

---

# **PUBLIC INTEREST LITIGATION: A JUDICIAL INSTRUMENT PUTTING AN END TO ENVIRONMENTAL DETERIORATION AND ENACTING SUSTAINABLE POLICIES**

---

Evani Gupta, Chandigarh University

## **ABSTRACT**

Being the part of the dynamic and developing society, policy making, and legal enforcement is the core of maintaining legal stability in the society. Judicial Activism has become one of the prominent practices across the country through the instrument of Public Interest Litigations (PILs). The development in the legal scenario has given a wider perspective to the traditional approach of a common man to seek justice, *locus standi*, by introducing the concept of PILs. The traditional approach to the justice seeker was of the private nature but this concept over the years has given a broad perspective to the concept of vested interest. These led to some major landmark cases, in *M.C Mehta v UOI*, the court explained how despite the enactment of Environment (Protection) Act, 1986, there had been a considerable decline in the quality of environment. Moreover, these led to major development in the area of conserving the environment upholding the right to healthy environment. Although, the chief instrument as PIL was proving an efficient tool to seek justice but this effectively piled up the cases of mala fide intentions of those who want to get the monetary benefits out of the cases in the name of general good. The Apex Court was more concerned dealing with PIL cases, and the others were bundled on the table. This article will deal with the development of PILs over the years with respect to the environment and what remarkable changes was the derivative and resultant of PILs. Furthermore, it will more precisely deal with the aspects of development of policies based on the landmark judgements in context to the environment degradation and towards a sustainable future.

Keywords: Public Interest Litigation (PIL), Landmark cases, Environment Degradation/Deterioration, Abuse of PIL, Development of Environmental Policies

## INTRODUCTION

The liberalisation and globalisation of the economy necessitate more vigilance to guarantee that industrial expansion does not come at the expense of the environment. However, centuries of unregulated utilization of natural resources have resulted in the deterioration, depletion, or even annihilation of our natural environment. Judicial activism in India has played a paramount role in the green jurisprudence in the state. The concerns developed over the years with respect to environmental deterioration and degradation have been dealt with sheer diligence by the judiciary in the country. Courts in India have incorporated bilateral and multilateral environmental concepts for the purpose of interpreting constitutions and laws, along with a liberal approach to promoting social justice and defending human rights and indigenous peoples. It has effectively followed its legal strategy. The greatest distinguishing aspect of Indian environmental law is Public Interest Litigation (PIL).<sup>1</sup> It is the profound use of such a platform in the judicial system that has envisaged India with the effective development of environment protection laws and policies.

It is critical to strive to build new rights based on a shared purpose. Article 14 of the Indian Constitution, for example, treats both an MNC and a citizen equally, notwithstanding the inherent and glaring disparity between the two. To completely defend rights and liberties in the face of increased MNC involvement in economic development, the concept of equality in liberal philosophy and establishment of new concepts on equality should be considered. Filing test cases remains a key method for creating these new concepts.

This was not a public interest matter, and it was vigorously contended that the petitioner lacked the legal standing to proceed with the current petition. We have reservations about accepting this plan. Furthermore, we all worry about the environment. It is something that is freely accessible to all residents of a certain region, and this environment must be preserved in ensuring a safe and healthy subsistence. This is not anymore, a *res integra* question. **Subhash Kumar v. State of Bihar** was decided by the Supreme Court.<sup>2</sup> **Public Interest Litigation:**

---

<sup>1</sup> Yun Ma, "Vindicating environmental public interests in China: A balanced approach to institutional interaction in public interest litigation system," 4 *Environmental Law Review* (2019), 269-291

<sup>2</sup> C. J. Fuller, "Hinduism and Scriptural Authority in Modern Indian Law," 2 *Comparative Studies in Society and History* (1988) <sup>3</sup> Bimal N. Patel, "The State Practice of India and the Development of International Law," (2016)

The Indian judiciary has vigorously backed the public trust theory.<sup>3</sup> Many of India's existing environmental regulations are the outcome of extensive legal debate before the Supreme Court and High court. Before 1985, the cases were brought before the Apex court as writ petitions were of the pro bono nature initiated by some individuals. The Apex court has taken a wider perspective of the *locus standi* into consideration.<sup>3</sup> Traditional hostile processes such as “reasons for action,” “victims,” and “individual processes” have seen paradigm supplements.

