ROLE OF PUBLIC INTEREST LITIGATION IN PROTECTION OF ENVIRONMENT

Dr. Priya Singla, Assistant Professor, UILS, Panjab University, Chandigarh

ABSTRACT

Public Interest Litigation is the result of judicial activism and has been seen as an instrument of bringing justice to the doorstep of the poor and less fortunate. It came into existence as a response to an endemic problem of exploitation and injustice caused to the vulnerable sections of the society in India and in many Third World countries. The Indian Supreme Court thus devised the Public Interest Litigation principle; thereunder the public-spirited citizens or groups can activate the Court to prevent the infringement of fundamental rights/human rights of weaker sections. The Apex Court in a number of cases has delivered landmark judgements and given directions to various authorities to take prompt measures to save the environment and thereby save the people from pollution and environmental degradation. An analysis of a few selected Public Interest Litigation cases here will help in explaining the emergence of a growing body of this environmental jurisprudence in India.

KEYWORDS: Public Interest Litigation, Judicial Activism, Environment, Pollution, Damages

INTRODUCTION

Judicial activism is the term used for the unconventional role played by the court when it gives value judgements and grants relief to the aggrieved person or persons according to its moral and social sense of justice in a situation where statutory law is silent or even contrary. Some jurists have also defined it as "non-interpretive judicial review" [1]. It is also called judicial law-making.[2] For a long time the Judges brought up in the Common Law tradition denied that they were lawmakers. The myth was that they either found the law or interpreted it. The American Realist Movement exploded this myth and boldly asserted that the Judges made law. The experience of the United State Supreme Court in interpreting the open textured expressions such as "equal protection of law" in the Fourteenth Amendment or "due process of law" in the Fifth Amendment very tellingly illustrated the law-making function of the Court. Now, it is no more disputed that judges make law.[3] When the words of a statute or the Constitution are vague or unspecific or open textured it consequently leads to widen the scope of such law-making. Judicial discretion is bound to be much greater in the interpretation of a written Constitution.[4]

In India, the judges were reluctant to admit that their function involved law-making. Such reluctance stemmed from their new acquaintance with the Constitution. Although before the Constitution also, the Indian Courts exercised judicial review and in fact struck down acts of legislature or executive as being *ultra vires*[5] such occasions used to be rare[6] and the scope for judicial review was restricted until the Government of India Act, 1935 was enacted. The pre-Constitution constituent laws did not contain any declaration of fundamental rights and therefore the only ground on which a legislative or executive act could be struck down was lack of power. Under the Constitution, the power of judicial review increased not only horizontally but also vertically in dimension.[7] The Court was entrusted with the function of the custodian and guarantor of the fundamental rights.[8] Although the Supreme Court of India acted extremely legalistically in *A.K. Gopalan* v. *State of Madras*[9], and refused to undertake a scrutiny of the

[1] Dr. K.L. Bhatia, Judicial Activism and Social Change 242-257 (State Mutual Book & Periodical Service, Limited 1990).
[2] *Id.* at 242
[3] Dr. K.L. Bhatia, Judicial Activism and Social Change 91-100 (State Mutual Book & Periodical Service, Limited 1990).
[4] *Ibid.*
[5] Empress v. Burah and Book Singh, ILR 3 Cal 63, 87-88; Dhamodar v. Secretary of State, AIR 1921, Bom 367; Tara Bug Tamin v. Collector of Bombay, AIR 1946 Bom 216.
[6] Gledhill, *Unconstitutional Legislation*, *9 Ind. Y.B. International Affairs* 40, 40(1960).
[7] Dr. K.L. Bhatia, *supra* note 3 at 91.
[8] Romesh Thappar v. State of Madras, AIR 1950 SC 124 at 128.
[9] AIR 1950 SC 27.

enacted laws with reference to the spirit of the Constitution,[10] it acknowledged in another case that it has been cast in the role of a sentinel on the quiva as to the fundamental rights.[11] Justice Patanjali Shastri acknowledged in this case that the judicial function was bound to involve choice of a policy, and therefore, it was bound to be influenced by the subjective predilections of the judges. The learned judge said:[12]

"In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgement in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for the people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

