



**Research Inspiration: An International Multidisciplinary e-Journal**  
**Area:** Multidisciplinary: Social Sciences, Law, and Arts & Humanities.

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## PROTECTION OF ENVIRONMENT THROUGH PIL IN INDIA: A SOCIO-LEGAL ANALYSIS

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### Electronic version

URL: <http://www.researchinspiration.com>  
DOI: <https://doi.org/10.53724/inspiration/v6n3.05>  
ISSN: **2455-443X**  
**Vol. 6, Issue-III, June 2021**  
Page No. **24- 30**

Publisher  
**Welfare Universe**

Electronic reference/Article is to be Cited:

**Ashish Verma**, (2021). Protection of Environment Through PIL in India: A Socio-Legal Analysis.  
**Research Inspiration: An International Multidisciplinary e-Journal**, ISSN **2456-443X**, 6(III), 24–30.  
<https://doi.org/10.53724/inspiration/v6n3.05>

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ISSN: 2455-443X

**Vol. 6, Issue-III, June 2021**

**Published on: 30<sup>th</sup> June 2021**

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### Abstract

The problem of environmental pollution is a kindle issue not only of India but of the biosphere. Preservation and improvement of environment is essential for the peaceful existence of humanity. The Constitution of India mentions the rules related to environmental protection, and many laws have been passed and implemented by the Indian Parliament from time to time to protect the environment. The Indian judiciary has taken a comprehensive and innovative approach to consider PILs on environmental issues for the protection of healthy environmental rights in the country. In independent India, for a long time, most environmental issues have been raised through PILs. The Supreme Court and various High Courts of the states have given many judicial decisions to protect the environment through PILs. In present times, PIL has become a powerful tool to safeguard the environment in India.

**Keywords:** Environmental pollutants/pollution, Indian Constitution, environmental laws, PIL, judicial system and judicial decisions.

### Introduction

The protection of the environment is a worldwide problem, not a problem of any particular region or nation. Administrative and legislative strategies for reconciliation of environmental issues with developmental issues should be designed keeping in mind the conditions of the country's socio-economic development. The courts play an important role in determining the scope of powers and functions of administrative agencies and in maintaining a balance between environment and development. At present, judicial activism is playing an important role for environmental protection, especially through PIL.<sup>1</sup> Justice P.N. Bhagwati is seen as the father of PIL in India. Several judicial decisions have been given from time to time by the Supreme Court of India and various High Courts of the states for this purpose i.e., for environmental protection. The right to pollution-free air, water, etc., is guaranteed under Article 21, namely 'protection of life and personal liberty'. India participated at the United Nations Conference on the Human Environment held at Stockholm in June 1972, to take appropriate steps for the protection and improvement of human environment, further to implement the decisions of Conference the **Environment [Protection] Act**, 1986 is enacted by Parliament in India.<sup>2</sup>

The PIL may be taken to mean a legal action initiated in a court of law for the enforcement of the public interest or general interest in which the public or a class of the community has pecuniary interest or have

<sup>1</sup>. Bakshi P.M. [2006], Public Interest Litigations, Ashoka Law House, New Delhi, at p. 7.

<sup>2</sup>. Tripathi S.C. [2017], Environmental Law, Central Law Publications, Allahabad, at p. 9.

some interest because it will affect their legal right or liabilities. In *Janata Dal v. H.S. Chowdhary*,<sup>3</sup> it was pointed out that a PIL is a legal action initiated in a court of law for the implementation of the public interest or common interest, in which the people or a unit of the community has pecuniary interest or some interest by which their lawful rights or accountabilities are affected.

The Preamble to the Indian Constitution highlights equality of status and opportunity and equal justice to all individuals. Articles 14, 21, 38 and 39–A of the Constitution strengthens the PIL. Public interest litigation is very important today and it has attracted the attention of all concerned. Nowadays, the court allows PIL at the case of public interest citizenry for implementation of constitutional permissible rights. Now any social worker citizen can approach the Court of public interest by filing a suit in the Apex Court by Article 32 of the Constitution of India, in addition to the High Court by Article 226 of the Constitution and under Section 133 of the Code of Criminal Procedure in the Magistrate’s Court.

With the changing times, there has been a wave of litigation in the courts regarding environmental and environmental protection. In present India, mainly environmental related matters are brought in the Court through PIL through Article 32 and 226 of the Constitution.<sup>4</sup> The writ process is preferred over traditional litigation, as it is faster, comparatively cheap and provides direct admission to the uppermost courts of the country. The environmental litigation has acquired immense importance with the power of the Apex Court to issue directions under Article 32 of the Constitution and the powers of the High Courts under Article 226. The courts have used these powers to plug the loopholes of the past and prevent future attacks on the environment.

