislatures in Schedule VII, and the second is the provision of Article 13 making legislative powers subject to fundamental rights in Part III of the Indian Constitution. Armed with such powers

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488 In Delhi Judicial Service Association v. State of Gujarat (1991) 4 SCC 406, the Supreme Court observed “this court’s power under Article 142(1) to ‘Complete Justice’ is entirely of different level and of a different quality. Any prohibition on restriction contained in ordinary laws cannot act as limitation on the constitutional power of this court. This constitutional power of the apex court cannot be limited or restricted by provision contained in statutory law”.

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of judicial review by the provisions of the constitution the Indian judiciary has played pivotal role in protecting the constitutionalism\textsuperscript{489} in India.

7.2.2.1 Independence of Judiciary in India

It is rightly said, “All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.”\textsuperscript{490}

It is universally acknowledged that the Constitution of modern democracy governed by the rule of law must guarantee judicial independence. Alexander Hamilton pointed out in Federalist No. 78 that the judicial independence is needed to prevent any outside influence from dictating the ruling of judges and also that this independence is equally requisite to guard the constitution and rights of individuals.\textsuperscript{491}

The Constitution of India has made several provisions to ensure independence of judiciary in India. The Judiciary should perform its functions freely without any kind of political pressure. The Judges of the Supreme Court have security of tenure. They cannot be removed from office except by an order of the President of India and that also only on the ground of proved misbehaviour or incapacity, supported by a resolution adopted by a majority of total membership of each house of parliament and also by a majority of not less than 2/3 of the members of the house present and voting.

The Constitution has also made provision that the salary of judges are charged on the consolidated fund of India and it is not subject to the vote or opinion of legislature.

In matter of jurisdiction the Parliament may change pecuniary limits for appeals to the Supreme Court in civil cases, enhance the appellate jurisdiction of the Supreme Court, confer supplementary power to enable it to work more effectively, confer power to issue directions, orders or writs including all the prerogative writs for any purpose other than

\textsuperscript{489} Constitutionalism connotes in essence limited government or a limitation on government. Constitutionalism is the antithesis of arbitrary powers. Constitutionalism recognizes the need for government with powers but at the same time insist that limitations be placed on those powers. See, Mcilwain, Charles H., Constitutionalism: Ancient and Modern, 23; De Smith, S.A., Constitutional and Administrative Law, 34 (1977)

\textsuperscript{490} Andrew Jackson 7\textsuperscript{th} president of United States 1829-1837

\textsuperscript{491} See, Rao, D.S.Prakash & Sujata, J.K.L.: Independence of Judiciary and Judicial review Sine-quo-non for Supremacy of Indian Constitution, Judiciary in India Constitutional perspectives 1\textsuperscript{st}Ed. Asia Law Book House
those mentioned in Article 32. The point to be noted in all provisions is that the Parliament can exceed, nut cannot curtail the jurisdiction of the Supreme Court.492

Neither in parliament nor in State Legislature a discussion can take place with respect to the conduct of judges of the Supreme Court in discharge of his duties.493

The Supreme Court and the High Courts have the power to punish any person for its contempt.494 This power is very much essential for maintaining the impartiality and independence of judiciary.

It is stated to the State, under the directive principles of State Policy Art. 50, to take steps to separate the judiciary from the executive in the public services of the State. It emphasises the need of securing the judiciary from the interference by the executive. The Constitution does not leave the appointment of the judges of the Supreme Court to the unguided discretion of the executive. The Executive is required to consult Judges of the Supreme Court and High Courts in the appointments of the Judges of the Supreme Court and High Courts.495 The independence of the Supreme Court is emphasised by article 229 which provides that appointment of officers and servants shall be made by the Chief Justice or such other judge or officer as he may appoint. Article 124(7) prohibits a retired judge of the Supreme Court to appear and plead in any court or before any authority within the territory of India496.

The provisions of independence of judiciary have played important role in giving ample scope to Indian judicial System to develop jurisprudence and to protect the socio-economic rights of people, to protect environment and to implement the international conventions and treaties into Indian society. In C. Ravi Chandran Iyear v. Justice A.M.Bhattacharjee497 the importance of independence of judiciary has been nicely explained. The Court said that in a democracy governed by rule of law under written constitution, Judiciary is the protector of the fundamental rights and pose even scales of justice between the citizens and the states inter se. Rule of law and judicial review are basic features of the constitution. As its integral Constitutional Structure, independence of judiciary is an essential attribute of rule law.

492 Art. 138
493 Art. 121
494 Art. 129-215
495 Art. 124(2)
497 1995 5SCC 457
Judicial review is one of the most potent weapons in the armoury of law. It is therefore, absolute by essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the constitution. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is wider concept which takes within its sweep independence from any other prejudices. It has many dimensions, viz. Fearlessness of other centres, economic or political and freedom from prejudices required and nourished by the class to which the Judge belongs.

7.2.2.2 Judicial Review

The power of judicial review of independent judiciary in India has really enabled it to promote constitutionalism under the Indian Constitution.

“Judicial review means overseeing by the judiciary of the exercise of power by other co-ordinate organs of government with a view to ensuring that they remain confined to the limits drawn upon their powers by the Constitution”

The Indian Constitution adopted the Judicial Review on lines of US Constitution. Parliament is not supreme under the Constitution of India. Its powers are limited in a manner that the power is divided between centre and states. Moreover the Supreme Court enjoys a position which entrusts it with the power of reviewing legislative enactments both of Parliament and the State legislatures. This grants the court a powerful instrument of judicial review under the constitution.

Both the political theory and text of the Constitution have granted the judiciary the power of judicial review of legislation. In India neither Judiciary nor Parliament are supreme but there is supremacy of rule of law. Even judges are accountable for their work in India. A procedure for removal of judges of the high court and Supreme Court by way of address of the Houses of Parliament to the President is contained in Constitution, art. 124(4) read with proviso (b) to art. 124(2) and proviso (b) to art. 217(1), for proved misbehavior or incapacity. The power of judicial review has been granted for the maintenance of the
supremacy of the constitutional law of the land. The constitutional provisions which guarantee judicial review of legislations are articles 13, 32, 131-136, 143, 145, 226, 246, 251, 254 and 372.

Article 13 establishes that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void.

Article 372 establishes the judicial review of the pre-constitution legislation.

Article 32 and 226 entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts.

Article 246 (3) ensures the state legislature’s exclusive powers on matters pertaining to the State list.

Article 245 states that the powers of both Parliament and State legislatures are subject to the provisions of the constitution. The legitimacy of any legislation can be challenged in the court of law on the ground that the legislature is not competent enough to pass a law on that particular subject matter the law is repugnant to the provisions of the constitution or the law infringes one of the fundamental rights. Article 131-136 entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state between the states and the union but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.

So the Judicial Review has to prime functions: (1) legitimizing Governmental action; (2) to protect the constitution against any undue encroachment by the Government. These two functions are interrelated.499

In a number of cases the Supreme Court has emphasised upon the judicial review in India. In Gopalan case the Court observed, “in India it is the Constitution that is supreme and that a statute law to be valid must in all cases be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not and if a

legislature transgresses any constitutional limits, the court has to declare the law unconstitutional for the court is bound by its oath to uphold the Constitution.”

In Kesavananda Bharti, Khanna, J. emphasised, “As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by these rights are not contravened …...Judicial review has thus becomes an integral part of our Constitutional system.”

The Supremacy of the Constitution and judicial review has been expounded by Bhagwati, J., as follows in Rajasthan v. Union of India:

“It is necessary to assert in the clearest terms particularly in the context of recent history, that the Constitution is supreme lex, the permanent law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the constitution or whether its action is within the confines of such power laid down by the constitution. This court is the ultimate interpreter of the constitution and to this court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits”.

