

Maharaja Surajmal Institute Law Journal
Year 2024, Volume-1, Issue-2 (July - December)



Online ISSN: 3048-9105

Public Interest Litigation (PIL) and Environmental Constitutionalism: Exploring the Nexus of Judicial Activism and Environmental Protection in India

Rekha Tewathia¹, Santosh Kumar²

¹Assistant Professor Maharaja Surajmal Institute GGSIPU

²Associate Professor Dr. B.R. Ambedkar University New Delhi

ARTICLE INFO

Keywords: Public Interest Litigation (PIL), Environmental Constitutionalism, Judicial Activism, Environmental Protection.

Doi: 10.48165/msilj.2024.1.2.5

ABSTRACT

In recent decades, the concept of Public Interest Litigation (PIL) has emerged as a potent instrument within the paradigm of environmental constitutionalism in India. This research paper aims to examine the intricate relationship between PIL and environmental constitutionalism, shedding light on how PIL has contributed to the advancement of environmental protection and sustainability objectives in the legal system of India.

The paper begins by contextualizing the concept of environmental constitutionalism within the Indian legal landscape, emphasizing the integration of environmental principles into the constitutional framework through articles such as Article 21¹ and Article 48A². It explores the inherent tensions between environmental rights and developmental imperatives, setting the stage for the subsequent analysis of PIL's role in reconciling these tensions.

A comprehensive review of landmark environmental PIL cases is conducted to illustrate the extent to which judicial activism has shaped environmental jurisprudence. The paper examines cases that have brought about significant policy changes, influenced regulatory frameworks, and compelled governmental action to prevent and remedy environmental harm. Through this analysis, the paper highlights the transformation of PIL from a mere procedural tool to a mechanism for enforcing environmental rights and holding authorities accountable for their constitutional obligations. Furthermore, the paper delves into the implications of PIL for access to justice, emphasizing its role in democratizing the legal process by providing marginalized communities and environmental activists with a platform to advocate for their rights.

¹ The Constitution of India, art. 21.

² The Constitution of India, art. 48A.

*Corresponding author.

E-mail address: tewathia4@gmail.com (Rekha Tewathia)

Copyright @ Maharaja Surajmal Institute Law Journal (<https://acspublisher.com/journals/index.php/msilj>)

It critically assesses the potential shortcomings of PIL, including issues of judicial overreach and the need for a balanced approach to ensure effective governance without undermining the separation of powers.

Ultimately, this research paper contributes to the scholarly discourse on both PIL and environmental constitutionalism by presenting a nuanced exploration of their symbiotic relationship. It emphasises the crucial function of the judiciary in safeguarding environmental rights and promoting a culture of sustainable development through the perspective of Public Interest Litigation (PIL). By offering insights into the successes and challenges of environmental PIL in India, this paper aims to inform future legal discussions and policy considerations for enhancing environmental protection within the framework of constitutional principles.

INTRODUCTION

The intersection of law, environment, and governance is a terrain of profound significance, particularly in a country as diverse and dynamic as India. Environmental challenges, often intricately linked to development imperatives, present a complex puzzle for the Indian legal system. Achieving equilibrium between economic development and environmental conservation is a formidable challenge, and it is in this complex context that Public Interest Litigation (PIL) arises as a significant influence.

India, a nation known for its constitutional commitment to environmental preservation, has embedded environmental principles deep within its legal framework. Articles 21 and 48A of the Indian Constitution, enshrining the right to life and the protection and improvement of the environment, respectively, stand as testament to this commitment. Yet, realizing these lofty ideals in a country with diverse environmental challenges, industrial aspirations, and resource needs is a formidable challenge.

This research paper embarks on a journey to explore the dynamic relationship between PIL and environmental constitutionalism within the Indian context. At its core, this investigation is driven by the recognition that the judiciary's function in protecting environmental rights and principles is essential to India's developing environmental jurisprudence.

As the paper unfolds, it seeks to contextualize the concept of environmental constitutionalism, offering insights into the integration of environmental values and rights into India's constitutional fabric. It underscores the inherent tensions that emerge when environmental preservation clashes with developmental imperatives and how the judi-

ciary, through PIL, navigates these turbulent waters.

