

# ● SENTRY APPROACH OF JUDICIARY FOR THE PROTECTION OF ENVIRONMENTAL POLLUTION IN INDIA: A BIRD'S EYE VIEW



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## **Abstract**

*Indian democracy is based on three pillars which are Legislature, Executive and Judiciary. Separation of powers amongst these three bodies is also a distinct feature of Indian Constitution. In reality it is very tough to stop interference of legislature and executive into the functions of each other. So in present times judiciary can be considered as a sole body which can create the balance.*

*Courts in India have played a very crucial role to prevent environment from pollution. Period of 1970s and 80s can be marked as active period of legislation relating to environmental protection. And this time period is also remembered for the active role played by the courts in India for the protection of environment. To boost up the awareness and to remove hindrances, concept of Public Interest Legislation was introduced in this period only, when rule relating to locus standi was relaxed. Supreme Court as well as High Courts at State level passed various orders to curb the problem of pollution. With the mushroom growth of industrial establishments in India, discharge of effluent into rivers and emission of smoke also increased which causes the environmental pollution at alarming level. This piece of research is a bonafide attempt to have a glance at principles propounded and recent trends of Indian judiciary for the protection of environmental pollution in India*

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## **Key words**

*Pollution, Environment, Judiciary, Industrialisation.*

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## **WRIT JURISDICTION TO DEAL WITH ENVIRONMENTAL ISSUES:**

Supreme Court and various High Courts passed most of the orders for the protection of environment while acting under its writ jurisdiction. It is the beauty of Indian Constitution that not only considers the right to healthy environment but also provides for the instrument to enforce the protection.

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## 1.1 Writ Jurisdiction of Supreme Court of India:

Enforcement of fundamental rights given under Part-III through writ jurisdiction of Supreme Court is provided under Article 32. Right to approach the Apex Court of country for the enforcement of fundamental right is itself a fundamental right. Importance of this fundamental right is summed up by Justice Gajendragadkar,<sup>1</sup> he observed that it is the Article 32 because of which Supreme Court is considered as protector and guarantor of fundamental rights as enshrined in Part-III of Indian Constitution. Dr. Bhim Rao Ambedkar also considered this provision as the soul of the Constitution. In the exercise of its writ jurisdiction Supreme Court can pass following writs:

- a) Habeas corpus
- b) Mandamus
- c) Quo Warranto
- d) Prohibition
- e) Certiorari

In *MC Mehta v. Union of India*,<sup>2</sup> Supreme Court while discussing the ambit and scope of Article 32 of the Indian Constitution observed that it is open for the court to adopt any procedure for the protection of the fundamental rights. Court is empowered to pass any order, direction or writ so that fundamental rights remain under the protective shield. Article 32 is injunctive as well as remedial in nature.

In *MC Mehta v. Union of India*,<sup>3</sup> it was contended that since the petitioner was not a riparian right holder, his writ petition under Article 32 is not maintainable. It was held by the Supreme Court that although petitioner was not a holder of riparian rights but being a public spirited person he is concerned with the infringement of rights of those persons who are living around the river Ganga. So the present writ petition under Article 32 of the Indian Constitution is maintainable.

## 1.2 Writ Jurisdiction of High Courts:

To enforce fundamental rights, like Supreme Court, all the High Courts are also conferred with the power to issue writs.<sup>4</sup> In this aspect all the High Courts are having concurrent jurisdiction as of Supreme Court. High Courts are conferred with vast powers in this regard as compared to the Supreme Court of India. Under Article 226, Writ jurisdiction of High Court can be invoked for the purpose of enforcement of fundamental rights as well as for any other purpose. High Courts have played an important role for the implementation of principles contained in Article 48A and Article 51-A(g).