Justifying the power of judicial review of the court, Ramaswamy, J., stated in S. S. Bola v. B.D. Sharma:

“The founding fathers very wisely, therefore, incorporated in the Constitution itself the provisions of judicial review so as to maintain the balance of federalism, to protect the fundamental rights and fundamental freedoms guaranteed to the citizens and to afford a useful weapon for availability, availment and enjoyment of equality, liberty and fundamental freedoms and to help to create a healthy nationalism. The function of judicial review is a

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500 A.K.Gopalan v. Madras, AIR 1950 SC 27
501 Kesavananda Bharati v. Union of India, AIR 1973 SC 1461
502 AIR 1977 SC 1361
503 Ibid
504 AIR 1997 SC 3127

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part of the constitutional interpretation itself. It adjusts the constitution to meet new conditions and needs of the time.”

In *Minerva Mills*, Chandrachud, C.J., speaking on behalf of the majority, observed:

“It is the function of the Judges, may their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled constitution will then become uncontrolled.”

In the minority judgment in *Minerva case*, Bhagwati, J., observed:

It is for the Judiciary to uphold the constitutional values and to enforce the constitutional limitation. That is the essence of the rule of law, which inter alia requires that the exercise of powers by the government whether it be the legislature or the executive or any other authority, be conditioned by the Constitution and the law. The power of judicial review is an integral part of our constitutional system …..the power of judicial review….is unquestionably…..part of the basic structure of the Constitution.”

The Supreme Court has thus ensured that judicial review is an inseparable part of the Constitution.

There are two models of judicial review: one is technocratic model in which judges act as merely as technocrats and hold law invalid if ultra vires the powers of the legislature. In second model, a court interprets the provisions of a constitution liberally and in the light of the spirit underlying it keeps the constitution abreast of the time through dynamic interpretation. A court giving new meaning to a provision so as to suit the changing social or economic conditions or expanding the horizons of the rights of the individual is said to be an activist court. Judicial activism can be positive as well as negative. ..Activism is related to change in power relations. A judicial interpretation that furthers the rights of the disadvantaged sections or imposes curbs on absolute power of the State or facilitates access to justice is positive activism. Judicial activism is inherent in judicial review. Judicial activism is not an aberration but is a normal phenomenon and judicial review is bound to

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505 *Minerva Mills Ltd. v. Union of India* AIR 1980 SC 1789
506 *Ibid*
mature into judicial activism. In environmental jurisprudence in India, the Indian judiciary’s positive activism is clearly seen from the number of judgments delivered by the Supreme Court and various high courts of the states.

The role of Indian judiciary needs special reference in developing environmental jurisprudence in India. The Supreme Court of India has emerged as the protector of the one of the basic fundamental rights of people i.e. right to clean environment. In number of cases the Supreme Court has tried to implement the concept of environmental protection as envisaged in international conventions. Being the apex court of the country it has insisted on implementation of principles of sustainable development, Ramsar convention etc. The role of the Supreme Court is remarkable for its judicial rhetoric on environmental ethos. Degradation of living conditions has prompted Indian society to seek remedy through civil action. A healthy environment is a constitutional right of the Indian citizen under the Right to Life, and the protection of the environment is a fundamental duty of every citizen in India. These provisions have been used especially by the Supreme Court in dealing with environmental cases, and considering environmental, ecological, air, water pollution, as amounting to violation of Article 21. This interpretation of the fundamental right to life entitles citizens to invoke the writ jurisdiction of the Supreme Court and high courts. The involvement and initiatives for environment protection by the community through the medium of public interest litigation opens the door for Indian judiciary to play an outstanding role in developing environmental jurisprudence in India. For this credit goes to the constitutional scheme of independence of judiciary from the other two organs of the government and the provision for judicial review which expand the scope of the judicial intervention in the matters related to environmental protection in India. The expansion of the locus standi has given momentum to judicial activism in development of environmental jurisprudence in India. The expansion of locus standi and entertaining public interest litigation has given ample scope to the judiciary to play a pivotal role in advancing the protection of civil liberties, the rights of workers, gender justice, accountability of public institutions, environmental conservation and the guarantee of socio-economic entitlements such as housing, health and education among others. Thus the advent of public interest

507 Supra 485, pp 5,6
508 Article 21
509 Article 51A
litigation (PIL) is one of the key components of the approach of ‘judicial activism’ that is attributed to the higher judiciary in India. The public interest litigation has been used as an effective tool the judiciary for protecting the environment in India.

7.3 PIL: An Effective Judicial Tool for the Development of Environmental Jurisprudence in India

PIL has helped the growth of environmental jurisprudence in a tremendous fashion India.

7.3.1 Public Interest Litigation-Meaning

The phrase ‘public law litigation’ was first prominently used by American academic Abram Chayes to describe the practice of lawyers or public spirited individuals who seek to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws and articulate public norms.510

It is a litigation in which a person though not aggrieved personally, brings an action on behalf of the down trodden masses for the redressal of their grievances. This type of litigation is undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective and diffused rights, interest or vindicating public interest.511

Public Interest Litigation (PIL) has come to be associated with its own ‘people-friendly’ procedure. The foremost change came in the form of the dilution of the requirement of ‘locus standi’ for initiating proceedings. Since the intent was to ensure redressal to those who were otherwise too poor to move the courts or were unaware of their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers.512

Advocate Mr. Kethmalani held in Janata Dal v.H.L. Chowdhary513 that true Public Interest Litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury approaches the Court either for enforcement of fundamentals rights of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporating the directive principles of state policy for annulling

511 Hurra, Sonia: Public Interest Litigation 1993 at p 4
513 AIR 1993, SC 892 AT P 919
executing acts and omissions violative of Constitution or law resulting in substantial injury to public interest..."\textsuperscript{514}

Thus Public Interest Litigation in simple words, means, litigation filed in court or law for the protection of public interest, such as pollution, terrorism, road safety, constructional hazards etc.

In India legal system is not equally accessible to all. The procedure is complex, The high priced lawyers, fleecing stamp fee, passive judiciary, traditional rules of locus standi, uncertainly generated because of the contradictory opinions of different High Courts and frequent reversal of prior holdings, the terrible delays in hearing of the cases even where life and personal liberty are at stake, the awesome court setting—frighten away the poor men, who are incapable of protecting them through law courts—because of economical, geographical, psychological and language barriers. It is not only disadvantaged and poor who often feel helpless in society, but there are millions of citizens facing governmental and institutional wrongful conduct. Citizens often feel frustrated due to gross violation of human rights. A similar problem occurs, when public institutions such as prisons, school systems and welfare systems directly infringe on the rights of citizens. In such situations affected people are not able to raise their voice against it.

In fact, it is due to lack of legislative thinking and executive inaction, coupled with exploitation of masses by the few opportune, that made a section of the judiciary come down and come out, almost in a revolt to extend its help to at least some of the needy-poverty stricken people. The judiciary had discarded its traditional cloak and helps the suffering masses through the strategy of PIL. Through PIL, judiciary has given relief to the under trial prisoners, to the amelioration of conditions of women in Protective Homes to prohibit trafficking in women, to the release and rehabilitation of bonded labor for the protection of environment and consumers, for accident cases etc., Thus, Public Interest Litigation has proved a boon for the common men and that’s why it is called “Social Action Litigation”.

\textsuperscript{514} Ibid
7.3.2 Reasons for the Growth of PIL in Environmental Issues

Public Interest Litigation in India was initiated by a few of the Judges of the Supreme Court as a method to redress public grievances.

In his definitive work on access jurisprudence, Mauro Capplletti has articulated the important transformation the concept of access has been undergoing. In laissez faire society, “Access to justice” signified only the “formal right of an individual to litigate or defend the claim.” There was no concept of the need for affirmative state action to protect and create an environment conducive to the realization of justice. The focus today has shifted from a singularly neutral perspective of state action to the present dynamic activist concept of affirmative state action. This has been accompanied by a corresponding shift toward relieving “legal poverty”, which is the incapacity of many persons and segments of society to have their legal rights vindicated in the justice system.