This exploration hinges on an in-depth analysis of landmark environmental PIL cases, where judicial activism had a major impact on the nation's legal and policy structure. These cases are not merely legal battles; they are pivotal moments that have led to shifts in governance, changes in regulatory frameworks, and the assertion of constitutional obligations to protect the environment.

Furthermore, this research delves into the far-reaching implications of PIL for the broader narrative of access to justice, illuminating how it has democratized the legal process by providing marginalized communities and environmental activists with a powerful platform to articulate their concerns. It critically examines the potential pitfalls of PIL, addressing issues of judicial overreach and the imperative of maintaining the delicate harmony of authority among the judiciary, executive and legislative branches.

As a result, this legal research paper embarks on an odyssey through India's legal and environmental terrain. It aims to contribute to the ongoing discourse surrounding PIL and environmental constitutionalism, offering a nuanced understanding of their interplay. By examining the successes and challenges of environmental PIL, this paper aspires to inform future legal discussions and policy considerations, ultimately strengthening the protection of India's environment within the framework of its constitutional principles.

NEED FOR THE PILS FOR ENVIRONMENT PROTECTIONS

During the 19th century under British colonial governance in India, legislation aimed at safeguarding environmental concerns such as wildlife preservation and water pollution control existed, but with limited territorial scope and specific objectives. For instance, the Indian Penal Code¹ imposed fines on individuals who willingly contaminated public springs or reservoirs, reflecting a relatively narrow legal framework.

Similarly, the Indian Easements Act of 1882² primarily protected land owners from "unreasonable" pollution caused by upstream users. Additional legislation included the Indian Fisheries Act of 1897³, which penalized fish killing through poisoning water and explosives, the Indian

³ The Indian Penal Code, 1860 (Act 45 of 1860).

⁴ The Indian Easements Act, 1882 (Act 15 of 1877).

⁵ The Indian Fisheries Act, 1897 (Act 4 of 1897).

Port Act of 1908⁴, regulating oil discharge in port waters, and the Indian Forest Act of 1927⁵, prohibiting water pollution within forested areas.

The initial legislation concerning air pollution was the Bengal Smoke Nuisance Act of 1905 and the Bombay Nuisance Act of 1912. Although these laws established a basis for environmental protection, they were constrained in scope and failed to comprehensively address the developing environmental concerns.

The turning point came after the Stockholm Declaration of 1972⁶, when the Indian government began to intensify its focus on environmental issues and initiated crucial developments in environmental legal protection. Nevertheless, significant gaps remained in the legal framework. Acts such as the Air Act⁷, Water Act⁸, Factories Act⁹, Forest Act¹⁰, and Motor Vehicle Act¹¹ imposed specific restrictions on noise pollution and improvements in water quality. However, complete coverage of noise and water pollution remained elusive.

Another often-overlooked area was the use of insecticides and pesticides. A report indicated that a substantial proportion of worldwide pesticide poisoning deaths, approximately one-third, occurred in India, with chemicals like BHC, DDT, and endosulfan being primary culprits.

Additionally, the management of nuclear waste posed considerable challenges. This waste fell under the purview of the Atomic Energy Act of 1962¹², granting the central government full authority over its supervision. Due to national security concerns, the operations of the Department of Atomic Energy, responsible for nuclear waste management, remained beyond public scrutiny, distancing this policy from active environmental discourse.

In response to the UN Conference on Human Environment in 1972, member nations, including India, committed to taking measures to protect and enhance the environment. As a follow-up, the 42nd Amendment

to the Indian Constitution was enacted. This amendment introduced Article 48-A in the directive principles of state policy, emphasizing the state's role in safeguarding and improving the environment, forests, and wildlife. Article 51-A (g) inserted in the fundamental duties underscored citizens' responsibility to protect and enhance the natural environment, including forests, lakes, rivers, wildlife, and to display compassion for living creatures.¹³

The 42nd Amendment moved subjects such as forest preservation and the protection of wildlife from the State List to the Concurrent List, enabling both the Union Parliament and State Legislatures to legislate on environmental protection. Article 253 of the Constitution empowers Parliament to legislate for the implementation of international treaties, accords, or conventions pertaining to environmental preservation.¹⁴

The incorporation of Article 48-A¹⁵ and 51-A (g)¹⁶ through the 42nd Amendment marked the initiation of environmental jurisprudence in India. This jurisprudence encompasses the body of laws, both statutory and judicial, addressing diverse aspects of environmental protection and sustainable development.