This observation is the first judicial admission of the creative nature of the judicial function. Much water has flown down the Ganges since then and today no one will dispute the contention that judges make law, because the Supreme Court of India is the only apex Court that can decide the constitutionality of the Constitutional amendments with reference to the basic structure of the Constitution.[13] Such decision-making involves, according to Baxi, and exercise of constituent and not mere legislative power by the Judges.[14] Justice P.N. Bhagwati said recently in his articles published in the Times of India that the Court performed law-making function.[15] So the then Chief Justice of India by saying this recorded the demolishing of the myth that prevails in public mind about the judicial function. Prof. S.P.Sathe in his renounced work on 'Judicial Activism' also recognize it as pillar of democracy though he is also of the opinion that 'Judicial Activism' however can easily transcend the border of judicial review and turn into populism and excessivism.[16]

Public Interest Litigation is the result of judicial activism. It came into existence as a response to an endemic problem encountered in India, and indeed in many Third World countries,

[10] *Id.* at 42.
[11] State of Madras v. V.G. Row, AIR 1952 SC 196.
[12] *Id* at 200.
[13] Keshavnanda Bharti v. State of Kerala, AIR 1973 SC 1460.
[14] Dr. K.L. Bhatia, *supra* note 3 at 91.
[15] P.N. Bhagwati, *Times of India*, 28th, 29th, 30th September, 1986.
[16] S.P. Sathe, Judicial Activism in India 100 (Oxford University Press 2002).

namely, that of the continued existence of a large number of groups and sectors who are subjected to exploitation, injustice, and even violence on a sustained and systematic basis.[17] In this air of exploitation, it was needed for the judges to come as a survivor for them and play a positive role. The judges were called upon to play an important role in preventing and remedying such abuses and misuses of power and in eliminating exploitation and injustice. It was necessary for this purpose to make procedural innovations that would enable it to meet the challenges posed by such new roles.[18] In doing so, the judiciary, being alive to its social responsibility and accountability to the people of the country, sought to liberate itself from the shackles of western thought-ways. The judges made the use of the judicial review power with new innovations. They devised new methods and new strategies for the purpose of bringing justice to socially and economically disadvantaged groups. This creative interpretation by the judges lead to democratization of remedies to an extent that was unimaginable a decade ago. This strategy made justice in the reach of the common man and also made it accessible to large segments of the population who were hitherto excluded from getting it.[19] A judge while playing this role knowing about his enormous executive and legislative powers that he has as a judge, and uses his discretion for the promotion of constitutional values then he can be termed as an activist judge. An activist judge will consider himself justified in resorting to law making power when the legislature does not bother to legislate. He would also legislate to protect and preserve the human rights as guaranteed by the Constitution. The Indian Supreme Court has devised the Public Interest Litigation principle; thereunder the public-spirited citizens or groups can activate the Court to prevent the infringement of fundamental rights of weaker sections. The traditional concept of Locus Standi has undergone a pragmatic transformation and a citizen can now activate the Court even by means of a letter that is treated as a writ petition.

PUBLIC INTEREST LITIGATION AND ENVIRONMENT

The Apex Court in a number of cases has delivered landmark judgements and given directions to various authorities to take prompt measures to save the environment and thereby save the people from pollution and environmental degradation. The change in the attitude of courts from the strict view to the liberal view of standing in case involving environmental issues started

[17] P.N. Bhagwati and C.J.Dias, *The Judiciary in India: A Hunger and Thirst for Justice*, MANUPATRA (September 19, 2022, 3:45 PM),http://docs.manupatra.in/newsline/articles/Upload/8B0089E4-47E9-4F3E-96AA-77E1135C5AFB.pdf
[18] P.N. Bhagwati and C.J.Dias, supra note 17.
[19] P.N. Bhagwati and C.J.Dias, supra note 17.

with the *Ratlam Municipality*[20] case. In this case the residents of a locality were anguished as the open drains and public excrement by the people who were dwelling in nearby slums were creating nuisance. The court recognized that the whole town and its entire population would benefit from the removal of the common nuisance. The Supreme Court regarded the case as a pathfinder in the field of people's involvement in the judicial process. It was also realized that this would lead to change in the justice system from individualism of locus standi to public oriented.