#### **Legal Provisions relating to Environmental Protection in India**

Environmental pollution is one of the most serious problems facing humanity and other life forms on our planet today. ‘Environment pollution’ means the presence in the environment of any environmental pollutant, as per Section 2[c] of the **Environment [Protection] Act, 1986**. In simple words ‘environmental pollution’ is defined as “the contamination of the physical and biological components of the earth/atmosphere system to such an extent that normal environmental processes are adversely affected”. The key purpose of the laws linked to environmental conservation is to save humanity and encourage healthy and good life. The Indian Constitution comprises some articles linked to environmental protection and the Indian Parliament has made some laws from time to time to protect the environment as per the requirement. The provisions which have been included in the Constitution to protect the environment are as follows:

- a) **Article 14:** This article provides equality by law to all persons of the state, talks about not depriving the equal protection of the laws of the land of India.
- b) **Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- c) **Article 48–A:** Apart from taking steps to protect and improve the environment, the state will also make successful efforts to protect the forests and wildlife of the country.

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<sup>3</sup>. AIR 1993 SC 892.

<sup>4</sup>. Pandey J.N. [2014], Constitutional Law of India, Central Law Agency, Allahabad, at p. 23.

- d) **Article 51[g]**: To guard and reform the natural environment as well as jungles, lakes, rivers and wildlife, and to have kindness for existing creatures.<sup>5</sup>

Apart from the constitutional provisions, some environmental laws were also made by the Indian Parliament to protect the environment, which are mentioned as follows:

- a) The Indian Forest Act, 1927.
- b) The Wild Life [Protection] Act, 1972.
- c) The Water [Prevention and Control of Pollution] Act, 1974.
- d) The Water [Prevention and Control of Pollution] Cess Act, 1977, and 2003.
- e) The Water [Prevention and Control of Pollution] Cess Rules, 1978.
- f) The Forest [Conservation] Act, 1980.
- g) The Air [Prevention and Control of Pollution] Act, 1981.
- h) The Ganga Action Plan, 1986.
- i) The Environment Protection Act, 1986.
- j) The National Water Policy, 1987, 2002 and 2012.
- k) The Public Liability Insurance Act, 1991.
- l) The National Environmental Tribunal Act, 1995.
- m) Recycles Plastics, Plastics Manufacture and Usage Rules, 1999.
- n) The Noise Pollution [Regulation and Control] Rules, 2000.
- o) Batteries [Management and Handling] Rules, 2001.
- p) The Biological Diversity Act, 2002.
- q) The National Environment Policy 2006.
- r) The Scheduled Tribes and Other Traditional Forest Dwellers [Recognition of Forest Rights] Act, 2007.
- s) The Hazardous Wastes [Management and Handling] Rules, 1989, 2002, 2003, 2008, and 2016.
- t) The National Green Tribunal Act, 2010 etc.<sup>6</sup>

### **Protection of Environment and Public Interest Litigation**

In the Indian legal system, the Apex Court is considered as the protector of the Constitution. Through legal interpretation, the Apex Court has accorded a high priority level to the issue of ‘*environmental protection*’ in many cases.<sup>7</sup> Indeed, the role of judicial activism in this regard is particularly noteworthy in PIL. The efforts of the Apex Court in hearing public interest litigation for environmental protection are really important and commendable. Especially at a time when the legislature is lagging behind in addressing the shortcomings in the current legal system and the administration is not very well prepared to meet the task.<sup>8</sup> Many landmark judicial verdicts have been given by the Apex Court through PIL for the protection and improvement of the environment, here some of the landmark decisions are being mentioned:

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,<sup>9</sup> the Court ordered closure of limestone mines due to serious deficiencies with regard to safety and hazards. The Court constituted a committee to inspect some limestone–mines and the committee had advised closure of certain types of

<sup>5</sup> Ibid, at pp. 56–57.

<sup>6</sup> Malik S. [2012], Environmental Law, Eastern Book Company, Lucknow, at p. 33.

<sup>7</sup> Upadhyaya J.J.R. [2015], Environmental Law, Central Law Agency, Allahabad, at p. 44.

<sup>8</sup> Rai K. [2003], Public Interest Lawyering, Legal Aid and Para–Legal Services, Central Law Publications, Allahabad, at p. 23.