In *V. Lakshmi pathy v. State*,<sup>5</sup> plan for the establishment and construction of various industrial establishments on the land meant for residential purposes was challenged under Article 226 of the Indian Constitution. It was contended that establishing

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<sup>1</sup>Premchand Garg v. Excise Commissioner AIR 1963 SC 996

<sup>2</sup>AIR 1987 SC 965

<sup>3</sup>AIR 1988 SC 1115

<sup>4</sup>Constitution of India; Article 226

<sup>5</sup>AIR 1992 Kar 57



industries in residential area will violate the right to life under Article 21 of the residents. State contended that this case is not fit to be entertained under writ jurisdiction of high court. High Court making the point clear observed that Article 226 is very apt provision under which any person can seek the help from judiciary for the protection of fundamental rights.

## 2 PUBLIC INTEREST LITIGATION:

It is general rule that only affected person can seek remedy from any court of law, which means that he shall have locus to institute a case. The concept is based on the proposition that remedies are always associated to rights. So to claim remedy one must be vested with the right. No person can approach the court for the enforcement of other person's rights. This proposition caused hindrance when rights are of public nature. Sometime the persons vested with the rights found it very difficult to approach the court for the enforcement of their fundamental rights for one or other reason. Concept of Public Interest litigation provides solution to this problem. According to this concept any public spirited person can file a case in the court of law for the enforcement of public rights and it is not mandatory for him to prove his locus. Concept found its origin in America. In India it was Justice P.N. Bhagwati who used this term for the very first time in early 1980s.<sup>6</sup> With the introduction of Public Interest Litigation, Supreme Court now becomes Peoples' Court.

Earlier trends of the concept of Public Interest Litigation favoured those who were incapable to institute suits for the protection of their fundamental rights. With the passage of time Public Interest Litigation has transcended its limitation. Now a variety of case including the cases for the protection of environment can be filed under Public Interest Litigation.

In *Sachidanand v. State of West Bengal*,<sup>7</sup> Supreme held that Public Interest Litigation is a sharp edged weapon and it must be used with caution and care. In this regard court

mentions following points to be considered

- a) Areas which are purely under the jurisdiction of Executive or Legislature, must not be encroached under the guise of Public Interest Litigation
- b) Whenever any Public Interest Litigation came before the courts of law it must be dealing with the injury inflicted to general public. There is no scope to institute Public Interest Litigation for the enforcement of legal rights which are connected to individuals.
- c) Litigations in which personal or self interest is involved must not be considered as Public Interest Litigations
- d) Public Interest Litigation can be used by petitioners to settle personal rivalries, Courts must ponder upon these cases and shall not consider those petitions as Public Interest Litigations
- e) Petitioner must be a public spirited person

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<sup>6</sup>In the case of *S.P. Gupta v. Union of India* 1981 (Supp) SCC 87

<sup>7</sup>AIR 1987 SC 1109

In recent times Public Interest Litigation successfully addressed various issues to curb the problem of water pollution. Some are

1. Protection of Rivers
2. Protection of Ground Water
1. Prevention of illegal mining
2. Prevention of discharge of trade effluents
3. Problem caused by tanneries
4. Problem caused by Chemical Factories

Public Interest Litigation also provide us various forums, some are:-

1. Animal Protection forums
2. Rural Voluntary Associations
3. Urban Social Activists
4. Environmentalists
5. Welfare Forums
6. Forums to address environmental issues
7. Tribal Welfare Societies
8. Water Protection Bodies

### **3 PRINCIPLES PROPOUNDED AND ADOPTED BY INDIAN JUDICIARY**

Various efforts are made by Indian judiciary to overcome the menace of pollution in India. In doing so various principles are also propounded for the effective implementation of environmental related provisions. Some of them are discussed below:

#### **3.1 CONCEPT OF ABSOLUTE LIABILITY**

Until 1987, rule of strict liability as propounded in *Raylands v. Fletcher*<sup>8</sup> was prevalent in India. In 1984 when dangerous gas from Sriram Fertilizers Company escaped, it was held that a new set of doctrine is in need to cover these kinds of cases so that speedy remedy can be given to the affected persons.<sup>9</sup> Unlike the principle of strict liability, principal of absolute liability is not having any kind of exception.

