

Indian Constitutional Perspective of Environmental Justice: An Analytical Study with Reference to Pil and Precedents

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ABSTRACT

The problem of environmental pollution has assumed massive and grave proportions over the decades. It has been left to the courts in India to go behind the letter of the law into the spirit of the law to find out the plausible solutions for the problem though evolution of the law of public nuisance into environmental law. Though the implementation of statutory provisions, as also by embracing various international doctrines, the Supreme Court of India as well as various High Courts have tried time and again to develop environment-friendly justice in India through the recognition of the principle of Sustainable Development. However, the actions of the judiciary had been under attacks from other organs of the State alleging that the judiciary is transgressing its boundaries and stepping into the realms of the executive and the legislature. This paper is an effort to trace the environmental justice in India and to find out whether judicial activism can actually lead to sustainable development.

Keywords: Environmental Pollution, Sustainable Development, Constitutional Provisions, Precedents, Judicial Activism

Introduction

To understand why environmental justice matters, one need only remember that the movement fighting environmental racism is the result of what happens when people fear that their lives and health are being disproportionately put at risk because of the color of their skin or the sound of their accent. Environmental racism burst onto the national political and academic radar in 1982 when civil rights activists organized to stop the state of North Carolina from dumping 120 million pounds of soil contaminated with polychlorinated biphenyls (PCBs) in the county with the highest proportion of African Americans.

Soon afterward, environmental justice studies emerged as an interdisciplinary body of literature, in which researchers were documenting the unequal impacts of environmental pollution on different social classes and racial/ethnic groups. Today, hundreds of studies conclude that, in general, ethnic minorities, indigenous persons, people of color, and low-income communities confront a higher burden of environmental exposure from air, water, and soil pollution from industrialization, militarization, and consumer practices. Known variously as environmental racism, environmental inequality, or environmental injustice, this phenomenon has also captured the attention of policy makers.

Thus, a substantial body of literature that documents the existence of environmental in-equalities in the United States emerged. Early findings were later amplified by a series of studies focusing on the location of hazardous waste sites, beginning with a study conducted by the U.S. General Accounting Office (GAO) in 1983. This study documented that African American communities in the southern United States were playing host to a disproportionately high number of waste sites. That regional study was followed in 1987 by the United Church of Christ (UCC) Commission for Racial Justice's groundbreaking national study titled Toxic Wastes and Race in the United States, which documented the unequal and discriminatory siting of toxic waste facilities across the United States. The UCC study concluded that race was the most important factor in predicting where these waste sites would be located.

Benjamin Cavis then executive director of the Commission for Racial Justice of the United Church of Christ, first coined and defined the term environmental racism in 1982 in the following manner: "Environmental racism is racial discrimination in environmental policy making, the enforcement of regulations and laws, or colour Turning the issue on its head to define the remedy for environmental racism, Robert Bullard defined environmental justice as the principle that "all people and communities are entitled to equal protection of environmental and public health laws and regulations." In a 1999 interview, Bullard described how "The environmental justice movement has basically redefined what environmentalism is all about. It basically says that the environment is everything: where we live, work, play, go to school, as well as the physical and natural world. And so, we can't separate the physical environment from the cultural environment. We have to talk about making sure that justice is integrated throughout all of the stuff that we do"

After years of bureaucratic and legalistic consideration, the U.S. Environmental Protection Agency (EPA) definition further elaborates on this principle by defining environmental justice as "The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. fair treatment means that no population, due to policy or economic disempowerment, is forced to bear a disproportionate share of the negative human health or environmental impacts of pollution or environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies". In spite of sharp changes in U.S. presidential administrations from Clinton to Bush and now Obama, this definition stands as the de facto official policy and legal bar that environmental justice groups must reach to receive government attention.