One of the greatest hurdles preventing the underprivileged classes from obtaining vindication before the courts has been their ignorance of their own legal rights. An equally formidable hurdle was the inability of these underprivileged groups to approach the courts due to the high expenses involved. The courts in India, duly supported by the initiative taken by public spirited lawyers, have started forging new juristic techniques for the purpose of overcoming these hurdles. The first revolution was to do away with the outdated rules of locus standi.

There has been recognition that the restrictive straitjacket of traditional rules of locus standi prevents the underprivileged and genuinely aggrieved persons from approaching the courts. There is growing sentiment in favour of modifying the rules of locus standi and injecting them with dynamism to allow genuine demands to reach the courts.

There has been a movement to simplify cumbersome legal procedures to bring justice to the doorstep of the ‘small man’. In India, in addition to substantial modification of locus standi, the traditional restrictive procedural laws have themselves been substantially changed. We have instances of judges reading a newspaper report of an injustice to an underprivileged

515 See, Capplletti Mauro and Garth, B. (eds.), Access to Justice, Volume VII (1979)
citizen or group of citizens, and taking immediate action by treating it as a formal Petition to the Court. There have also been several cases of judges who have received letters from aggrieved individuals and treated them as substantive writ petitions so that justice can be done. The Supreme Court observed that “the court is moved …by a member of the public by addressing a letter drawing the attention of the court to such legal injury or wrong. The court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the original side and take action upon it.

It was against this backdrop that the access to justice movement came to the forefront in environmental issues. The Supreme Court, which has original jurisdiction of judicial review, stepped in and with a single stroke did away with the outdated principles and procedures governing the dispensation of justice.

7.3.3 The Scope of Public Interest Litigation: Judicial Interpretation

The scope of public interest litigation has been discussed and explained in many judgments by the judiciary.

In Bombay Dyeing and Mfg. Co. Ltd. v Bombay Environmental Action Group and Ors., the Supreme Court explaining the scope of the Public Interest Litigation held:

While entertaining a public interest litigation of this nature several aspects of public interest being involved, the Court should find out as to how greater public interest should be subserved and for the said purpose a balance should be struck and harmony should be maintained between several interests such as (a) consideration of ecology; (b) interest of workers (c) interest of public sector institution, other financial institutions, priority claimed due to workers; (d) advancement of public interest in general and not only a particular aspect of public interest; (e) interest and rights of owners; (f) the interest of a sick and closed industry; and (g) schemes framed by BIFR for revival of the company.

The courts in doing so would have to take into consideration a large number of factors, some of which may be found to be competing with each other. It may not be proper to give undue

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518 In PUDR v. Union of India, AIR 1982 SC 1473, 1483
519 Supra 516 pp 195,196
520 AIR2006SC1489
importance to one at the cost of the other which may ultimately be found to be vital and give
effect to the intent and purport for which the legislation was made. Scope of Public Interest
Litigations in view of several decisions of this Court has its own limitations. We would
hereinafter notice a few of them.

In *Raunaq International Ltd. v. I.V.R. Constructions Ltd. and Ors.*\(^{521}\) the Court
highlighted that the public interest litigation should not be a mere cloak. The court must be
satisfied that there is some element of public interest involved in entertaining such a petition.
The court also cautioned that before entertaining a writ petition and passing an interim order
overwhelming public interest should be taken into consideration. Therefore, unless the court
is satisfied that there is a substantial amount of public interest, or the transaction is entered
into mala fide, the court should not intervene under Article 226 in disputes between two
rival tenderers.

In *Ashok Lanka v. Rishi Dixit*,\(^{522}\) this Court opined:

…it is well settled that even in a case where a petitioner might have moved the Court in his
private interest and for redressal of personal grievances, the Court in furtherance of the
public interest may treat it necessary to enquire into the state of affairs of the subject of
litigation in the interest of justice.

This was also the view taken in *Guruvayoor Devaswom Managing Committee v. C.K.
Rajan*\(^{523}\), *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi*\(^{524}\) and *Chairman &
MD, BPL Ltd. v. S.P. Gururaja and Ors.*\(^{525}\)

In *K.K. Bhalla v. State of M.P. and Ors*\(^{526}\) it was stated:

The Appellant has brought to the notice of the High Court that a malady has been prevailing
in the department of the State of Madhya Pradesh and the JDA. It may be true that the
Appellant did not file any application questioning similar allotments but it is well-settled if

\(^{521}\) AIR1999SC393  
\(^{522}\) AIR2005SC2821  
\(^{523}\) (2003)7SCC546  
\(^{524}\) [1987]1SCR458  
\(^{525}\) AIR 2003SC4536  
\(^{526}\) AIR2006SC898
an illegality is brought to the notice of the court, it can in certain situations exercise its power of judicial review suo motu....

The Court times without number, however, has laid down the law as regard limited scope of public interest litigation. It sounded note of caution for entertaining public interest litigation in service matters\textsuperscript{527} in questioning the validity or otherwise of a statute or when a statute is enacted in violation of the direction of a superior court\textsuperscript{528}. But, we cannot also shut our eyes to the fact that this Court has entertained a large number of public interest litigations for protection of environmental and/or ecology.\textsuperscript{529}

Public interest litigations, thus, have been entertained more frequently where a question of violation of the provisions of the statutes governing the environmental or ecology of the country has been brought to its notice in the matter of depletion of forest areas and or when the executive while exercising its administrative functions or making subordinate legislations has interfered with the ecological balance with impunity.

The Judiciary is aware of the misuse of Public Interest litigation, it was held in \textit{Shri Sachidanand Panedy v The State of West Benagal and Ors.},\textsuperscript{530} the Court observed:

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guide-lines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available

\textsuperscript{527} \textit{See, Dr. B. Singh v. Union of India and Ors.}, AIR2004SC1923
\textsuperscript{528} \textit{See Ashok Kumar Thakur v. State of Bihar and Ors.} AIR1996SC75
\textsuperscript{529} \textit{See M.C. Mehta group of cases and T.N. Godavarman Thirumulpad v. Union of India and Ors.}, AIR2005SC4256
\textsuperscript{530} AIR1987SC1109
provisions for remedying the hardships and miseries of the needy, the under-dog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restrain of public interest litigants.

In *Chhetriya Pardushan Mukti Sangarash Samiti v. State of U.P. and others*, the court made the observation:

Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enemity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.

In *R. & M. Trust v. Koramangala Residents Vigilance Group*, the Court laid down the law in the following terms:

...sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of the vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purposes of serving their private ends.

In *State of Maharashtra v. Digambar*, this Court held:

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531 AIR 1990 SC 2060
532 AIR 2005 SC 894
...where the High Court grants relief to a citizen or to any person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches, or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the state.

In *T.N. Godavarman Thirumulpad v. Union of India and Ors.* the Court clarified:

It has been repeatedly held by this Court that none has a right to approach the Court as a public interest litigant and that Court must be careful to see that member of the public, who approaches the Court in public interest, is acting bona fide and not for any personal gain or private profit or political motivation or other oblique considerations.