#### **3.2 Polluter Pays Principle**

This principle provides that if any pollution is caused in the process of any manufacturing, industrial operations or other activities, the responsibility for the same shall be borne by the person incharge of such activity. Basically this principle found its birth in France, where the head office of Organisation for Economic Cooperation and Development is situated. It is an intergovernmental body in which following countries

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<sup>8</sup>(1868)LR 3 HL 330

<sup>9</sup>M.C. Mehta v. Union of India 1987 SCC(1) 395



are member:

- |        |                |         |                          |
|--------|----------------|---------|--------------------------|
| i.     | Austria        | xx.     | Latvia                   |
| ii.    | Australia      | xxi.    | Lithuania                |
| iii.   | Belgium        | xxii.   | Luxembourg               |
| iv.    | Canada         | xxiii.  | Mexico                   |
| v.     | Chile          | xxiv.   | Netherlands              |
| vi.    | Colombia       | xxv.    | New Zealand              |
| vii.   | Czech Republic | xxvi.   | Norway                   |
| viii.  | Denmark        | xxvii.  | Poland                   |
| ix.    | Estonia        | xxviii. | Portugal                 |
| x.     | Finland        | xxix.   | Slovakia                 |
| xi.    | France         | xxx.    | Slovenia                 |
| xii.   | Germany        | xxxi.   | South Korea              |
| xiii.  | Greece         | xxxii.  | Spain                    |
| xiv.   | Hungary        | xxxiii. | Sweden                   |
| xv.    | Iceland        | xxxiv.  | Switzerland              |
| xvi.   | Ireland        | xxxv.   | Turkey                   |
| xvii.  | Israel         | xxxvi.  | England                  |
| xviii. | Italy          | xxxvii. | United States of America |
| xix.   | Japan          |         |                          |

Although this principle was adopted at international level in 1970s, but in India principle was implemented and quoted in *Indian Council for Enviro-legal Action v. Union of India*.<sup>10</sup> Court observed that while conducting any activity in relation to hazardous substances if any damage is caused than the person incharge of the activity must pay for the damage irrespective of the precaution take by him. Court further added that offending industry must be made responsible to repair the damages caused and observed that Section 3 and Section 5 of the Environment Protection Act sufficiently empowered the Governmental Bodies to implement this principle. In Tamil Nadu Tanneries Case<sup>11</sup> for the first time, Apex Court merged Polluters Pay Principle and Principle of Absolute liability, and observed that both these principles are necessary to implement the concept of sustainable development. Although there is clear out distinction between these two principles, Polluters Pay Principle observes no boundaries for its implementation but it is not so with the application of principle of

<sup>10</sup>AIR 1996 SC 1446

<sup>11</sup>Vellore Citizens Welfare Forum v. Union of India AIR 1996 SC 2715

Absolute Liability. Absolute Liability can only be imposed when accident happens involve the handling of hazardous substances.

In *Re Bhawani River- Sakthi Sugar Limited*<sup>12</sup> attention of the court was drawn towards the deterioration of water of river Bhawani. Untreated industrial effluents were discharged into the river making its water unfit for domestic use. Supreme Court relied on Polluters Pay Principle and makes it clear that public interest should always be paramount over the development. Court passed the order against the polluter to pay for the restoration of environment.

In *Uttar Pradesh Pollution Control Board v. Mohan Meakins Ltd.*,<sup>13</sup> Respondent Company was discharging untreated effluent of the establishment into river Gomati, which made the river polluted and its water unfit for human consumption. Polluters demanded that they must be absolved for their liability as the case was pending from last 17 long years. Court, while implementing Polluters Pay Principle held that there is no exception under this doctrine and if any other officer is found to be indulged in the activity of polluting the water, he can also not be absolved.

### 3.3 Precautionary Principle

This principle was conceived by the apex judicial body of the country in *Vellore Citizens Welfare Forum v. Union of India Case*.<sup>14</sup> This principle is a distinct part of the concept of sustainable development. This principle is based on the proposition that prevention is better than cure. It is easy and desired to take appropriate steps to prevent anticipated pollution. Court suggested following elements in this regard:

- a) All authorities whether governmental or statutory must anticipate and prevent environmental degradation
- b) In the event of serious irreversible damage, prevention of environmental degradation shall not be postponed on the pretext of lack of scientific instruments<sup>15</sup>
- c) Occupier of the industrial establishment or actor shall have onus of proof to show that actions taken by him are environmentally benign

This principle should be applied by the government and by other concerned persons whenever the establishment of any industrial establishment is proposed. So in this regard this principle is a policy and not a law, but for the implementation of this policy only strict laws can pave the way.