Environmental justice claims remain contentious for three reasons. first, in its early years, the mainstream environmental movement ignored social justice and equality issues, and many critics argue that it still does. Early work by scientists and activists concerned about environmental issues was done with little regard to underlying social inequalities that drive differential exposures to pollution and did not incorporate voices of people of color and the working classes in solving them. In fact, there is still debate among environmentalists about whether they should attempt to address these issues or should continue campaigning on issues they are more able to influence. That is, there is not a consensus among environmentalists on whether broadening environmentalism to include justice is always a good idea. Second, documenting the existence of "disproportionate impact" on people of color or poor populations has turned out to not be a simple issue. Because they diverted demands of environmental justice activists, a few studies skeptical of environmental justice claims have gained

an extremely high level of attention in research and policy circles. Dozens of studies have piled up as debates evolved on the best ways to solve research problems. Because so much is at stake for policy in how one answers this question, a substantial portion of this review considers this literature. A third reason environmental justice studies are controversial is that it is not immediately obvious what should be done after an injustice has been documented: Addressing environmental injustice with public policy could involve complex and expensive local, national, or perhaps even global interventions. Solutions, such as relocation of affected communities, which is so ardently sought by some local environmental justice groups, are themselves socially and economically disruptive, and these solutions rarely satisfactory in their outcomes. Workplaces protected by better regulations and enforcement of occupational health standards still face plant closure in the face of globalized production.

The growing threats to our environment through developmental activities has created an unprecedented crisis. It has resulted in hazards for decent and healthy environment which is so crucial for human existence. The world has come a long way since the first historic effort to diagnose the global environment took place at the UN Conference on Human Environment (Stockholm, 1972). The journey from the Stockholm Conference to the Earth Summit at Rio

de Janeiro has led to the recognition that "all human beings are entitled to a healthy and productive life in harmony with nature". The growing awareness about unhampered development has led to numerous international and national efforts to protect the environment. Human beings are the primary victims of environmental damage. Though there is no consensus at the international level regarding securing a right to environment as a fundamental human right, yet efforts have been made in some national jurisdictions to recognize such a right.

This right to environment essentially emanates from the right to life, which is the core of all fundamental human rights. The parameters of this right in the various jurisdictions may be put differently, even as the right itself is still in evolution. This emerging human right, recognized primarily through judicial interpretations, tends to offer a shield against the "developmental terrorism" which is threatening to engulf humankind, among other species, on our fragile planet. The nascent right to environments protection is likely to be frowned upon in developed as well as developing societies, as those seeking it may be dubbed anti-development.

Constitution of India is a dynamic instrument which echoes the values, aspirations and the ideals of our freedom movement. Constitutional provisions strive for having clean environment and it is reflected in Constitutional provisions as interpreted by the higher judiciary.

Principles of Environmental Justice

Participants of the first National People of Color Environmental Leadership Summit, held October 24–27, 1991, adopted the following principles:

1. Environmental Justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental Justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
3. Environmental Justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
4. Environmental Justice calls for universal protection from nuclear testing, extraction, production and

disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.

5. Environmental Justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.
6. Environmental Justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
7. Environmental Justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.
8. Environmental Justice affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
9. Environmental Justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
10. Environmental Justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration on Human Rights, and the United Nations Convention on Genocide.
11. Environmental Justice must recognize a special legal and natural relationship of Native Peoples to the
12. U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.
13. Environmental Justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources.
14. Environmental Justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.
15. Environmental Justice opposes the destructive operations of multi-national corporations.
16. Environmental Justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.
17. Environmental Justice calls for the education of present and future generations, which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.
18. Environmental Justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to insure the health of the natural world for present and future generations.

The Constitutional aspects on Environmental Law

In the Indian constitution it was the first time when irresponsibility of protection of the environment imposed upon the states through Constitution (Forty Second Amendment) Act, 1976.

Article 47- duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people

and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48-A-State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.”