For the last few years, inflow of public interest litigation has increased manifold. A considerable judicial time is spent in dealing with such cases. A person acting bona fide alone can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bona fide public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing attention of this Court and High Courts in matters of utmost importance and in securing orders and directions for many under-privileged such as, pavement dwellers, bonded labour, prisoners' conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings, torture, long custody in prison without trial or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in the *Godavarman's* case. While the Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any

533 AIR1995SC1991
534 AIR2006SC1774
535 See *S.P. Gupta v. Union of India and Anr.* [1982]2SCR365
536 Supra 534

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interest or concern except for personal gain or private profit or other oblique consideration.\textsuperscript{537}

In a decision in \textit{Dattaraj Nathuji Thaware v. State of Maharashtra and Ors.}\textsuperscript{538} (Arijit Pasayat and S.H. Kapadia, JJ) taking note of earlier decisions, it was said that:

It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detunes expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

\textsuperscript{537} See \textit{Janata Dal v. H.S. Chowdhary and Ors.} 1993CriLJ600
\textsuperscript{538} AIR2005SC540
Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.\(^{539}\)

It was further said:

Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good.\(^ {540}\) No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions.\(^ {541}\)

Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

\(^{539}\) Ibid


\(^{541}\) See, Dr. B.K. Subbarao v. Mr. K. Parasaran 1996CrlJ3983
In *Gopi Aqua Farms and Ors. V. Union of India and Ors.*\(^{542}\) the ratio is as follows.

"Public notices are issued while delivering Judgment and not opposed by affected parties in PIL then it cannot be challenge by parties on ground of unawareness."

It clearly indicates that the court does not want to entertain PIL which are not genuine. It is true that the Court has made use of Public Interest Litigation as a tool for securing enviro-justice but at the same time the court has also taken precaution against misuse of PIL.

### 7.3.4 Judicial Craftsmanship in Providing Remedies for Environmental Harms through PIL

The judicial craftsmanship is clearly seen in the use of private law remedies for the public wrong in environmental cases.

In the *Ratlam Case*\(^ {543}\) establishes a good example how citizens petitions can stir indolent municipalities into action. In this case, the Supreme Court for the first time treated an environmental problem differently from an ordinary tort or public nuisance. The environmental pollution in Ratlam affected a large community of poor people and arose from a combination of diffuse causes: Private polluters, slack and under financed enforcement agencies, and haphazard town planning. In this case the court held that budgetary constraints did not absolve a municipality from performing its statutory obligation to provide sanitation facilities. The remarkable thing is, the supreme, court interpreted section 133 of Cr. Pc. to impose a mandatory duty on magistrate to remove public nuisance whenever exists.

The Indian judiciary has confronted with the problem of protecting private rights in mass tort cases. The private legal remedy may not always work where victims are in large group. In some cases the polluter is easily identifiable but the people living in the vicinity of the polluting industry and those who live around the industry and those who live progressively further away are not identifiable. They cannot successfully prove the causal link between the wrong done by the polluter and their suffering as a consequence to that pollution. The damage suffered by the victims is not uniform, but totality of damage can be large. The

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\(^{542}\) AIR 1997 SC3519  
\(^{543}\) Municipal Council Ratlam V Vardchand AIR 1980 SC 1622
victims of the pollution have various levels of power and incentives to litigate due to their differing income levels. Therefore, each victim may not file a lawsuit and a class action suit may fail to emerge. In such cases the public interest litigation can play important role. In such cases of gross human rights violations, where there is a lack of strong right protections, the sufferers should not be left without remedy. In this type of cases it would not be appropriate for a court to refuse to determine such issue because of the limitations of *locus standi*.

The judicial activism is craftsmanship is clearly seen in its new-fangled approach in providing tort remedies in public interest litigation. In *M.C.Mehta v. Union of India*\(^{544}\) the court entertained the public interest litigation where the damage was caused by an industry dealing with hazardous substance like oleum gas. The Supreme Court could have avoided a decision on their on the affected parties’ application by asking parties to approach subordinate court by filing suits for compensation. Instead, the Court proceeded to formulate the general principle of liability of industries engaged in hazardous and inherently dangerous activity. Not only this Chief Justice Bhagawati declared that the court has to evolve a new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy.\(^{545}\) The Court evolved the principle of absolute liability and did not accept the exceptions of the doctrine of strict liability for hazardous industries. The Court did not stop here; it proceeded a step further and held that the measure of compensation must be co-related to the magnitude and capacity of the enterprise. The Chief Justice Bhagawati said:

The large and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by enterprise.\(^{546}\) This is found necessary because of its deterrent effect on the behavior of the industry. The Indian Supreme Court was developing indigenous jurisprudence free from the influence of English law. Here the scope of the owner conferred on the Court under Article 32 was so widely interpreted as to include formulation of new remedies and new strategies for enforcing the right to life and

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\(^{544}\) AIR 1987 SC 1086
\(^{545}\) Ibid
\(^{546}\) Id. p 1089
awarding compensation in an appropriate case.\textsuperscript{547} The court gives clear message in the case that one who pollutes ought to pay just and legitimate dimes for the harm one causes the society. It opened a new path for later growth of the law and accepted the polluter to pay principle as part of environmental regime. The principle requires an industry to internalize environmental cost within the project cost and annual budget and warrants fixing absolute liability on harming industry. The judiciary woke up with a new awareness and laid down legal norms in clear terms. This was accomplice by invoking the technique of issuing directions under Art.32 of the constitution of India.

In \textit{Consumer Education and Research Center (CERC) v. Union of India}\textsuperscript{548} the court designed the remedies following Mehta dictum.\textsuperscript{549} The Court’s attitude shows certainty of the court that direction can be issued under Article 32 not only to the State but also to a company or a person acting in purported exercise of powers under a stature of license issued under a statute for compensation to be given for violation of fundamental rights.

In this case, the doctrine of absolute liability has not been referred but a different species of liability was formulated in respect of hazardous industries, like those producing asbestos. The compensation payable for contracting occupational diseases during employment extends not only to those workers who had visible symptoms of the diseases while in employment, but also to those who developed the symptoms after retirement.

In \textit{Indian Council for Enviro-Legal Action v. Union of India}\textsuperscript{550} the Supreme Court supported Mehta case and pointed out the rationale for fixing the absolute liability on the hazardous industry. In this case the polluter pays principle was applied. The Court directed the government to take all steps and to levy the costs on the respondents if they fail to carry out remedial actions.

Socio-economic transformation is a challenge to a developing country. As Chief Justice Bhagwati has rightly observed, law has to grow in order to satisfy the needs of fast changing society and keep abreast with the developments taking place in the country.\textsuperscript{551} It is

\textsuperscript{547} Id.1091
\textsuperscript{548} AIR 1995 SC 922
\textsuperscript{549} Not mentioned the case but followed
\textsuperscript{550} AIR 1996 SC 1466
\textsuperscript{551} Supra 544,546
absolutely true. The Indian judiciary has evolved the new doctrines of tortious liability through the effective tool of public interest litigation.

Some of the Public Interest Litigation cases involved flagrant human rights violations that rendered immensely inadequate traditional remedies, such as the issuance of prerogative writs by the Courts. Without any hesitation the Indian Judiciary has forged unorthodox remedies. Where the peculiarities of case prompted urgent action, the Court gave immediate and significant interim relief with a long deferral of final decision as to factual issues and legal liability. For instance, in a case involving the blinding of several prisoners by the police, the Court ordered to provide medical and rehabilitative services to the blind prisoners. The Court gave directions for such relief even before the culpability of the police officials was determined. The Court has also evolved the practice of appointing ombudsmen for the purpose of ensuring and monitoring the effective implementation of its far reaching orders. In People’s United for Democratic Rights v Union of India, the Court appointed an ombudsman, comprising three individuals, for the purpose of monitoring the implementation of labour laws by the contractors and the Delhi administration.