Close on the heels of the *Ratlam Municipality* case, a vast scope for 'public interest' litigation for environmental pollution control began to unfold. The court, in admitting such cases which project with a joint and collective effort the cause sought to be remedied, highlights and brings to judicial notice the public interest problem, eventually doing a public service by which the common man is benefited. An analysis of a few selected Public Interest Litigation cases here will help in explaining the emergence of a growing body of this environmental jurisprudence in India.

In the case of Rural Litigation and Entitlement Kendra, *Dehradoon* v. *State of UP*[21] popurlarly known as *Doon Valley Case*, it was ordered by the Supreme Court to close the limestone quarries in the Doon valley. The court took the notice of the fact that the perennial water springs in the area are being adversely affected by the limestone quarrying and excavation which is going around the area. The disturbance in the environment was weighed by the court vis-a-vis the need for limestone quarrying for industrial purposes. Consequently, the court also observed that the lessees of the limestone quarries would be thrown out of business if it passes this order of banning the limestone quarries but came to the conclusion with the justification for the order that it has to be done as protecting and safeguarding environment is of more public interest and this cost is to be paid for the same. Right to live in healthy and safe environment is the fundamental right of the people for which it is necessary to maintain ecological balance. [22]

Thus this progressive decision of the Supreme Court has recognized the right of the people to live in a clean hygienic environment, carving it out of the broad right to live with basic human dignity as interpreted under Article 21 of the Constitution of India. In a sense, it became a forerunner to cases involving environment and ecological balance issues.

[20] Municipal Council Ratlam v. Vardichand & other, AIR 1980 SC 1622.
[21] AIR 1985 SC 652.
[22] *Id.* at 653.

Among the public interest cases which have hitherto come before the higher courts in respect of causing environmental pollution, the *Delhi Gas Leak case*[23] also called the *Oleum Gas Leak case*, involving the Sriram Foods and Fertilisers Industries Limited(SFFL) has become historic in view of not only the stringent conditions imposed on the erring unit but also formally introducing the internationally recognized legal norms of 'Absolute liability' and 'Polluter Pays'. A Public Interest Litigation was brought before the Supreme Court in respect of leakage of oleum gas from one of the plant on 4 and 6 December 1985. While holding that the SFFL management was negligent in the operation and maintenance of the plant, the court provided for compensation for the victims of the oleum gas leakage. The court observed that the power of the court is not only injunctive in ambit, i.e. prohibition or injunction orders when any fundamental right of a person is infringed, but it is also remedial in scope that the court can give relief in way of compensation also to the victims. Accordingly, in taking an epoch-making decision with very wide ramifications, the Constitutional Bench of the Supreme Court unanimously ruled:[24]

We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in operation of such hazardous or inherently dangerous activity resulting, for example: in escape of toxic gas, the enterprise is Strictly and absolutely liable to compensate all those who are affected by the accident…the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensations must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

Thus the Supreme Court introduced one of the emerging international eco-standards for providing compensation for causing harm by industrial enterprises. The compensation has been linked to the magnitude and capacity of the enterprise. The court also underscored that factors contributing to the accident cannot in any way diminish the liability in such cases.

Then came *Ganga Pollution Case*[25] and it became milestone in the annals of judiciary history seeking to prevent the industries and the municipal bodies situated along the banks of the Ganga from polluting her waters. The Court directed all industries discharging effluents as well as the municipalities and local bodies which are discharging sewerage into Ganga to be impleaded as

[23] M.C. Mehta v. UOI, AIR 1987 SC 1086.
[24] *Id.* at 1090.
[25] M.C. Mehta v. UOI, (1988) 1 SCC 471; M. C. Mehta v. UOI, (1991) 2 SCC 137; M.C. Mehta v. UOI, (1991) 2 SCC 353.

respondents. The court recognized the right of the petitioner to maintain the petition on the ground that he was interested in protecting the loves of the people who made use of the water flowing in the river even though he was not a riparian owner. The Supreme Court ordered the shifting of tanneries, which were located in such a congested area that they did not have enough space to put up primary treatment plants. The Court directed that unless factories make adequate provision for treatment of effluents, their applications be refused, and immediate action should be taken against existing industries if they are found responsible for polluting water. Apart from these, some other observations made by the Supreme Court have far-reaching implications.