The amendment also inserted Part VI-A (Fundamental duty) in the constitution, which reads as follows:

Article 51-A (g)¹-It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature. In *Sachidanand Pandey v. State of West Bengal*², the supreme court observed whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A (g).

Environment Principles Recognized by the Supreme Court

The Supreme Court has drawn from several international environmental law principles using them as guiding principles for incorporating concerns into decision making. Briefly, these principles are as follows:

Principle of Absolute Liability

In *M.C. Mehta v. Union of India (Oleum gas leak case)*³ the Court laid down the principle of absolute liability of hazardous/inherently dangerous industries. The court recognizing that the right to life of the citizens was adversely affected.

Narmada Bacho Andolan v. Union of India,⁴ Supreme Court held that, the precautionary principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain.

*Union carbide corporation v. union of India (The Bhopal case)*⁵ in this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement incoming about, for instance, in getaway of poisonous gas, the enterprise is strictly and incompletely obligated to repay every one of the individuals who are influenced by the accident and such risk not subject to any exemptions.

The Polluter Pays Principle

‘If anyone intentionally spoils the water of another... let him not only pay damages, but purify the stream or cistern which contains the water’ – Plato. The main object of this principle is to make the polluter liable for the compensation to the victims. It’s a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment. In *Vellore citizen’s welfare forum v. union of India*⁶ the court held that, precautionary principle and the polluter pays principle are part of environmental law of the country.

In case of *Indian council for Enviro Legal action vs. Union of India*⁷, pollution by the leaching of H- Acid

¹ Dr. Jai Ram Upadhyay, *Environmental Law 2* (Allahabad Central Law Agency, 2005).

² AIR 1987 SC 1109.

³ AIR 1987 SC 1086

⁴ AIR 2000 SC 375

⁵ AIR 1990 SC 273.

⁶ AIR 1996 SC 2718

⁷ 1996 SC 1446

and sludge produced by a company named silver chemicals (located in Bichhri, a village near Udaipur, Rajasthan) along-lasting damage had been caused, to the soil, underground water, inhuman beings, cattle and to the village economy. The Supreme Court held that the company was absolutely liable for the environmental degradation due to leaching of the H-acid and based on the polluter pays principle it directed the company to pay for the restitution of the environmental damage it had caused.

The Precautionary Principle

The precautionary principle says that if any action or project has isomer possible risk which icon cause harm to public and environment and the person who is taking that action has knowledge about those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in case when scientific investigation point towards a risk. These protections can be relaxed in the case when person taking action can prove with sound evidence that no harm will result.⁸

The precautionary principle, adopted in the Rio declaration, 1992 and subsequently incorporated in international protocols has been recognized by the Supreme Court in several of its directions. The principle implies that even in the absence of full scientific evidence, there is a social responsibility to protect the public from harm when scientific investigation suggests a plausible risk. It is also irrelevant in the context of international justice.⁹

In *S Jagannath v Union of India (Shrimp culture case)*¹⁰, the Supreme Court held that the government authorities must anticipate, prevent and attack the causes of environmental pollution. According to the precautionary principle the burden of proof is on the developer to show that his or her actions are environmentally sound.

In *Indian Council for Enviro-Legal Action v. Union of India*¹¹ case discussed above accepted this principle along with the ‘polluter pays principle as part of the legal system. In *Vellore citizen’s welfare forum v. Union of India*¹² and *Andhra Pradesh pollution control board v. MV Nayudu*¹³, the Supreme Court applied the precautionary principle directly to the facts of the cases and developed the following three concepts for the precautionary principle:

- 1 Environmental measures must anticipate, prevent and attack the causes of environmental degradation.
- 2 Lack of scientific certainty should not be used as a reason for postponing measures.
- 3 Onus of proof is on the actor to show that his action is benign.