In cases of personal injuries and unlawful confinement the court has refused to limit the victim to the usual civil process. Petitions are allowed directly to the Supreme Court under Article32 and damages are awarded to compensate the victim and deter the wrongdoer. In cases of gross violations of fundamental rights, the damages are awarded by the court. It is a new approach. The court has not dealt with only violation of individual’s right but has taken serous note of the environmental harm along with violation of human rights. In such cases the court has also imposed the cost of repairing the environmental damage on the polluters. Perhaps more importantly, the courts have shown a willingness to experiment with remedial strategies that require continuous supervision and that appear significantly to shift the line between adjudication and administration. Just as the court will appoint socio-legal commissions to gather facts, so will it create agencies to suggest

552 See, Khatri v State of Bihar. AIR 1981 SC 930-35
553 AIR 1982 SC 1473
554 M.C.Mehta v Union of India, AIR 1987 SC 1086
555 Rudal Shah AIR 1983 SC 1086
appropriate remedies and to monitor compliance. The final order in PIL matters are often detailed, specific and intrusive.\textsuperscript{557}

For the sake of attaining environmental justice, in environmental litigation the court has shown itself willingness to assume wide powers that might otherwise be left to the rule-making authorities and regulatory agencies. In \textit{Shriam fertilizer case},\textsuperscript{558} the court allowed reopening of the fertilizer plant only after implementation of proper safety conditions in the plant. On the basis of the recommendations of four separate courts appointed technical teams the court ordered specific technical, safety staff to defined safety functions. To monitor the plant the court constituted an independent committee to visit the plant every two weeks and also ordered the government inspector to make surprise visit once a week. In addition, noting the increasing frequency of environmental litigation, and the technical difficulties which the court experienced in acquiring competent independent technical information and advice, it suggested that the government establish an Ecological Sciences Resource Group to assist the court. The Court also required the company and its managers to deposit security to guarantee to compensation to any who might be injured as a result of the enterprise’s activity.

Similarly in Bonded Labour Case\textsuperscript{559} the court ordered local officials to identify oppressed workers and to effect their release and physical economic and psychological rehabilitation. To this end the court directed the authorities to accept the assistance of social action groups, to carry out surprise checks on local quarries, to set up labor camps to educate workers about their legal rights, and to ensure a pollution free environment with adequate sanitary, medical and legal facilities.

7.3.5 Judicial Enthusiasm for Securing Envirojusticce: Filling Gaps in Law & Lacunae in Administration

In their decisions the courts tend to impose measures that should be prescribed by the legislation such as the appointment of committees.\textsuperscript{560} In several cases the court has appointed committees to study environmental issues. In \textit{Rural Litigation and Entitlement...}

\textsuperscript{557}\textsuperscript{557} Cassels, Jamie., Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?, 37,The American Journal of Comparative Law, p 506
\textsuperscript{558}\textsuperscript{558} M.C. Mehta v. Union of India, AIR 1987 SC 965
\textsuperscript{559}\textsuperscript{559} Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161
\textsuperscript{560}\textsuperscript{560} Supra, 558
**Kendra v. State of Uttar Pradesh**, the court addressed the issue of balance between mining limestone and environmental degradation and appointed a committee to report on the quality of the limestone quarries at issue. Here the Court is not giving wrong message that the legislature and the government are inactive by appointing a committee but to avoid delay the court performed this task.

In **Shrimp Aquaculture Case** the petitioner has sought of enforcement of CRZ notification dt. 19-02-1991 issued by the Govt. of India, stoppage of intensive, semi intensive type of prawn farming in the ecologically fragile coastal areas prohibition from using the waste land/wet lands for prawn farming and constitution of National Coastal Management Authority to safeguard the marine life and coastal areas.

The court order the Central Govt. to constitute and authority under section: 3 (3) of Environment Protection Act 1986 and to confer on that authority all the powers necessary to protect the ecologically profile coastal areas, sea shore water front and other coastal areas & specially to deal with the situation created by the Shrimp Culture industry in the Coastal States & UTS. This authority shall be headed by the Retd. Judge of a High Court & it will implement ‘the Precautionary & Polluter Pays Principles’.

There are cases in which the court actually reinforces the abilities and functions of the pollution control boards. In **Subhash Kumar v. State of Bihar** the court reiterated that the function of the pollution control board was to inspect sewage or trade effluents: review plans specifications, and other data for the treatment of water; and establish standard that should be complied without by the people which discharge sewage. Yet, not all cases reinforce the environmental legislation in India. Some Courts take it upon themselves to set forth environmental rules and regulations.

For example, in another case brought by M.C.Mehta the court was asked to prescribe environmental awareness mechanism. The court in this case set out many programs that the government should undertake, including the mandatory exhibition of environmental

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561 AIR 1988 SC 2187
562 Under chapter II s. 9 (1) of the Water Act, 1974 it is within the power of the Central Board and State Boards to appoint committees, of members or . of other persons., for such purpose or purposes as it may think fit.
563 S Jagnath V Union of India AIR 1997 SC 811
564 AIR 1991 SC 424
565 Ibid
awareness message as a condition of license for cinema halls, government programs to produce environmental awareness for Indian radio.\(^{566}\) No doubt, it is beyond the power of the court to set license standards and requirements. But it can be argued that this is a response to the lack of governmental action in India. It is the thrust of Indian judiciary to secure enviro-justice in a developing democracy of India.

In some PIL cases, courts issue direction to fill yawning gaps in existing law\(^{567}\), in others they may go to the extent of asking the government to constitute national and state regulatory authorities or environment courts.

In most cases, courts have issued direction to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns\(^{568}\). In the *Vellore Citizens Welfare Forum V. Union of India*\(^{569}\) the Supreme Court made notable request to the Chief Justice of the Madras High Court to constitute a special bench – ‘A green bench’ – to deal with the case and other environmental matters, as is done in Calcutta, Madhya Pradesh and in some other High Courts.

**7.3.6 Establishing a Relationship between International Law and Municipal Law through PIL**

Indian courts are potentially open to a liberal absorption of customary international law. The Indian courts have directly and indirectly implemented the principles of international conventions to protect the environment in the country. The directive principles of state policy and the duty under Article 51 A (g) have given momentum to this movement of securing environment justice.

The Court has cited to international environmental norms in supporting its conclusion in number of cases. In *M.C.Mehta v. Union of India*,\(^{570}\) before embarking on a survey of the issues involved, the Court dealt at length with the famous proclamation adopted at the UN Stockholm Conference on Human Environment in 1972 and the leading role played by the

\(^{566}\) *M.C.Mehta v Union of India*, AIR 1992 SC 362
\(^{567}\) *CERC V. Union of India* AIR 1995 SC 922
\(^{568}\) *L K Koolwal V. State* AIR 1997 SC 3297
\(^{569}\) *AIR 1996 SC 2715 at P.2727
\(^{570}\) *AIR 1987 SC 1086*
Indian delegation headed by the then Prime Minister, late Mrs. India Gandhi at that event. It drew attention to the recommendation that required states to take all possible steps to prevent pollution of the seas. In *Law society of India v. Fertilizers and Chemicals Travancore Ltd.*, while reiterating that the right to wholesome environment is implicit in Article 21, the Court referred to the 1984 UN resolution embodying a fundamental right to an environment adequate for health and well-being. This clearly indicates that the Court is receptive to international environmental norms and has used them as an interpretative toll in elaborating the constitutional provisions. In essence, the Court has used human rights and environmental norms in a definitional manner. By allowing individuals and environmental groups to safeguard the environment, the Supreme Court has served as an effective instrument for the enforcement of environmental justice.

In *Essar Oil Ltd. v. Halar Utkarsh Samiti and Ors.*, the Supreme Court aptly observed:

"Stockholm Declaration as "Magna Carta of our environment". First time at the international level importance of environment has been articulated.

In the Stockholm Declaration principle number two provides that the natural resources of the earth including air, water, land, flora and fauna should be protected. The fourth principle of Stockholm Declaration reminds us about our responsibility to safeguard and wisely manage the heritage of wildlife and its habitat.

The Court in the said judgment also observed that

"This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The
objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.”  

In *Indian Council for Enviro Legal Action v. Union of India* the observation of the court was:

While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking, due care and ensuring the protection of environment.