In another Public Interest Litigation case, based on community need and conservation of environment[26] popularly known as *Delhi Master Plan case*, the Supreme Court held that as Delhi is the most polluted city in the country and also in the world, the quality of air is so hazardous to the lungs which leads to various respiratory diseases. Thus conservation and the reversal of environmental degradation is the most vital "community need". The Supreme Court for this viewed that there should be development of green belts and open spaces on the land which is surrendered and dedicated to the community by the owners and occupiers of the relocated hazardous, noxious, heavy and large industries. Thus that land has to be surrendered and dedicated to the community. But at the same time the owner should also be given an opportunity to enable himself to meet the expenses of relocating the industry and provisions should be made to this regard otherwise it would be injustice to him. Thus under the Master Plan permitting the owner to develop a part of the land for his own benefit and surrendering the remaining land for the community use is justified and in conformity with the broader concept of "community need".[27] It shows the courts concern about the ownership right to land as well as community need and the need for protection of the environment.

In *M.C. Mehta* v. *Kamalnath,*[28] the apex court applied the principle of 'Polluter Pays'. According to this principle the activity that is hazardous or inherently dangerous, then the person carrying such activity was liable to make good such loss caused to another person by that activity. This is how the court also applied this compensation jurisprudence in environment cases too. In this, the motel was directed to pay exemplary costs for the irreversible damage done to the ecology of the area. It was also observed by the court that the power of the Court under Article 32 can even extend to award compensation or even exemplary costs in Public

[26] M.C. Mehta v. UOI, AIR 1996 SC 3311.
[27] *Id.* at 3317.
[28] AIR 2000 SC 1997.

Interest Litigation or writ petitions addressing issues of violation of Fundamental Rights as in the present case where the right to clean and green environment as embedded in Article 21 of the Constitution is being violated.

In *M.C. Mehta* v. *UOI*[29] popularly known as *Taj Trapezium case* Public Interest Litigation was filed to protect Taj Mahal – a world wonder and the monument of international repute, sought appropriate directions to the authorities concerned to take immediate steps to stop air pollution in Taj Trapezium Zone. The sulphurdioxide emitted by the Mathura Refinery and other industries when combined with oxygen – with the aid of moisture – forms sulphuric acid called "acid rain" which has a corroding effect on the gleaming white marble. The Supreme Court decision was based on the reports of various technical experts that air pollutants have a damaging effect on the Taj and the people living in the Taj Trapezium Zone. The Court observed that "precautionary principle" requires that environmental measures must anticipate, prevent and attack the causes of operation, which are detrimental to the environment. The Supreme Court further upheld that the polluting industries should changeover to the natural gas as an industrial fuel or should relocate themselves in new industrial estates outside Taj Trapezium Zone.[30] The UP government was directed to give assistance and incentives to the industries in the process of relocation while workmen shall be entitled to certain rights and benefits.[31]

In *M.C. Mehta* v. *Union of India*,[32] a Public Interest Litigation succeeded in getting favourable opinion from the Supreme Court for educating the people about the hazards of environmental pollution. The judges agreed that law alone could not be an effective instrument for protecting environment unless there was an element of social pressure or social acceptance and the interaction was voluntary. It was directed by the court to the central and state government to make rules regarding the exhibition of slides in cinema halls, which contains the information and messages on environment. The court also directed to spread the relative information through radio and television and also to make environment subject compulsory in schools and colleges. These messages were to be designed to educate the people about their social obligation in the matter of the upkeep of the environment in proper shape and making them alive to their obligation not to act as polluting agencies or factors. It was also directed by the court to

[29] AIR 1997 SC 734.
[30] *Id.* at 762.
[31] *Id.* at 763.
[32] AIR 1992 SC 382.

authorities to make rules making it compulsory for the cinema halls license, tourist cinemas and video parlours to exhibhit free of cost at least two slides or messages on environment in all the shows shown by them. The ministry of Environment was also directed to prepare slides carrying the message home on various aspects of environment and pollution. It was also directed that the license of cinema halls could be cancelled if the slides were not exhibited as directed by the honourable Supreme Court. Further the Ministry of Information and Broadcasting was also directed to start the production of information films of short duration. The programme controlling authorities of the Doordarshan and All India Radio were directed to take proper steps to make interesting programmes and broadcast the same on radio and television. The Court also advised the University Grants Commission to consider the feasibility of making environment a compulsory subject at every level of college education.[33]

One may gather from the above discussion that Public Interest Litigation is completely a success story. But this is not a fact. There are two sides of every coin and so is in Public Interest Litigation. Public Interest Litigation too has a dark side. It too has generated problems of its own and it is not expected that such problems be swept beneath the carpet and only positive side of Public Interest Litigation be shown.