In *Vijaya Nagar Education Trust v. Karnataka State Pollution Control Board*,<sup>16</sup> High Court while applying the Precautionary Principle emphasised on the importance of this Principle. Court held that application of Precautionary Principle is the part of constitutional mandate while pondering over the cases relating to environmental issues.

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<sup>12</sup>(1998) 6 SCC 335

<sup>13</sup>(2000) 3 SCC 745

<sup>14</sup>AIR 1996 SC 2715

<sup>15</sup>Principle 15 of Rio Declaration on Environment and Development, 1992

<sup>16</sup>AIR 2002 Kar 123



Another important case which emphasised the importance of Precautionary Principal is *A.P. Pollution Control Board v. M. V. Nayudu*.<sup>17</sup>

### 3.4 Doctrine of Public Trust

According to well settled Roman law *Res Nullius* belonged to nobody, *Res Publicae* belonged to the State and *Res Communes* belonged to everyone. So far as this doctrine is concerned it is based on the concept that air, water and other natural things are gifted to humans by Mother Nature so ownership of all these things must not lie with specific individuals or bodies. Availability of water should not be dependent upon the status of any person in the society.

It was the case of *M. C. Mehta v. Kamal Nath*<sup>18</sup> in which the doctrine of public interest was observed. In this case a motel was proposed to be constructed on the bank of beas river. For which forest area was supposed to be utilised. Plans were also there to divert the water of river which can lead to the grave deterioration of the environment. Forest area was taken on lease and agreements were formed between State Government, Central Government and the intended company. Supreme Court interfered and issued orders to quash lease agreement and also instructed to state government that the area must be restored to its original and natural state. State Government was also held liable for the breach of public trust by making agreement for the lease of intended forest area. Court added that water of river belongs to public and must be kept available for their use.

In *M.P. Ram Babu v. Divisional Forest Officer*,<sup>19</sup> question for consideration before Andhra High Court was to determine the ownership of the underground water. Matter was related to the exploitation of underground water by making excessive use of the same. Court applied the the Doctrine of Public Trust and answered the question. Court held that underground water belongs to the State. Even if no specific law is made for the regulation of this water, its use is subject to the regulations of the State. Like a riparian owner can only use the water, he cannot change the flow of the water and he cannot pollute the water as well. So is the case with underground water. Every person is under obligation to protect this water.

In *Hindustan Coca Cola Beverages Private Limited v. Perumatty Gram Panchayath*,<sup>20</sup> Dotrine of Public Trust was again invoked. In 1999 Coca Cola Company established its plant in the tribal area of Plachimada. Licence was granted to the company for the extraction of the water. 60% of the population was dependent over agricultural functions. This area was called as the rice bowl of Kerala so for the cultivation of paddy crop they need plenty of water which was not in scarcity at that time. Coca cola company drawn 1.5 million litres of water which produces scarcity of the same in the region. Also the ground water gets polluted because of the industrial operations. Water samples were analysed and it was found that water now contained cadmium and carcinogen which are toxic for humans.

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<sup>17</sup>AIR 1999 SC 812

<sup>18</sup>(1997) 1 SCC 388

<sup>19</sup>AIR 2002 A.P. 256

<sup>20</sup>2005 (2) KLT 554

Coca Cola Virudha Janakeeya Samara Samiti was formulated to oppose the industrial activities of the company. High Court observed the Doctrine of Public Trust and held that ground water is public property and nobody can pollute it or use it in unregulated manner.

Appeal was instituted in Supreme Court, where recently on 15 July 2017, Coca Cola Company withdraws its proceedings in this 12 year old case by stating that they are not willing to resume the production.