In *Karnataka Industrial Areas Development Board v. Sri. C.Kenchappa and Ors.* the court declared:

The Stockholm Conference recognized the links between environment and development. But little was done to integrate this concept for international action until 1987 when the Brundtland Report, ‘Our Common Future’ was presented to the United Nations General Assembly. The Brundtland Report stimulated debate on development policies and practices in developing and industrialized countries alike and called for an integration of our understanding of the environment and development into practical measures of action.

The Earth Summit held in Rio de Janeiro in 1992 altered the discourses of environmentalism in significant ways. Sustainability, introduced in the 1987 Brundtland Report - Our Common Future - and enacted Rio agreements, became a new and accepted code word for development. The United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, provided the fundamental principles and the programme of action for achieving sustainable development. Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as

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573 Ibid
574 (1996)5SCC281, Para 31p 296
575 AIR 2006SC2038
well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all.

The 1992 Rio Declaration on 'Environment and Development' recognizes the element of integration of environmental and developmental aspects, particularly in principles 3 & 4, which are set as under:

**Principle 3**

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

**Principle 4**

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

In *K.M.Chinnappa and T.N.Godavarman Thirumalpad v. Union of India and Ors.*\(^{576}\) the Court referred to the Convention on Biological Diversity, 1992 and its articles 1, 6, 7. The Court gave warning that “the greenery of India should not be allowed to be perished, to be replaced by deserts. Ethiopia which at a point of time was considered to be one of the greenest countries is virtually a vast desert today.”

The Judiciary has also implemented precautionary principle; polluter pays principle, public trust doctrine and the principle of intergenerational equity in India. These doctrines are part of the concept of sustainable development. By implementing this principle the Indian judiciary has tried to balance the thrust for development and need for protecting the environment.

In *Bombay dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors.*\(^{577}\) The Court, referring to Articles 48A and 51A (g) of the Constitution of India, observed that the precautionary principle and polluter pays principle are part of the constitutional law.

\(^{576}\) AIR 2003 SC 724

\(^{577}\) AIR 2006 SC 1489)
The court felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the entrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and tradeoffs.”

The Indian judiciary has time and again recognized this principle of sustainable development as being a fundamental concept of Indian law.

In *Vellore Citizens' Welfare Forum v. Union of India and Ors.*,578, the Supreme Court laid down the salient principles of sustainable development consisting of the Precautionary Principle and the Polluter Pays Principle being its essential features stating:

The "Precautionary Principle" _ in the context of the municipal law - means:

(i) Environmental measures _ by the State Government and the statutory authorities _ must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.”

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578 AIR1996SC2715
The Court observed that the Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. The Court in the said judgment, on the basis of the provisions of Articles 47, 48A and 51A(g) of the Constitution, observed that we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental laws of the country.

Again, this principle has been reiterated in the case of *M.C. Mehta v. Union of India*.\(^{579}\)

According to the petitioner M.C.Mehta, the Taj a Monument of international repute is on its way to degradation due to atmospheric pollution and emission of sulphur dioxide by the foundries, chemical/hazardous industries and the refinery at Mathura, Naroa. The preventative steps are required urgently.

The court held that the 292 industries located and operating in Agra shall change over to the natural gas as industrial fuel. The industries which are not in a position to obtain gas connections, for any reason, shall stop functioning with the aid of coak/coal in the TTZ and may relocate themselves.

In the said case, the Precautionary Principle has been explained in the context of municipal law as under:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environment degradation.

(iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

The implementation of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should take the

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\(^{579}\) (1997) 2 SCC 353
necessary action to prevent that harm; the onus of proof is thus placed on developers to show that their actions are environmentally benign." 580

The directions which have been given in the impugned judgment are perhaps on the lines of directions given by the Court in M.C. Mehta v. Union of India. 581 The Court observed that the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration.

The Polluter Pays Principle has been held to be a sound principle by the Court in Indian Council for Enviro-Legal Action v. Union of India. 582

The Court observed 583:

...we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.

The Court ruled that 584:

...once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable

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580 Ibid
581 1997]3SCC715
582 [1996]2SCR503
583 Ibid p. 246
584 Ibid
Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The Court in the said judgment observed as under:\(^{585}\):

The Polluter Pays principle demands that the financial costs of preventing or remediating damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.

In *Intellectual Forum, Tirupathi v. State of A.P. and Ors*\(^{586}\), it was stated:

“…an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and finds a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.”

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors*\(^{587}\), the Court reiterated the necessity of institutionalizing scientific knowledge in policy-making or using it as a basis for decision-making by agencies and courts. The Court mentioned that there is a need to take into account the right to a healthy environment along with the right to sustainable development and balance them.

In *Narmada Bachao Andolan v. Union of India and Ors*\(^{588}\), this Court emphasized the exercise which is required to be undertaken by the committees before policy decisions are taken.

In *N.D.Jayal v Union of India*\(^{589}\), the court held that,

\(^{585}\) Ibid  
\(^{586}\) AIR2006SC1350  
\(^{587}\) [1999]1SCR235  
\(^{588}\) AIR2000SC3751  
\(^{589}\) AIR 2004 SC 867
The precautionary principle accepted by India being a party and signatory to international agreement and understandings in the field of environment has become part of domestic law i.e. Environmental (Protection) Act, 1986. The Governmental authorities in India cannot be permitted to set up plea of scientific uncertainty of 3-D Non-Linear Analysis of the dam. On the safety aspect the pleas like *res judicata* based on earlier decision of this Court cannot be allowed to be raised when further developments and events in the course of the project require further precautions to be taken before filling the dam to the optimum capacity.

The same principles were applied by the Supreme Court in *Research Foundation for Science Technology and Natural Resources Policy v. Union of India and Anr* 590.

The concept of public trusteeship has been accepted as a basic principle for the protection of natural resources of the land and sea. The Public Trust Doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public. 591

In the case of *M.C. Mehta v. Kamal Nath* 592, this Court dealt with the Public Trust Doctrine in great detail. The question raised in the case was whether the public has right to natural flow of rivers and streams and to the natural configuration of land? In this case the state government has granted a lease of riparian forest land for commercial purpose to a private company having a motel situated at the bank of river Beas. The motel management was interfering with the natural flow of the river by blocking natural course.

The court held that the state had committed a breach of public trust. The court observed that the doctrine of ‘public trust’ rests primarily on the principle that certain resources like air, sea, water and the forests are very important for the people as a whole and it would be wholly unjustified to make them subject to private ownership. The court observed that “Our

590 (2005) 13SCC186
591 Karnataka Industrial Areas Development Board v. Sri. C. Kenchappa and Ors. AIR 2006SC2038
592 (1997)1SCC388
legal system based on English common law includes the public trust doctrine as a part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea – shore, running waters, air, forests and ecologically fragile lands. The state as a trustee is under a legal duty to protect natural resources. These resources meant for public use cannot be converted into private ownership.\textsuperscript{593}

After declaring the public trust doctrine as a part of the law of the land, the Court issued directions for the cancellation of the lease in favour of the motel & directed the motel to pay compensation by way of cost for restitution of environment and ecology of the area.

The Court observed as under:

If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. 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. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

\textsuperscript{593} Ibid
Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.\textsuperscript{594} 

In a case of \textit{Intellectuals Forum v. State of A.P.},\textsuperscript{595} this Court has reiterated the importance of the Doctrine of Public Trust in maintaining sustainable development.

In \textit{Banwasi Seva Ashram v. State of U.P.},\textsuperscript{596} the Supreme Court observed that indisputably forests are a much wanted natural asset and it is the State who has to regulate the exploitation of environment (forests) and natural resources and such steps must be taken by the government which do not stand against the concept of sustainable development and environmental protection.