MISUSE AND ABUSE:

It seems misuse of Public Interest Litigation mechanism in India started in 1990's itself that was anticipated by the Court also and now has reached to such a stage that the very purpose of Public Interest Litigation is undermined for which it was actually introduced. In other words, the bright side of Public Interest Litigation is almost overshadowed by its dark side.

Public Interest Litigation is often criticized as it sometimes obstructs genuine plans of development through stay orders or injunctions. It is advised by the Supreme Court that the interim orders which deprive the State of legitimate due revenues should not be issued. It should be granted only after considering the balance of convenience, if it is found that the some loss likely to be caused to the petitioner, which would be irreversible if contemplated action, were found to be illegal.[34] In a Public Interest Litigation the Court has to weigh the advantage to the public from staying the project against the implementation of the same. In *Raunaq* case[35] Justice

[33]Parmanand Singh, *Public Interest Litigation,* Vol. XXVIII Annual Survey of Indian Law 240, 240(1992).
[34]P.N. Bhagwati and C.J.Dias, supra note 17.
[35]Raunaq International Ltd. v. I.V.R Construction Ltd., 1999 (1) SCC 492.

Sujata Manohar imposed a most onerous condition on the litigant filing Public Interest Litigation. The learned judge said:

"The party at whose instance interim orders are obtained has to be made accountable for the consequence of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders."[36]

That is why it is submitted here that the courts should adopt some midway path so that people who genuinely coming to the courts to unveil the strong adversaries of government and big companies being faced by the poor people would be discouraged and it will go against the ethos of Public Interest Litigation.

In the case of *Rajeev Suri* v. *The Delhi Development Authority* the petition was initially filed before the Delhi High Court, but the Supreme Court transferred it to itself. This petition challenged the possibility of the Central Vista project and the way clearances were obtained for environment, heritage, and land use matters. It also called this a matter of high political significance which required judicial scrutiny. The Supreme Court lamented and called this a misuse of the concept of PIL. It reiterated the intention behind PIL and said that PIL was not meant to make the judiciary the superlative authority over everyday governance but to open the doors of constitutional courts for those humans who were facing injustice and to secure their rights.[37]

Recently in *Kamini Jaiswal* case[38] Supreme Court imposed 25 lakhs on an NGO named Citizens for Judicial Accountability and Reforms (CJAR), which had demanded a probe by a Special Investigating Team into the medical college bribery scandal in which former Orissa High Court Judge is under scanner. The Court said the petition is not only wholly frivolous but

[36] *Id*. at 503.

[37] Debayan Roy, *Supreme Court upholds Central Vista redevelopment by 2:1 majority; Justice Sanjeev Khanna dissents on change of land use*, BAR AND BENCH (September 19, 2022, 4:45 PM)https://www.barandbench.com/news/litigation/supreme-court-upholds-central-vista-redevelopment-justice-sanjiv-khanna-dissents

[38] Kamini Jaiswal v. UOI, AIR 2017 SC 5334.

contemptuous, unwarranted, and is scandalizing the highest judicial system of the country without any reasonable basis.[39]

CONCLUSION

Despite the twin-strategy employed by the judiciary for curbing the misuse of Public Interest Litigation, it seems that still many frivolous Public Interest Litigation cases are filed in the courts. The difficulty faced in curbing the misuse is because of the reason that the basis of Public Interest Litigation itself is flexibility as it has relaxed those traditional rules of standing, form and evidence. That is why it is not easy for the court too to keep the door open and at the same time stop busybodies at the gate. And also the judiciary might not stop entertaining Public Interest Litigation as it is the instrument through which the court is able to intervene and act like guardian of the interest of the marginalized and to protect the fundamental rights of the citizens of this country by making the government accountable. Because of this reason the court would prefer a situation in which no single genuine Public Interest Litigation case not missed, even if that results in admission of some non-genuine Public Interest Litigations. But still the fact is that the misuse of Public Interest Litigation is a major issue and need to be regulated. In true sense a balance needs to be maintained between judicial creativity and judicial restraint.

[39] *Id.* at 5334.