It is also commented that the precautionary approach is a principle meant to invert environmental disaster. The principle involves anticipation of environmental harm, adoption of preventive measures, and choice of the least environmentally harmful inactivity.¹⁴

In *Vijayanagar Education Trust v. Karnataka State Pollution Control Board*,¹⁵ the Karnataka High Court

⁸ Arvind Kumar Singh, “The Role of Indian Judiciary in Protection of Environment in India”

⁹ Montreal Protocol on Substances that Deplete the Ozone Layer, 1989; Kyoto Protocol to the United Nations Framework Convention for Climate Change, 2005.

¹⁰ AIR 1997 SCC 813.

¹¹ Supra note 5

¹² Supra note 4 at 2715

¹³ AIR 1999 SC 812

¹⁴ P Leelakrishnan et al, “Environmental Expertise and Judicial Review: Need for Strategy Shift and Law Reform”, Journal of the Indian Law Institute, 357 (1999).

¹⁵ AIR 2002 Kant123

accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment.

A.P. control board v. M.V. Nayudu and others¹⁶ in this case Supreme Court was called upon to decide a question as to whether a cashew factory was a polluting unit. The court relied upon precautionary principle and explained that the principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose least environmentally harmful inactivity. Indian legal system is essentially biased on common law, and includes the public trust doctrine as 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 seashore, running waters, airs, forests, and ecologically fragile lands. The state as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.¹⁹

In M.C. Mehta v. Kamal Nath and Others²⁰, the Supreme Court applied this doctrine for the first time in India to an environmental problem. Its doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. The court continued that 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.

M.I. Builders Pvt Ltd. V. Radhe Shyam Sahu²¹, a city development authority was asked to dismantle an underground market built below a garden of historical importance.

Principle of Sustainable Development

The world commission on environment and development (WCED) in its report prominently known as the 'Brundtland Report' named after the chairman of the commission. Brundtland highlights the concept of sustainable development. As per Brundtland report, sustainable development signifies 'development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. There is a need for the courts to strike a balance between development and environment.'¹⁷

The principle of sustainable development was first enunciated by the Brundtland commission (WCED, 1987) and subsequently adopted in the Rio declaration, 1992. Although not legally binding, the Rio declaration, 1992 enunciated the key principles of sustainability. In B.K. Srinivasan v State of Karnataka¹⁸ the court held that 'sustainable development' as a balancing concept between ecology and development has been accepted as a part of the customary international law though salient features are yet to be finalized by international law jurists. The court directed that sustainable development, precautionary principle, the polluter pays principle and the new burden of proof as laid down by the court should be applied by the government development agencies in making decisions on environmental matters. This principle has been incorporated in the National Green Tribunal Act, 2010.

Rural litigation and entitlement Kendra v. State of UP¹⁹, the court for the first time deal with the issue relating to the environment and development; and held that, it is always to be remembered that these are

¹⁶ AIR 1999 SC 812.

¹⁷ Shantha Kumar, Environmental Law: An Introduction 112 (Surya Publication, Chennai 2008).

¹⁸ AIR 1987 1059

¹⁹ AIR 1987 SC 1037

the permanent assets of mankind and not intended to be exhausted in one generation.

Vellore Citizen's Welfare Forum²⁰, in this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying incapacity of the supporting eco-system.

Environmental Protection: Judicial Approach

There are numbers of the following judgments which clearly highlight the active role of judiciary in environmental protection these are follows:

The Right to a Wholesome Environment

In Charan Lal Sahu v Union of India the Supreme Court said that the right to life guaranteed by article 21 of the constitution includes the right to a wholesome environment.²¹

In Damodhar Rao v. S.O. Municipal Corporation Hyderabad, the Court decided the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in article 21 of the constitution.²²

Public Nuisance: The Judicial Response

Ratlam Municipal Council v. Vardhichand²³ it is held that environmental damage will be considered as public nuisance and duty is cast upon public authorities to help mitigate the effect of nuisance through public interest litigation as strong medium. the judgment of the supreme court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary-constraints.