### 3.5 DOCTRINE OF INTERGENERATIONAL EQUITY

The doctrine states that everyone belonging to present generation is duty bound to utilise natural resources in such a way that it can remain available for future generations. This doctrine is similar to the concept of sustainable development, under it is made clear that development shall not be made at the cost of our sustainability. Brundtland Commission's Report which is titled as "Our Common Future" emphasized on the intergenerational equity. Report also makes an appeal to all that everybody must adopt a life style which should be within the ecological parameters and marks it as the requirement of Sustainable Global Development.

### 4 RECENT IMPORTANT DECISIONS

Some important decisions are being given by the judicial bodies recently to protect environmental pollution. Some are discussed below

In *Ayisha w/o Late Komu v. District Collector, Kalpetta & other*,<sup>22</sup> matter came before Kerala High Court, in which a restaurant and bakery were carrying on some unregulated activities because of which water of a well situated in the adjacent house gets contaminated. Restaurant owner had not acquired necessary permissions for the local authorities. Court passed interim order to stop the operation of the restaurant till he acquires the necessary permission on fulfilment of conditions in this regard.

In Court on its own *Motion v. State of Himachal Pradesh & others*,<sup>23</sup> a letter was received by the Himachal Pradesh High Court and Court considered it as a writ petition under Article 226 of the Indian Constitution. A cement factory called ACC Cement factory was in operation in village Salapar of district Mandi. Allegations were levelled on the said cement factory and the governmental authorities not adopted proper measures to check water pollution and the rehabilitation of the villagers. An affidavit in this regard was demanded from the Deputy Commission of Mandi, who admitted that nearby villages are facing pollution problem though all the mandatory permits were taken by the said cement factory.

Court held that issue of environmental pollution is of a grave concern. In the light of affidavit filed by the Deputy Collector of Mandi, the grievances of the residents of the village Salapar must be addressed by the State in a given time period. For this, following orders are passed

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<sup>21</sup> Available at <http://www.un-documents.net/our-common-future.pdf> (Visited on 25.06.2018)

<sup>22</sup> 2018 Indlaw Ker 541

<sup>23</sup> 2018 Indlaw HP 368





- i. Chief Secretary of the State shall constitute a committee for the said purpose
- ii. Committee shall include expert officers from following departments
  - a. Department of Environment, Science and Technology
  - b. Department of Health
  - c. Himachal Pradesh State Pollution Control Board
  - d. Department of industries
- iii. Committee shall assess the impact of industrial operation on the environment and health of the residents
- iv. An action plan must be prepared by the committee and shall also be implemented to protect the environment

In *Mariyapuram Poura Samit v. Leo V. J. and others*,<sup>24</sup> because of the industrial operations of a factory, water of all the wells in the region got acidic. Court taking the cognizance of this grave and serious matter held that State pollution Control Board must identify such wells and affected persons. Directions to the occupiers of the factory to clean the wells to eradicate pollution from them are passed and they are also directed to supply drinking water to the affected people till the work of cleaning is not done.

In *Abhinandan Stone Crushers v. State of Karnataka and another*,<sup>25</sup> petitioners were carrying on the operation of stone crushing under a valid licence in this regard. After the expiry of the licence, an application was made to the Deputy Commissioner for the extension of the licence, which was rejected by the Deputy Commissioner. This writ petition was filed by the petitioner for the issuance of a mandamus writ for the grant of further extension. It was observed that various complaints about the pollution of water and air were forwarded by the residents of nearby villages. It was also contended by the respondent that rejection of the application is decided because a study of the impacts of crushing activities on the environment is in need. Court held the preservation of environment is important so decision of Deputy Commissioner is sound.

## 5 CONCLUSION

When governmental bodies failed to implement the legislative and policy framework, the whole burden shifts to the judiciary, which unfortunately is already overburdened. Still judiciary is playing an active role for the protection of environmental pollution. It is pertinent to mention here that number of separate judicial and quasi-judicial bodies is in need if we are to deal with the long pendency of cases. Unfortunately judiciary is forced to step into the shoes of legislature by framing various policies for the protection of environmental pollution.

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<sup>24</sup>2018 Indlaw Ker 402

<sup>25</sup>2018 Indlaw Kar 4032