In \textit{Nature Lovers’ Movement v State of Kerala},\textsuperscript{597} the Kerala high Court has dealt with the doctrine of public trust and pointed out that the Constitution of India while declaring India into sovereign, Secular, socialist, democratic republic has imposed certain obligations on the State. Thus, preservation of ecology, environment and forest is also function of the State and of every citizen. Thus, the use of the land and forest should be for the maximum benefit of the people without causing irreversible damage to ecology. In this context, it can also be said that Section 2 of the Forest (Conservation) Act, 1980 which prohibits the use of forest land for non forest purposes and for such use prior approval of Central Government which is a condition precedent, is a part of the Public Trust Doctrine as the State as a trustee has to manage the natural resources.

In \textit{M.I.Builders Ltd. v. Radhey Shyam Sahu},\textsuperscript{598} the Supreme Court has made it clear that this doctrine is also applicable even in the absence of any stature to nullify the act of Municipal Corporation, if Public park is transferred for building construction-which is against zoning laws- it would amount to violation of the duty as public trustee by the State.

\textsuperscript{594} Ibid
\textsuperscript{595} AIR2006SC1350
\textsuperscript{596} AIR 1987 SC374
\textsuperscript{597} AIR 2000 Ker.131
\textsuperscript{598} (1999) 6 SCC464
In *T.N.Godavarman Thirumulpad v. Union of India*\(^{599}\) a fine of one crore rupees was levied by the Supreme Court of India on the State of Himachal Pradesh for not performing its duties as public trustee of natural resources. As a trustee, the State of Himachal Pradesh was supposed not to grant permission to Pepsi, Coca-Cola and other corporations to damage the ecology and to allow them to write their advertisement on eco-fragile rocks. Since it granted permission to damage ecology of the areas by private institutions, it violated its duties as trustee and protector of the ecosystem which has been provided under Article 48-A of the constitution of India.

In *N.D.Jayal v. Union of India*\(^{600}\) the Supreme Court explained that the Public Trust Doctrine is an integral part of the concept of sustainable development and not independent one which means a strategy that caters the needs of the present without negotiating the ability of upcoming generations’ to satisfy their needs. It was also warned by the Court that strict adherence to sustainable development is necessary without which life of coming generations will be in jeopardy. If we read this line in the right perspective, it becomes clear that the present generation and the State is holding the natural resources as public trustee for the posterity. Thus, Public Trust Doctrine is main edifice of the doctrine of Sustainable Development.

These various pronouncements of the Supreme Court vividly depict that Court has evolved a new environmental jurisprudence. The Court has always made it clear that the problem of environmental degradation is a social problem and considering its impact on the society, law-courts have to deal with the situation according to justice and fairness. Thus, the Courts are duty bound to harmonize between danger to the environment and sustainable development. Justice Krishna Iyer declared that “Judges (and lawyers) are trustees of the human estate the world’s great heritage: and the robes have a responsibility obligating the use of writ power to regulate modern industry and technology”\(^{601}\).

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\(^{599}\) 2003(6) Scale374

\(^{600}\) AIR 2004 SC 867

\(^{601}\) The Hindu, ‘Open Page’, dated 17.8.1999
7.3.7 Environmental Awareness and Education through PIL

In different PIL cases, the directions of the Supreme Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education not only at school level, but also at the college level. In M.C.Mehta v. Union of India the Supreme Court stressed the need for introducing such scheme, “In order for the human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measures to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law.

We can see the result of such approach of the Supreme Court e.g. The Bar council of India has introduced Environmental Law as a compulsory paper for legal education at the graduate level.

7.3.8 Protection of Wet Lands and Water Resources

In Public v. State of West Bengal, which is one of the oldest cases where the Calcutta High Court had entertained a public interest litigation in regard to maintenance of wet lands in the eastern fringe of the city of Calcutta, Banerjee, J., (as his Lordship then was) quoting extensively from the authoritative textbooks on the use of wet lands observed:

Wetland acts as a benefactor to the society and there cannot be any manner of doubt in regard thereto and as such encroachment thereof would be detrimental to the society which the Law Courts cannot permit. This benefit to the society cannot be weighed on mathematical nicety so as to take note of the requirement of the society- what is required today may not be a relevant consideration in the immediate future, therefore, it cannot really be assessed to what amount of nature's bounty is required for the proper maintenance of environmental equilibrium. It cannot be measured in terms of requirement and as such, the Court of Law cannot, in fact, decry the opinion of the environmentalist in that direction. Law Courts exists for the benefit of the society - Law Courts exists for the purpose of giving

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602 AIR 1992 SC 362
603 Id P. 384
604 AIR1993Cal215
redress to the society when called for and it must rise above all levels so that justice is meted out and the society thrives there under.

However, thereafter the Court on certain occasions granted leave to make constructions in the wet lands.

In *Dr. Ajay Singh Rawat v. Union of India and others*\textsuperscript{605}, (commonly known as Nainital Lake case) a member of Nainital Bachao Samithi approached the Supreme Court under Article 32 of the Constitution seeking directions as would prevent further pollution of already suffocating Nainital. It was inter alia contended that Nainital lake is polluted because of both inorganic and organic causes. The nearby minerals viz., manganese, lead, salts, copper, cobalt and zinc made the lake toxic for life forms. The Apex Court directed:

1. Sewage water has to be prevented at any cost from entering the lake.

2. So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent siltation of the lake.

3. Care has to be taken to see that horse dung does not reach the lake. If for this purpose the horse-stand has to be shifted somewhere, the same would be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.

We part with the hope that the butterfly would regain its beauty and would attract tourists not only in present but in future as well, which would happen if the beauty would remain unsoiled. Given the will, it is not a difficult task to be achieved; the way would lay itself out. Let all concerned try and try hard. Today is the time to act; tomorrow may be late.

Yet again in *M.C. Mehta v. Union of India*\textsuperscript{606}, (Badkhal and Surajkund Lakes case) it was held:

The two expert opinions on the record -by the Central Pollution Control Board and by the NEERI- leave no doubt on our mind that the large scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has

\textsuperscript{605} [1995]2SCR632
\textsuperscript{606} AIR1997SC734
recommended green belt at one km radius all around the two lakes. Annexures A and B, however, show that the area within the green belt is much lesser than one km radius as suggested by the NEERI.

In *M.C. Mehta v. Union of India*<sup>607</sup>, it was observed:

The functioning of ecosystems and status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost next door to the capital city of Delhi. ... The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.

In *M.C. Mehta v. Union of India and others*<sup>608</sup>, the Apex Court overruled the objection raised against the closure of the mines by the State of Haryana without affording any opportunity to the lessees of the mines by granting them an opportunity of being heard in Court and found it reasonable to direct stoppage of mining activity within 2 kms radius of the tourist resorts of Badkhal and Surajkund and inter alia directing that no constructions of any type shall be permitted within 5 kms radius of the Badkhal lake and Surajkund and further that all open areas shall be converted into green belts.

In *Mallikarjuna Sharma and others v. The Govt. of A.P. and others*<sup>609</sup>, Nazir, J., lamented inaction on the part of the A.P. Pollution Control Board, Water Supply and Sewerage Board and Municipal Corporation of Hyderabad in the matter of maintenance of ecology. It was observed:

But we are mainly concerned with the orientation of results. So long as the parameters of pollutants are not brought down to the level of tolerable limits by giving them the necessary

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<sup>607</sup> (1997)3SCC715  
<sup>608</sup> AIR1997SC734  
<sup>609</sup> 1996 (3) AWR 253
treatment before discharging the same from any outlet, all such assurances and undertakings are meaningless. The Pollution Control Board instead of taking pleasure by being a party to the pollution control measures expected to be taken or having already been taken by the Sewerage Board, should have given a direction in exercise of powers conferred on the Pollution Control Board by the provisions of the Pollution Control Act to treat whatever effluents, domestic or industrial, to the tolerance limits acceptable to the Board and should have set a deadline for treating the effluents accordingly within the tolerance limits so that prosecution could be launched against the person/persons responsible in the Sewerage Board if the necessary facilities were not provided before the deadline. These were the elementary requirements which should have been complied with by the Pollution Control Board within three months from the enactment of the statute, or at least within a reasonable time thereafter so as to ensure that the untreated effluents were not discharged by these agencies. In any case, the Pollution Control Board would do well to keep its eye on the progress of the proposed comprehensive scheme for treating the effluents before discharging the same from any outlet in the city by the Sewerage Board, which is not in conformity with the tolerance limits, which could be laid down by the Pollution Control Board.