While India had already enacted several laws for the preservation of its natural heritage, it was during the 1980s and 90s that judicial activism began to amplify efforts in environmental preservation. Empowered by judicial review and the constitutional principle of judicial independence, the Indian judiciary adopted a proactive role in conserving and enhancing the natural environment, while simultaneously raising environmental awareness among the populace. This era resulted in a substantial shift in India's environmental protection strategy, with the judiciary significantly influencing the country's environmental jurisprudence. It is therefore, submitted that there exist disturbing voids in our ecological security laws and this calls for Environment Activism.

PUBLIC INTEREST LITIGATION (PIL) AS A TOOL FOR UPHOLDING ENVIRONMENTAL CONSTITUTIONALISM

Public Interest Litigation (PIL) has played a crucial role in upholding environmental constitutionalism in India by enabling citizens to enforce environmental rights and

⁶The Indian Port Act, 1908 (Act 15 of 1908).

⁷The Indian Forest Act, (Act 16 of 1927).

⁸Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF. 48/14, at 2 and Corr. 1 (1972).

⁹The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).

¹⁰ The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974).

¹¹The Factories Act, 1948 (Act 63 of 1948).

¹²The Indian Forest Act, 1927 (Act 16 of 1927).

¹³The Motor Vehicles Act, 1988 (Act 59 of 1988).

¹⁴The Atomic Energy Act, 1962 (Act 33 of 1962).

¹⁵The Constitution of India, art. 51-A (g)

¹⁶The Constitution of India, art. 253.

¹⁷The Constitution of India, art. 48-A.

¹⁸The Constitution of India, art. 51-A (g).

hold the government accountable. Several landmark cases illustrate how PIL has been used effectively as a tool for environmental protection within the framework of India's constitutional principles.

In the landmark case of *Ratlam Municipal Council v. Vardhichand*¹⁷, the Supreme Court of India made a groundbreaking introduction of the concept of Public Interest Litigation (PIL). This pivotal case centered around the failure of the Municipal Council of Ratlam to fulfill its obligation to establish an adequate drainage system. The council cited financial constraints as the reason for its inability to carry out this essential public health duty.

In its historic judgment, the Supreme Court delivered a precedent-setting observation. It emphasized that a responsible Municipal Council, specifically constituted to uphold public health standards, cannot absolve itself from its primary duty by pleading financial constraints. This judgment laid the foundation for PIL as a legal mechanism to address issues of public interest, particularly when government bodies or authorities fail in their mandated duties.

This significant case marked a significant turning point in Indian jurisprudence, recognizing the courts' role in ensuring the enforcement of public duties even in the face of financial challenges. The introduction of PIL in this context has since become an instrumental tool for the judiciary to protect the rights and interests of the public and to hold government entities accountable for their responsibilities, particularly in matters related to public health and welfare.

Subsequently, the Indian Judiciary has been in a constant process of adaptation, refining established legal principles and innovating new ones to address the evolving needs of society. A compelling example of this adaptability can be found in the case of *M. C. Mehta v. Union of India*¹⁸. This case emerged as a response to a grave incident in 1985 when an oleum gas leak occurred at an industrial plant in the heart of Delhi, resulting in a fatality and posing severe health risks to the public.

In this landmark judgement, the Supreme Court of India established the concept of 'Absolute Liability' regarding the utilisation of dangerous substances. This legal philosophy precluded the offending party from evading accountability through the assertion of defences. The doctrine of 'Absolute responsibility' represents a progression from the established idea of 'strict responsibility,' demonstrating the court's resolve to hold entities accountable for the repercussions of handling hazardous substances.