Judicial Relief Encompasses Compensation to Victims

Delhi gas leak case: M.C. Mehta v. union of India²⁴ In this case, the Supreme Court laid down two important principles of law:

1. The power of the Supreme Court to grant remedial relief for an improved infringement of a fundamental right includes the power to award compensation.
2. The judgment opened a new phase in the Indian jurisprudence by introducing a new "no fault" liability standard (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The anew standard makes hazardous industries absolutely liable from the harm resulting from its activities.

Fundamental Right to Water

The fundamental right to water has involved in India, not through legislative action but through judicial interpretation. in Narmada Bacho Andolan v. Union of India and Ors., the Supreme Court of India held

²⁰ 1996 (5) SCC 647

²¹ Ravi Krishan, "Human Rights Approach Towards Pollution Free Environment"

²² C.M. Abraham and Sushila Abraham, "The Bhopal Case and The Development Of environmental Law in India"362 (April 2010)

²³ AIR1980SC1622.

²⁴ AIR1987SC965.

that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined 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.²⁵

Environment Education

Supreme Court in many cases directed the union government to issue directions to all the State governments and the union territories to enforce through authorities as a condition for license on all cinema halls, to obligatory display free of expense two slides/messages on environment amid each show.

Role of Public Interest Litigation in India

THE RATIONALE

The public interest litigation (PIL) in India has essentially emerged through the human rights jurisprudence built up by the Supreme Court of India. Initially the writ jurisdiction was invoked (as per Article 32 in case of the Supreme Court and Article 226 in case of the state High Courts) to enforce the fundamental rights enshrined in part III of the Constitution in the process. The PIL in India has been primarily judge-led and even to some extent judge-induced.²⁶ In fact some of the justices of the Supreme Court, notably Krishan Iyer and Bhagwati, began converting much of the constitutional litigation into public interest litigation through a variety of techniques of judicial activism. This was greatly facilitated, by the power of "judicial review" conferred upon the apex court. It covers not only executive action, but also legislative action and even over constitutional amendments. The growth of PIL has been strongly nurtured by the understanding that judges do not merely find the law. It did give a jolt to the traditional Anglo-Saxon myth that judges do not make law. Instead of nurturing this myth, some justice of the Supreme Court pondered over the role of a judge in a traumatically changing society such as India. Justice Bhagwati, quoting Lord Reid, argued that judges do take part in the lawmaking process and regarded judicial activism as a necessary and inevitable part of the judicial process.²⁷ The Supreme Court has strived to achieve distributive justice or social justice. Justice Bhagwati in fact argued that, in a developing country such as India, the modern judiciary cannot afford to bide behind notions of legal justice and plead incapacity when social justice issues are addressed to it.²⁸ In the process, value accountability guides the judges in their decision making.

BASIC CONTOURS

As a logical corollary to the activist role pursued by the higher courts; the centre of gravity of justice has shifted from the traditional individual locus standi to the community orientation of public interest litigation. It was felt by the judges that in the social and cultural setting of India, the traditional rules with regard to standing require extenuation for the purpose of achieving the ends of justice.²⁹ Though not an aggrieved party, the liberalization of the rule of *locus standi* enabled environmentally conscious public spirit individuals or groups an easy access to the highest court of India or to judge-fashioned remedies. In this context, the PIL has been essentially viewed as a collaborative effort on the part of the petitioner, the

²⁵ Vrinda Narain, "Water as a Fundamental Right"

²⁶ Bhagwati, "Judicial Activism and Public Interest Litigation", Columbia Journal of Transnational Law. Vol. 23. (1985). p. 561.

²⁷ Bhagwati, n.4. p. 563.

²⁸ Bhagwati, n.4, p. 566.

²⁹ Forward Construction Co. v. Prabhat Manila! (1986). 1 S.C.C. (Supreme Court Cases), 104.