<sup>9</sup> [1985] SCC 431.

stone quarries in view of the adverse impact of mining operations. The people living around the mine area were largely produced by these mines causing adverse effects on safety and health.

In *M.C. Mehta v. Union of India*,<sup>10</sup> the Apex Court directed to take all necessary safety measures before reopening the plant so that the health and life of the employees and the people living in the vicinity are not adversely affected by hazardous and noxious chemicals and gases. One person died and other workers and residents of the area also faced hardships due to leakage of chlorine gas from the plant. This was due to the carelessness of the administration in the maintenance and process of the Caustic Chlorine Plant of the factory. The administration was directed to credit an amount of Rs. 20 lakhs as security with the Registrar of Courts for payment of recompense claims to the affected by the Oleum gas leak. This case sets out the principle of 'absolute liability'. Where an individual sets up an manufacturing of a hazardous nature, he is solely responsible for the danger posed by him.

In the case of *M.C. Mehta v. Union of India*,<sup>11</sup> the Apex Court ordered the shutting of tannery industries at Jajmau near Kanpur, which pollute the river Ganga. The matter was fetched before the Court by a PIL by a social activist. The court ordered that despite the State having comprehensive provisions of the **Water** [Prevention and Control of Pollution] **Act** and the **Environment** [Protection] **Act**, the government had failed to check the serious pollution caused by tanning factories at Jajmau in Kanpur. Under these circumstances, it was held that the Court could have ordered the closure of tannery factories, but the state did not take steps to close the plant. In *Damodar Rao v. S.O. Municipal Corporation*,<sup>12</sup> the Court held that due to environmental pollution, the poison is gradually getting dissolved in the environment, which is not fit for living, and this should be considered as a direct violation of Article 21 of the Indian Constitution.

In *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*, the Apex Court followed the concept of 'sustainable development', and held that the permanent wealth of mankind should not be lost in one generation. The natural resources should be used with due care and attention so that the ecosystem and environment are not seriously affected in any way. In *L.K. Koolwal v. State of Rajasthan*,<sup>13</sup> the Rajasthan High Court detected that the duty of the citizen to guard the environment under Article 51-A [g] of the Indian Constitution confers on the citizens the right to a fresh environment.

In *M.C. Mehta v. Union of India*,<sup>14</sup> the Apex Court said that the river Ganga is very well-known for its historic importance and spiritual importance. Due to the discharge of industrial waste, other waste and human excreta in the river, its water is getting polluted. In addition, many dead bodies are being thrown into the river at Kashi with the belief that the dead will go straight to heaven as they consider Kashi to be a holy place and the river to be holy. An eminent advocate of the Supreme Court, M.C. Mehta filed a PIL in the Apex Court under Article 32 of the Indian Constitution against the Union of India, the Kanpur Municipal Corporation and others to remove the causes of polluted Ganga water. The Supreme Court accepted the petition and directed the concerned authorities to remove the public nuisance and also appreciated the petitioner for taking steps in this regard.

The PIL of the petitioner in *Subhas Kumar Kumar v. State of Bihar*,<sup>15</sup> has been accepted by the Court holding that the enjoyment of pollution free water and air is the right of every person, which is included in

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<sup>10</sup>. [1986] 2 SCC 176.

<sup>11</sup>. [1987] 4 SCC 463.

<sup>12</sup>. AIR 1987 AP 171.

<sup>13</sup>. AIR 1988 Raj 2.

<sup>14</sup>. AIR 1988 SC 1115.

<sup>15</sup>. AIR 1991 SC 420.

the ‘right to life’ under Article 21 of the Constitution. In *M.C. Mehta v. Union of India*,<sup>16</sup> the Apex Court issued some instructions to the Indian Government to teach the subject of environmental pollution in schools and colleges education. Directed the educational boards to make proper arrangements for making environment compulsory education up to matriculation and the UGC to consider the need to make environment a compulsory subject in college education also.

In case of *Vellore Citizens Welfare Forum v. Union of India and Ors*,<sup>17</sup> the petitioner has filed a PIL under Article 32 of the Constitution to prevent large scale pollution in the Polar river due to release of wastes in the course of work by tanneries and other factories in the State of Tamil Nadu. While hearing the matter, the Court has constituted a committee to investigate the matter. After perusing the report submitted by the committee, the Supreme Court delivered its verdict trying to strike a balance/harmony between economic development and public welfare. The Court detained that sustainable development is an equilibrating notion between ecosystem and growth. In this case, the Apex Court applied the ‘precautionary principle’ i.e., ‘polluter pays’ and this principle came into existence as a law based on Article 141 of the Constitution. The Supreme Court, while interpreting the ‘polluter pays’ principle, held that the liability of the polluter for damage to the environment is not only limited to compensating the victims of pollution, but also to bear the cost of restoring the degradation of the environment.