The Supreme Court and the High Court, which operate under Articles 32 and 226 of the Indian Constitution, have played critical roles in interpreting Article 21 in order to enjoy fundamental environmental rights.<sup>4</sup> The importance of proceedings in the public interest is the most distinguishing aspect of Indian green jurisprudence. The 1976 modification of the Indian Constitution made public interest trials permissible.<sup>5</sup> Article 39A was the only one that existed at the time. Furthermore, the 1976 amendment introduced environmental Articles 48A and 51A (g).<sup>6</sup> The court concluded in *Mehta v UOI* that notwithstanding the Environmental (Protection) Act of 1986, the condition of the environment had deteriorated dramatically. Furthermore, they have made tremendous progress in environmental protection and the right to a healthy environment.<sup>7</sup>

A lawyer filed a PIL in *Hussainara Khatoon v Bihar*, which resulted in the release of almost 40,000 pretrial inmates. The right to prompt justice has emerged as a basic right that these inmates are denied. Judge P.N. Bagawatigupta v in the matter of S.P. has heralded a new era in the PIL movement. When the interests of the general public or the general public sector are at issue, the Indian Union, and as a result, Indian citizens, consumer organizations, or social behaviour groups, seek appeals.

---

<sup>3</sup> Jamil Ddamulira Mujuzi, “Private Prosecution in Nigeria under the Administration of Criminal Justice Act, 2015,”

2 *Journal of African Law* (2019), 225-250

<sup>4</sup> S. R. Subramanian, “BITs and Pieces in International Investment Law: Enforcement of Investment Treaty Arbitration Awards in the Non-ICSID States: The Case of India,” *The Journal of World Investment & Trade* (2013), 198-239

<sup>5</sup> Zaid Deva, “Basic without structure? the Presidential Order of 1954 and the Indo-Jammu & Kashmir constitutional relationship,” 2 *Indian Law Review* (2020), 162-198

<sup>6</sup> Normawati Hashim, “Towards New Frontier of Constitutional Recognition of Environmental Protection in Urban Regeneration,” *Procedia - Social and Behavioral Sciences* (2015), 415-425

<sup>7</sup> David R. Boyd, “The Constitutional Right to a Healthy Environment,” 4 *Environment: Science and Policy for Sustainable Development* (2012), 3-15

Recent development in the approach has been witnessed forming three types of PILs,

### **Abuse of the PIL**

Nevertheless, petitions to steal PIL have been brought overtime for economic, political, or private interests. It is an undemocratic, foolish, and concerning practice made more difficult by our legal standing. Former Chief Justice A.S. Anand warned against using PIL, saying, It should be emphasized that PIL is fundamentally a public interest case and should not be degraded into a political interest matter or a personal inquiry proceeding.

Numerous PIL advocates in India saw PIL as a strong instrument. In public interest court cases, abuse expresses itself in a variety of ways. Their exploitation may be driven by public relations, commercial interests, political competitiveness, or other indirect aims. The issue is that it stifles the legal system's movement. The attitude of balance is required but developing a sustained jurisprudence for preventing misuse is not easy. The misuse of PILs has grown so out of hand that its essential goal has obscured the genuine lawsuits, inter alia, initiated by the individuals seeking out their beneficial private interest in the shadow of the PILs. The various individuals seek to manage their interests using this vital fundamental tool of democracy for their private benefits in the name of the general interest of the public at large.<sup>8</sup> The intentions behind the filing of PIL in the name of securing and protecting nature from other opponents and competitors result out as malice and vexatious many a times. The sole aim of the PIL can be reflected in the way the petition has been filed and presented before the bench. Many PIL activists in India have used PILs as a convenient method for adversely affecting the court system. As initiating PILs is a low-cost procedure, many lawsuits of malice intent are brought without the expenditure of high court fees that would ordinarily be required for civil litigation proceedings. As a result of filing those cases, bargains are formed in order to get money for the injured party to secure the PILs. The major cause for such incidents was that any weapon capable of self-defense might also be used to hurt others. Using the same approach, one can minimize the Locus Standi metrics, allowing motivated parties to submit PILs that may be of public interest. PIL has recently gotten a lot of criticism, since the notion of enjoying the work of justice has spread widely among the Indian people. Judge Bhagwati, who challenged the landmark *Bandhua Mukti Morcha v Union of India* decision, stated that the court was applying

---

<sup>8</sup> Razeen Sally, "Ordoliberalism and the social market: Classical political economy from Germany," 2 *New Political Economy* (1996), 233-257

the aforementioned steps and represented a little attempt to accomplish the judicial system's fundamental purposes.