State or public authority and the court to secure observance of the constitutional or legal rights conferred upon

the vulnerable sections of the community and to reach social justice to them³⁰- The PIL is not in the nature of adversary litigation. The Supreme Court, in the *Bandhua Mukti Morcha* case, regarded it as a challenge and an opportunity to the government "to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of the Constitution".³¹

ENFORCEMENT

The Indian Supreme Court, through the device of public interest litigation, has played an effective role in the task of social engineering. Through varied innovative judicial techniques, the Court has tried to enforce the citizen's right to life in general and the right to clean and hygienic environment in particular.

A. Varied Techniques

In view of the very nature of the PIL cases, the courts have to often issue detailed directions to ameliorate the situation warranting immediate attention. Sometimes it amounts to taking over the direction of administration 'in the area' concerned from the executive.³² Moreover, the Court has to see that there is faithful compliance with its directions by the concerned polluters or authorities. Therefore, the Court has devised a technique of monitoring mechanism and periodic reporting to the Court.

The sense of urgency involved in petitions seeking enforcement of the citizens right to a clean and hygienic environment, necessitates that fact-finding commissions or expert committees had to be constituted and interim orders to be issued even before a decision on the rights. This was shown in the *Doon Valley* as well as *Shriram Gas Leakage* case. In the latter case, the Court ordered the caustic chlorine plant to be closed, set up a victim compensation scheme, and then ordered the plant reopening subject to extensive directions, all within ten weeks of the gas leak, without even first deciding whether it had jurisdiction under Article 32 to order relief against a private-corporations.³³

B. Sanctions

Despite all this the Court often remains helpless as its action depends upon violations of orders being brought to its notice by the petitioner. For instance, in *Bandhlta Mukti Morcha* case, the petitioner brought to the notice of the Court non-compliance with its 21 directions (passed on 16 December; 1983) by the Haryana Government. However, the court merely preferred to issue a warning that "if any of these directions is not properly carried out by the Central Government or the State of Haryana, we shall take a serious view of the matter".³⁴

Conclusion and Suggestions

1. Thus, after analyzing the above-mentioned cases, I found that the Supreme Court extends the various legal provisions relating to the protection of the environment. In its way, the justice system tries to infill the gaps when there is a lack of legislation. These new innovations and developments in India through judicial activism open the many approaches to helping the country. In India, courts are

³⁰ People's Union for Democratic Rights v. Union of India, AIR (All India Reporter) 1982 SC 1477

³¹ Bandhua Multi Morcha v. Union of India and Others. AIR 1984 SC 802 at 811.

³² S.K. Agrawala. Public Interest Litigation in India: A Critique (Tripathi Bombay. 1985), p. 32.

³³ Cnningham, "Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience", 29 Journal of the Indian Law Institute 494 (1987) at 516-517.

³⁴ AIR 1984 SC 802 at p. 834.

extremely aware and cautious about the particular nature of environmental rights, is the loss of natural resources cannot be renewed.

2. Environmental law has seen considerable development in the last two decades in India. Most of the principles under which environmental law works in India come within this period. The development of the laws in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the supreme court of India and the high courts of states. PIL has proved to be an effective tool in the area of environmental protection.
3. The Indian judiciary adopted the technique of public interest litigation for the cause of environmental protection in many cases. The basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or finances. Due to PIL, the court indicated contractors of indiscriminate mining operations which had disturbed and destroyed ecological balance and ordered for their closure in the interest of protection of natural environment and conservation of natural resources for public health.
4. Public awareness: in India, media plays an essential part in the general improvement of the country. The effect of media can be seen in the different trials directed by it just by publishing item in their media. The compelling agency of correspondence not just influences the mind of the individuals but is also capable of developing thoughts and desirable attitudes of the people for protecting environment.
5. Regular inspection: there is a requirement for a standard review apparatus, which can inspect and examine periodically every one of those exercises which are threatening the environment. It his would be a successful step towards environment protection, since prevention is better than cure.

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