Similarly, in the case of *Tarun Bharat Sangh, Alwar v. Union of India (Sariska Bio-Reserve)*¹⁹, a notable non-governmental organization (NGO) initiated a Public Interest Litigation (PIL) in the Supreme Court in 1991. This PIL addressed the significant problem of unauthorised large-scale mining operations permitted by the State Government within a protected region. These actions were inflicting irreversible damage on the Tiger habitat and propelling these majestic creatures into extinction. The Supreme Court enacted a resolute measure in response. A Committee was established, chaired by former Supreme Court Justice M.L. Jain, to detect mines inside the protected region and ensure compliance with court orders and notifications. Additionally, it instituted a comprehensive prohibition on all mining operations within Sariska National Park and the area designated as a Tiger Reserve. In 1996, acknowledging the seriousness and intricacy of environmental issues, the Chief Justice of India instituted a permanent Forest Bench in the Supreme Court. This bench was established to adjudicate matters pertaining to environmental and forestry concerns. Over time, its authority broadened, resulting in its rebranding as the "Green Bench" in 2013. It persists in supervising cases related to Sanctuaries and National Parks, as these matters are beyond the authority of the National Green Tribunal.

*Vellore Citizens' Welfare Forum v. Union of India (1996)*²⁰: In this case, the Supreme Court addressed the issue of pollution in the Vellore region of Tamil Nadu. In this case, the untreated effluents originating from tanneries and industrial operations were being indiscriminately discharged into the river *Palur*, which served as the primary water source for the inhabitants of Vellore in the state of Tamil Nadu. Faced with this alarming environmental degradation, the Supreme Court of India delivered a profound judgment that reverberated throughout the legal landscape. In its seminal ruling, the Supreme Court expanded the concept of 'absolute liability' concerning harm inflicted on the environment. The court's pronouncement affirmed that the 'absolute liability' principle extended beyond the mere compensation of victims impacted by pollution. Instead, it encompassed a broader and more comprehensive responsibility – the need to carry the financial burden of rectifying the environmental damage caused.

This legal precedent emphasised the judiciary's commitment to safeguarding the environment and held those responsible for environmental harm to an unambiguous and stringent standard of accountability. It signified a pivotal moment in India's legal evolution, emphasizing that

¹⁹AIR 1980 SC 1622

²⁰ AIR 1987 SC 1086

²¹AIR 1992 SC 514

²²AIR 1996(5) SCC 647

those who exploit or degrade the environment must not only compensate the victims but also actively participate in the restoration and preservation of the environment itself. The significance of this ruling extends far beyond this singular case, serving as a cornerstone in the jurisprudential foundation of environmental protection in India. It not only reinforced the principle of 'absolute liability' but also established a powerful precedent for promoting environmental conservation and ensuring that those who profit from, or contribute to, environmental degradation bear the full weight of their responsibilities. This landmark judgment exemplifies the Indian Judiciary's commitment to environmental constitutionalism and its unwavering dedication to the principles of justice, accountability, and the preservation of the environment. It laid down strict guidelines for industries to adopt cleaner technologies and pollution control measures. This case exemplifies how PIL can be used to combat industrial pollution and promote sustainable development.

M.C. Mehta v. Kamal Nath (1997)²¹: This case highlighted the rampant vehicular pollution in Delhi and led to several directives to improve air quality. The Supreme Court ordered the conversion of all public transport vehicles to run on compressed natural gas (CNG), significantly reducing air pollution in the city.

A.P. Pollution Control Board v. M.V. Nayudu (Retd.) (2001)²²: In this case, the Supreme Court emphasized the importance of the "precautionary principle" in environmental protection. It ruled that in matters of environmental damage, the burden of proof should rest on the person or entity that causes potential harm to the environment.

T.N. Godavarman Thirumulpad v. Union of India & Ors. (2002)²³: This case has been instrumental in protecting India's forests. The Supreme Court issued directives to regulate forest-related activities, prevent illegal logging, and promote afforestation. It introduced the concept of the Forest Conservation Act and has played a significant role in preserving India's forest cover.