Further loose thread that the Indians have critiqued is the practice of utterly diluting the core concepts of "Locus Standi." This grey area was addressed in numerous arguments, revealing various embarrassing facts, such as the use of PIL to represent political aims rather than justice. As a calming influence on people who will obstruct the submission of key PILs in the future.

**Redressing the procedural appropriateness or approach:**

In order to restrict the abuse of such public access, there were many regulatory reforms taking place in the state.

The Court must be pleased with

- a) the applicant's qualifications and
- b) the prima facie validity or appropriateness of the material facts he provides.<sup>9</sup>

The information should not be hazy or ambiguous; it should demonstrate the gravity and seriousness of the situation. The court must find a balance between two conflicting interests.<sup>10</sup>

- i) No one should be permitted to make wild and irresponsible claims against the character of others.
- ii) Avoidance of public disturbance and avoidance of malevolent petitions trying to undermine justified executive acts for oblique reasons. Nonetheless, in such a scenario, the court cannot afford to be generous.

Despite the fact that the Supreme Court provided rules on accepting letter petitions as PILs and is not hesitant to place sanctions on vexatious litigants. The time has come to establish a solid framework for curbing PIL misuse.

---

<sup>9</sup> Elina Paunio, "Beyond Predictability – Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order," 11 *German Law Journal* (2009)

<sup>10</sup> Daphna Sharfman, Ephraim Kahana, "Combating Terrorism with Intelligence: The Normative Debate in Israel," 3 *International Journal of Intelligence and CounterIntelligence* (2012), 546-570

Having considered that the judiciary is accountable for overseeing the disposal of PILs, mentioned below are a few guiding remedies implemented by the supreme court to govern PILs.:

- The most integral part of the PIL is the connection to the vested interest with respect to which the PIL is filed, whether the interest for which PIL has been filed is initiated with some malice intent or is frivolous in nature.
- The courts must remember that the process is not twisted or abused.<sup>11</sup> However, it is difficult to stay on top of things in such a populated state, attempting to do so does not harm anyone.
- The legal system must take into consideration, that the procedure of filing the PIL is not exploited or manipulated by political influence or the gaining monetary benefits, resulting in the domination of malicious political aims as well as the postponement of administrative action.
- In certain cases, PILs have altered a person's rights even before hearing back from the courts. The most straightforward approach is for courts to be careful and to consider the best interest of victims. The judicial system must implement a plan that guarantees adequate notice of all the interests of persons who are likely to be impacted by the judicial decisions.

### **Development of concern over the years**

Prior to 1984, the key environmental rules in India were-

- The Water (Prevention and Control of Pollution) Act, 1974<sup>12</sup>
- The Water (Prevention and Control of Pollution) Cess Act, 1977<sup>13</sup>
- Air (Prevention and Control of Pollution) Act, 1981

---

<sup>11</sup> Ian Freckelton, "Querulent paranoia and the vexatious complainant," 2 *International Journal of Law and Psychiatry*, 127-143

<sup>12</sup> O. P. Dwivedi, B. Kishore, "Protecting the Environment from Pollution: A Review of India's Legal and Institutional Mechanisms," 9 *Asian Survey* (1982), 894-911

<sup>13</sup> Bishwanath Goldar, Rita Pandey, "Water pricing and abatement of industrial water pollution: the study of distilleries in India," 2 *Environmental Economics and Policy Studies* (2001), 95-113

Alwar Tarun Bharat Sangh v. The Union of India (Sariska BioReserve) (AIR 1992SC514 and AIR1993SC 293) is a trustworthy NGO in 1991 on a large-scale mining operation within a reserve, including tiger habitats, that is unlawfully managed by the state government.<sup>14</sup> He filed the PIL with the Supreme Court. It deteriorated and eventually led to their demise. The Supreme Court has directed the formation of a commission led by a former Supreme Court judge to compile a list of mines in the protected region and to guarantee that the court's judgments are followed. All mining operations in the Sariska National Park and Tiger Sanctuary region have been prohibited. In 1996, the Chief Justice of India created a permanent forest bench to hear complaints against the environment and forests.<sup>15</sup> In 2013, the Forest Bench was renamed Green Bench, and it continues to resolve disputes concerning protected areas and national parks that fall beyond the authority of the National Green Court.<sup>16</sup>