7.3.9 Judicial Munificence to Public Interested Lawyers & NGOs in Securing Enviro-Justice through PIL

We cannot deny that the success of PIL in environmental protection also depends upon the contribution of lawyers & different NGOs who are really public spirited. Lawyers M.C.Mehta’s contribution is unforgettable in this field. There are number of issues involving environmental problems which are brought before the court by Mr. M.C.Mehta eg. Damage to Taj Mahal, Pollution in river Ganga, Leakage of Oleum gas etc.

Similarly there are different NGOs who have worked for environmental protection. Chhetriya Pradusan Mukti Sangharsh Samiti, Indian Council for Enviro-legal Action, Dahanu Taluka Environment Protection Group, Rural Litigation & Entitlement Kendra.

There are the various NGOs who have worked for environmental protection. They have drawn attention of the court on different environment related issues & the suffering & helath
hazard to people eg. In *Doon Valley’s case*\(^{610}\), the NGO Rural Litigation & Entitlement Kendra had put before the court issues relating to mining operations in Mussoorie & its ill effect on environment & the residents of that area.

It is no doubt true that in public interest litigation, vigilant citizens have found an inexpensive remedy (there is only a nominal fixed court fee involved) to focus attention on and achieve results pertaining to larger public issues, especially in the field of environment. But the development of PIL has also uncovered its pitfalls. As a result from time to time, the Supreme Court itself has been compelled to lay down certain guidelines to govern management and disposal of PIL.

**7.3.10 The Pitfalls in PIL**

The liberal use of PIL against assault on the environment does not mean that very allegation, even if it is tainted with bias, ill will or intent to black mailing will be entertained by the courts.

In *Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P.*\(^{611}\) Sayaschi Mukharji, C.J. observed:

“While it is the duty of this court to enforce fundamental rights, it is also the duty of this court to ensure that this weapon under article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court”.

In *Union Carbide Corportaion v. Union of India*\(^{612}\) Rangnath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus:

“I am prepared to assume, nay, conclude, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the court and bring down the serviceability of the institution to the people at large. Those who are acquainted with

\(^{610}\) AIR 1987 2187  
\(^{611}\) AIR 1990 SC 2060  
\(^{612}\) AIR 1991 4 SCC 584, 610
jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled”.

7.4 Conclusion

From the forgoing it becomes clear that judicial activism through PIL has effectively solved the environmental problems. Though there are various specific statues dealing with various kinds of pollution eg. Air Act 1981, Water Act 1974, Environment Protection Act 1986, in India, the contribution of PIL in bringing environmental justice is much more & remarkable. There are certain limitations of judiciary. Decisions relating to the environment are essentially to be based on many factors such as scientific material, highly technical data, socio-economic facts, health hazard aspects and ecological mores of the region. Judiciary is aware of its limitations and that is why in 1987, the Supreme Court urged the Govt. of India to set up an Ecological Sciences Research Group, with professionally competent and independent experts who would act as an information bank for the court and government departments and could generate correct & unbiased information.613

In some PIL cases the judiciary takes the view of environmental decisions as mere administrative matters and not as complex environmental problems eg. In Silent Valley’s Case, a hydroelectric project designed to be located by clearing a virgin forest, rich in diversity, was accorded judicial approval of the Kerala High Court in spite of preponderance of evidence of ecological imbalance likely to be caused614. According to the court, the government had already examined the matter in detail and there was limited scope for interference with such policy decision.615 Similarly, the decision of the Supreme Court in Sachidanand Pandey v. State of West Bengal616 was criticized.

But we have to agree that despite all these limitations the success rate of PIL is very high in bringing environment justice. The important reasons for it are the more numerous drawbacks in the specific laws dealing with environmental problems.

The Environment (Protection) Act of 1986 is umbrella legislation. It covers not only more kinds of pollution but also extends to protection and improvement of the environment. There

613 M.C.Mehta V Union of India AIR 1987 DC 965 at P 981
614 See for detail M.K.Prasad “Silent Vally Case an Ecological Assessment” P. Leelakrishnan Law and Environmental 1991 P116
615 Id P 123
616 AIR 1987 SC 1109

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are number of pollution control boards in our country but a study of them revels that the working of the board, the primary environmental protection agency, is not at all encouraging. As per the existing norm, Water (Prevention and Control of Pollution) Act 1974, a person with special knowledge or practical experience in respect to matters relating to environmental protection can be nominated by the state government for the post. The vague description of the eligibility criteria in the laws has led to various interpretations & loopholes in the proper implementation of the acts.

As per the information received from CPCB out of total 32 PCB in the Country almost 22 (Which amounts 70%) have part time chairpersons. These officials are on deputation and hold some other positions in state government office. In some states, legal bodies have had to intervene in PCB appointments. The Jharkhand High Court ordered the dismissal of Thakur Bal Mukund Shahdeo Chair person of Jharkand Pollution Control Board. The court observed that Shahdeo was unqualified for the post as he was only a matriculate with no understanding of the environment. In such situations how can people expect help of pollution control boards in solving environmental problems? Moreover, majority of people do not know how to get remedy in environmental related issues through environmental laws. They don’t know the procedure to get remedy under such acts. The thing is, there are certain provisions in EPA for environmental protection, but their implementation part is rather weak. Section 3(3) of the EPA 1986 permits the central government to constitute one on more authorities to implement the Act. But in Vellore citizens Welfare forum v Union of India the Supreme Court held that “The main purpose of the Act is to create an authority or authorities under section 3(3) of the act with adequate powers to protect the environment. It is pity that till date no authority has been constituted by the central government. The work which is required to be done by the authority in terms of section3 (3) read with other provisions of the Act is being done by this court in the country. It is high time that central government realizes its responsibility and statutory duty to protect the degrading environment in the country”. Section 24 of the EPA is curious and controversial provision. It provides that if any act or omission constitutes an offence punishable under the EPA as well as any other law, the offender shall be liable to be punished under the other law.

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617 See Down to Earth, Vol 11 No. 3 June 30, 2002
618 AIR 1996 SC 2715
619 Id at 2724
& not under the EPA. This provision takes the life out of enactment. Some critics criticize it saying that this provision makes the law as cobra with fangs having no venom.

Section 19 of the EPA provides that any person, in addition to authorized government officials, may file a complaint with a court alleging an offence under the Act. This citizen’s initiative provisions requires that the person give notice of not less than 60 days of the alleged offence and the intent to file a complaint with the government official authorized to make such complaints.

The citizen’s initiative provision appears to give the public significant powers to enforce EPA. But in reality the provision is eye wash because only government officials are given the power under the Act to collect samples needed as evidence of the violation of the Act. In addition, during 60 days’ notice period required for the government to decide whether to proceed against alleged violation, the offending industry has time to clean up traces of the offence and prepare itself for the collection of samples. What if the government decides to file a complaint against alleged polluter but then does not diligently pursue prosecution? Should a citizen be allowed to file a separate action or intervene in ongoing prosecution?

As a matter of practice, the citizen’s initiative provisions are seldom used. There are no significant reported decisions in cases arising from a citizen’s complaint under section 19 of EPA. Because of these procedural technicalities, most environmental groups and concerned citizens prefer to obtain redress through the public interest litigation.

So, we can say that really public interest litigation has been proved an effective instrument in solving environmental problems. PIL has really played an important & remarkable role in environmental jurisprudence in India.