In the case of **Research Foundation for Science, Technology and Natural Resources Policy v. Union of India²⁴**, a significant legal episode unfolded in 2005. The petitioner, invoking the fundamental rights enshrined in Article 21 of the Indian Constitution, filed a Public Interest Litigation (PIL) before the Supreme Court. The Public Interest Litigation concerned the imminent environmental hazard presented by the French vessel 'Clemenceau,' which

was scheduled for dismantling at the Alang Shipbreaking Yard in Gujarat. In response to pressing environmental issues, the Supreme Court issued a directive that barred the 'Clemenceau' from docking at the Alang Shipbreaking

Yard for destruction. The Court, expressing significant concern over shipbreaking operations, established a committee of technical experts to offer suggestions on the issue. The Court instructed the Government of India to develop regulations concerning shipbreaking techniques. The Court created a detailed framework of recommendations to reduce the environmental effects of shipbreaking operations. These guidelines encompassed the decontamination of ships before dismantling and the categorization of waste generated during the process into hazardous and non-hazardous classifications.

In another noteworthy case, **Him Privesh Environment Protection Society v. State of Himachal Pradesh through Secretary Industries and Others²⁵**, which transpired in 2010, petitions were brought before the High Court of Himachal Pradesh. The petitions contested the development of a cement plant by an industrial organisation in District Solan, Himachal Pradesh. The allegations centred on the plant's development, considered a clear violation of environmental standards, including the Environmental Impact Assessment (EIA) Notifications. The facility intruded upon a significant expanse of forested land and seized territory from neighbouring communities without adhering to requisite public hearing procedures. Recognising the far-reaching implications of imposing a closure or demolition order on the cement plant, a decision that might severely jeopardise the livelihoods of numerous innocent individuals, the High Court used the "polluter pays" principle. The Court levied significant damages of Rs. 100 crores, representing 25% of the overall project cost, on the owner of the Cement Plant. The Cement Plant owner appealed this ruling to the Supreme Court. In 2013, the Supreme Court rejected the appeal, upholding the High Court's ruling and emphasising the importance of the "polluter pays" principle in environmental law. This legal precedent underscored the accountability industries bear for environmental violations, thereby reinforcing the principles of environmental protection within the Indian legal system.

These cases showcase how PIL has been instrumental in interpreting and enforcing constitutional provisions related to the environment. PIL petitions in India can be filed by any citizen or organization acting in the public

²³(1997) 1 SCC 388

²⁴1994 (3) SCC 1

²⁵(1997) 2 SCC 267.

²⁶(2007) 8 SCC 583

²⁷CWP 586/2010 and CWPIL 15/2009 (2012.5.4) (High Court of Himachal Pradesh).

interest, and the courts have taken a proactive stance in addressing environmental issues, often bypassing procedural hurdles to ensure swift action.

Through these cases, PIL has not only held the government accountable for environmental protection but

has also contributed to the development of environmental jurisprudence in India. It has become a crucial mechanism for upholding environmental constitutionalism by ensuring that the principles enshrined in the Indian Constitution are translated into practical action to safeguard the environment.

CONCLUSION

In the vibrant legal landscape of India, the intersection of Public Interest Litigation (PIL) and Environmental Constitutionalism has given rise to a dynamic synergy that has profoundly influenced the trajectory of environmental protection in the nation. The journey through this nexus reveals a story of judicial activism, constitutional commitment, and the relentless pursuit of environmental justice.

Environmental Constitutionalism, rooted in the Indian Constitution through Articles 21 and 48A, embodies the nation's steadfast dedication to safeguarding and enhancing the environment. These constitutional provisions, while noble in intent, often grapple with the complexities posed by the inexorable march of development. It is within this complex web of competing interests that PIL emerges as a pragmatic and potent tool.

PIL has become the cornerstone upon which the bridge between constitutional ideals and environmental protection is built. It is the mechanism through which ordinary citizens, environmental activists, and organizations have found a voice and a channel to demand their constitutionally guaranteed right to a clean and healthy environment. The judiciary, through PIL, has taken on the mantle of a vigilant guardian, stepping in when the executive and legislative branches falter, ensuring that constitutional promises are not mere words on paper but tangible rights for the people.

The landmark cases that have unfolded within the realm of PIL have been nothing short of transformative. From curbing industrial pollution in Delhi to preserving the country's precious forests, these cases have rewritten the environmental narrative in India. They have set precedents, established principles such as the "polluter pays" doctrine, and pushed for pioneering changes in policy and governance. These cases embody the power of PIL in catalyzing proactive, far-reaching reforms.