The Indian judiciary faces the terrible problem of balancing environmental issues with conflicting goals for development that creates jobs and contributes to the economic output. Taking this into account, the Supreme Court used the 'polluter pays' principle in the case of Vellore Citizen Welfare Forum v. Union of India & others ((1996) 5 SCC 647).<sup>17</sup> Untreated toxic by-products from industrial effluents and factories were being dumped straight into the Palar River, which served as the primary source of water supply for the population of Vellore, Tamil Nadu. The Supreme Court determined that the notion of "strict accountability" for environmental harm encompasses not only compensation for polluters, but also the expense of repairing environmental damage.

Him Pravesh Environmental Protection Association vs. Himachal Pradesh by the Secretarial Industry and Ors: a lawsuit was filed with the Himachal Pradesh High Court in 2010 to oppose the development of a cement factory by an industrial zone in HP's Soran district. Claims that the cement mill was erected in blatant disregard of environmental legislation, including the EIA notice. Without a proper public hearing, the facility had levelled a large portion of the forests and grabbed land from adjacent settlements. Recognizing that issuing a closure or demolition order in relation to the cement factory would create enormous suffering and have a

---

<sup>14</sup> K. S. SANKHALA, "Breeding behaviour of the tiger *Panthera tigris* in Rajasthan," 1 *International Zoo Yearbook* (1967), 133-147

<sup>15</sup> *ibid*

<sup>16</sup> JOE FLATMAN, "The Art, Science, and Technology of Medieval Travel," 1 *International Journal of Nautical Archaeology* (2010), 212-213

<sup>17</sup> Mia Mahmudur Rahim, "Legal Regulation of CSR in Weak Economies: The Case of Bangladesh," *CSR, Sustainability, Ethics & Governance Legal Regulation of Corporate Social Responsibility* (2013), 179-272

negative effect on the lives of numerous individuals. The Supreme Court used a “polluter burden” method and awarded cement plant owners 100 rupees in damages, which amounted to 25% of the overall cost of the project. The cement factory's owner has filed an appeal with the Supreme Court. The appeal, however, was dismissed in 2013.

The Supreme Court held in *MC Mehta v Union of India* that air pollution in Delhi caused by vehicle emissions infringes the right to life under Article 21 and endangers people's health on all commercial vehicles operating in Delhi. Ordered to convert to CNG-powered operation for safety.<sup>18</sup>

## **Conclusion**

Green jurisprudence in India highlights the implementation of a comprehensive interpretation of the Constitution by a liberal Supreme Court, which established a system that permitted indigents and concerned individuals to approach the courts through PILs. Lawyers are tempted to perceive every situation as providing a legitimate cause and a legal remedy. This is not always the case, is done with malicious intent and a frivolous approach. PIL is considered a prominent instrument. It is not correct to the fullest in that case. It like other procedures has some grey areas which need to be considered and monitored to of extent. There was still a need of developing green jurisprudence of such a dynamic area.” The court recognized this, which resulted in the creation of a new Environment Court. In June 2010, the National Green Court Law was enacted. Its mission and jurisdiction are as follows: "The National Green Court for the effective and timely resolution of matters relating to environmental preservation and the sustainability of forests and other natural resources, including the enforcement of legislative rights relating to environmental concerns.” to give a place to stay Compensation and payment of compensation for bodily injury and property damage. The Tribunal must follow the core principles of Indian environmental jurisprudence, namely the concepts of ecological sustainability, vigilance, and polluter pays principle derived from Article 21 of the Constitution. Once again, there is a constitutional issue. The Indian court has shown a potential positive impact in developing sustainable ecological governance, sustaining the rule of law, and establishing a fair balance between environmental preservation, social obligations, and national development concerns.

---

<sup>18</sup> Kaushik Ranjan Bandyopadhyay, “Emission Trading in India: A Study of Two Schemes,” AGI Working Paper Series/AGI Working Paper Series,2016-03,1-44 (2016-01) (2016)