In the case of *M.C. Mehta v. Union of India*,<sup>18</sup> the Apex Court delivered instructions to check automobile pollution in the State of Delhi. In another *Church of God [Full Gospel] in India v. K.K.R. Majestic Welfare Association*,<sup>19</sup> the Apex Court held that noise pollution is a defilement of Article 21 of the Indian Constitution. In *Narmada Bachao Andolan v. Union of India and Ors*,<sup>20</sup> the Apex Court held that, “water is the basic need for survival of human beings and is part of the right to life and human rights as enriched in Article 21 of the Constitution of India and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life.” In *M.C. Mehta v. Kamal Nath and Ors*,<sup>21</sup> the Apex Court ruled that environmental pollution is an offence against the public and the Court shall proceed under Articles 32 or 226 and the person found guilty may impose suitable damages.

In a milestone decision in *Intellectuals Forum Tirupathi v. State of Andhra Pradesh*,<sup>22</sup> the Apex Court said in very strong words that it is the constitutional obligation of the government to protect and improve the environment under Article 21 and Article 51–A. In any case the environment cannot be harmed for urban development.

In the case *Indian Council for Environ–Legal Action v. Union of India*,<sup>23</sup> the Apex Court felt that the high courts established in different parts of the country were better informed about their regional environmental conditions than they should, to protect the environment under the anti–pollution laws.

Recently, in *M.C. Mehta v. Union of India and Ors*, the Apex Court has passed an order dated 6<sup>th</sup> September, 2019 for increasing air pollution due to stubble burning in Delhi. The Apex Court directed those miniature and marginal agriculturalists in the states of Punjab, Haryana and western Uttar Pradesh who do not burn stubble, be provided economic assistance of Rs. 100 per hundred kilograms of non–

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<sup>16</sup>. AIR 1992 SC 382.

<sup>17</sup>. AIR 1996 SC 2715.

<sup>18</sup>. AIR 1998 SC 2963.

<sup>19</sup>. AIR 2000 SC 2773.

<sup>20</sup>. AIR 2000 10 SCC 664.

<sup>21</sup>. AIR 2000 SC 1997.

<sup>22</sup>. AIR 2006 SC 1350.

<sup>23</sup>. [2011] 8 SCC 161.

basmati paddy by the State within 7 days. The states will have to endow machineries to farmers who will take care of stubble like Happy Seeder, Hydraulically Reversible MB Plow, Paddy Straw Chopper to those farmers who currently cannot afford the machines and submit action taken report within a month. The Apex Court has directed the Delhi, Haryana, Punjab and Haryana governments to take appropriate measures to check pollution.

These decisions of the Supreme Court and the various High Courts on PILs show the activism of the judiciary to protect the environment. Nowadays maximum of the environmental matters in India are raised up through Public Interest Litigation. The Apex Court and the High Courts established in different states from time-to-time issue guidelines to the government for environmental protection on PILs. Therefore, it is not incorrect to say that PIL is playing an important role to safeguard the environment.

### **Conclusion**

The problematic of environmental pollution has been documented as a universal disaster. The environmental guard around the world needs urgent attention. Provisions have been given in the Indian Constitution for the protection of environment in India, apart from these provisions, many Acts have been made by the Parliament to protect the environment. Indian judiciary has also been playing its important role to protect the environment. It has further expanded the existing legal provisions to address environmental issues. It has developed many new principles applied to deal with the problem of environment. The PIL in India has played the role of an effective tool in the field of environmental guard. In a PIL, a public-spirited person or an organization can file a petition on behalf of deprived and unaware persons. The Indian judiciary has in many cases adopted technical tools like PIL for environmental protection. In order to examine the menace of environmental pollution on PILs, the Apex Court and various High Courts of the States have issued several landmark judgments, directions, orders and guidelines from time to time to the States and the human society. While deciding a PIL, the Apex Court held that “pollution-free environment is a fundamental right under Article 21”.<sup>24</sup> The Apex Court and various Supreme Courts of the states are doing their duty very well to protect the environment and human health, but protecting the environment is not only the duty of the judiciary, but protecting the environment is the ultimate dharm and duty of every citizen.

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<sup>24</sup>. Tripathi G.B. [2013], Constitutional Law: New Challenges, Central Law Publications, Allahabad, at p. 53.