The democratizing role of PIL in providing access to justice cannot be overstated. It has acted as an equalizer, giving voice to the marginalized and those who bear the disproportionate brunt of environmental degradation. It has elevated the environment from a mere legal issue to a matter of public concern, fostering an informed and engaged citizenry.

However, in wielding this tool of PIL, challenges loom. Judicial overreach is a specter that demands constant vigilance. Striking the delicate balance between the judiciary's intervention and the prerogatives of the other branches of government remains an ongoing endeavor. Yet, these challenges should not obscure the monumental achievements and the promise of PIL as an essential element of India's environmental constitutionalism.

In conclusion, the nexus between PIL and Environmental Constitutionalism represents a beacon of hope in India's ongoing quest for sustainable development and environmental protection. It exemplifies the profound impact that judicial activism can have when grounded in constitutional principles and driven by the pursuit of justice. It is a testament to the resilience of a nation determined to safeguard its environment while progressing towards a brighter, more sustainable future. As this synergy continues to evolve, one can only anticipate that it will remain a vital force for environmental protection in India, ensuring that the ideals enshrined in the Constitution remain vibrant and relevant for generations to come.

SUGGESTIONS

Using Public Interest Litigation (PIL) more effectively to protect environmental constitutionalism in India requires a multi-pronged approach that involves stakeholders from various sectors. Here are some suggestions to harness the power of PIL for stronger environmental protection:

Legal Awareness Campaigns: Promote legal literacy and awareness campaigns, especially in rural and marginalized communities, to inform citizens about their environmental rights and how to initiate PIL cases. This can empower more individuals and communities to engage with the legal system effectively.

Training for Advocates: Provide training programs and resources for lawyers and legal professionals specializing in environmental law and PIL. Enhancing their capacity can lead to more well-prepared and effective legal representation in environmental cases.

Collaboration with NGOs: Foster partnerships between environmental non-governmental organizations

(NGOs) and legal professionals. NGOs often have deep knowledge of environmental issues and can identify potential PIL cases, while lawyers can provide the legal expertise required to pursue them.

Pro Bono Legal Services: Encourage law firms and lawyers to offer pro bono services for PIL cases related to environmental protection. This can help individuals and organizations with limited resources access legal assistance.

Online Platforms: Establish online platforms or databases that centralize information on environmental issues, ongoing PIL cases, and legal resources. This can facilitate easier access to information and encourage more citizens to get involved.

Monitoring and Evaluation: Develop mechanisms for monitoring the implementation of court orders in environmental PIL cases. This ensures that the government and other relevant bodies comply with court directives and that the intended environmental outcomes are achieved.

Public Engagement: Encourage public participation in PIL cases by organizing community meetings, town halls, and awareness campaigns. Engage citizens in the process, making them stakeholders in the protection of their environment.

Pre-Litigation Negotiations: Promote the utilisation of alternate dispute resolution methods, such as mediation or negotiation, prior to engaging in public interest litigation. This may expedite the resolution of environmental issues and alleviate the pressure on the judiciary.

Legal Aid Clinics: Establish legal aid clinics specializing in environmental issues at educational institutions or within communities. These clinics can provide free legal

advice and assistance to individuals or groups with environmental concerns.

Specialized Environmental Courts: Advocate for the establishment of specialized environmental courts or benches within existing courts. These dedicated courts can ensure faster and more expert handling of environmental cases, including PILs.

Review and Reform: Periodically review and reform environmental laws, regulations, and procedural rules to make the PIL process more accessible and efficient for environmental protection cases.

Capacity Building for Judges: Offer training and workshops for judges to enhance their understanding of complex environmental issues. This can lead to more informed and effective decisions in PIL cases.

Public Funding: Explore the possibility of public funding or grants to support PIL cases that address critical environmental issues, especially when the cases are in the public interest but financially burdensome.

Public Reporting and Transparency: Encourage government agencies to provide transparent and accessible information about environmental data, policies, and enforcement efforts. This can aid PIL litigants in building their cases.

By implementing these suggestions, India can maximize the potential of PIL as a tool for upholding environmental constitutionalism. This approach combines legal empowerment, stakeholder collaboration, and systemic improvements to create a more robust framework for environmental protection through the legal system.