

ROLE OF PIL IN THE DEVELOPMENT AND IMPLEMENTATION OF ENVIRONMENT LAWS IN INDIA

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Abstract:

Protection of environment in India is a big issue. Apex Court is very much sentient about the degradation of the environment. It is the basic human right of every one to live in a healthy environment. It is protected under Article 21 of the Indian Constitution. It is also the basic duty of the State to protect the environment from degradation and to provide the healthy environment to its subjects. To fulfil this objective various Environment Protection Laws are there in India and in the development of the Environmental Laws in India, Public Interest Litigation (PIL) has played a significant role. PIL has become an effective tool for the implementation of the Environment Legislations through which the Apex Court gives the directions and issues guidelines for the protection of the environment. The main purpose of this research paper is to throw light on the importance of Public Interest Litigation (PIL) in the development and implementation of Environmental Law.

Key words: Public Interest Litigation, Environmental Laws, Right to Live, Fundamental Right

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1. Introduction:

Living being and environment are like the two sides of a coin. Everyone has the right to live in a safe and healthy environment. At the same time State is under an obligation to provide healthy environment to its subjects. Man lives in the environment and he himself is responsible for polluting the environment. Progress of a country is based upon the progress of its subjects. Progress of a man is possible in case he lives in a healthy environment. The 42nd Amendment Act 1976 inserted Article 48A in Part IV of the Constitution of India which directly imposes a duty on the State by providing that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the Country. This Amendment Act also inserted Article 51A which imposes 10 duties on the citizens of India. Clause (g) of Article 51A imposes a duty on the citizens to protect the environment. This clause provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Even prior to the 42nd Amendment Act of the Constitution of India, Articles 39(b), 47, 48 and 49 of the Directive Principles individually and collectively imposed a duty on the State to create conditions to improve the general health level in the Country and to protect and improve the natural environment.¹ In **Municipal Council, Ratlam vs Vardichand**² the SC held that the State will realise that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties.

In regard to fulfilment of the obligation to protect and conserve the environment, a separate environment department was established in 1980 and various Acts have been passed in India. There are about 200 Central and State Legislations on environmental protection. The most important environmental legislations are passed by the Parliament under Article 249 of the Constitution.³ In 1974, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1974 were passed. In the year 1980, the Forest (Conservation) Act was passed for the conservation of forests and to check on further deforestation. The Air (Prevention and Control of Pollution) Act of 1981 was enacted by invoking the Central Government's power under Article 253. The Air Act represents an implementation of the decisions made at the Stockholm Conference. A notification relating to Noise Pollution

¹ <http://www.legalserviceindia.com/articles/evn.htm>

² (1980) 4 SCC 162

³ http://twocircles.net/legal_circle/constitutional_provision_and_environmental_protection_kamaluddi_khan.html

(Regulation & Control) Rules was made in the year 2000 with the objective of maintaining Ambient Air Quality Standards in respect of noise.

In the wake of the Bhopal gas tragedy, the Government of India enacted the Environment (Protection) Act, 1986. Apart from this, several notifications and rules have also been made, some of which include the Hazardous Wastes (Management and Handling) Rules in 1989, the Biomedical Wastes (Management and Handling) Rules in 1998, Recycled Plastics (Manufacture and Usage) Rules 1999, Environment (Siting for Industrial Projects) Rules 1999 and the Municipal Solid Wastes (Management and Handling) Rules in 2000. In addition to these eco-specific legislations, realising that there is no comprehensive legislation dealing with biodiversity in India, and to fulfil its international obligation under the Convention on Bio-Diversity, the Government of India has enacted the Biological Diversity Act, 2002.⁴

The Apex court is also vigilant for the protection of the environment. It has played a vital role in the development and implementation of the environment laws. It has developed the concept of PIL in India. Public interest litigation is a potent weapon for the enforcement of public duties **where executed in action or misdeed resulted in public injury**. Any citizen of India or/and social group can approach the Supreme Court and High Courts for seeking legal remedies in all cases where the interest of general public or a section of public are at stake.⁵ The then Chief Justice of India, Justice K.G. Balakrishnan said that over the last three decades or so, the device of Public Interest Litigation (PIL) has come to be recognized as a characteristic feature of the higher judiciary in India. The Supreme Court's decisions in Public Interest Litigation (PIL) matters have progressively shaped a unique jurisprudence that gives due weightage to the interests of the underprivileged and backward sections in society.⁶ The Apex Court in India has relaxed the traditional requirement of locus standi in case of PIL. The Court has also widened the scope of Article 21 of the Constitution of India. For the completion of this research paper the traditional or doctrinal method is used. I have divided this paper into five parts. First part is introduction. Second part is concept of PIL in India. It describes about the definition, need and importance of the PIL. Third part is relating to Article 21 of the Constitution of India. It describes that right to enjoy healthy environment is part of Article 21. Fourth part is PIL and environmental law. It

⁴ Supra Note 1.

⁵ <http://www.legalserviceindia.com/article/1171-Public-Interest-Litigation.html>

⁶ Address at Singapore Academy of Law, Fifteenth Annual Lecture on October 8, 2008.

[http://supremecourtindia.nic.in/speeches/speeches_2008/8\[1\].10.08_singapore_-_growth_of_public_interest_litigation.pdf](http://supremecourtindia.nic.in/speeches/speeches_2008/8[1].10.08_singapore_-_growth_of_public_interest_litigation.pdf)

explains the various PILs in which the Apex Court has protected and safeguarded the environment from pollution by issuing directions/orders to the Centre, State Governments and Pollution Control Boards, and has also awarded exemplary compensation. Fifth part is conclusion and suggestions.

2. Concept of PIL in India:

The Public Interest Litigation is termed as PIL. It means the litigation in the interest of the public to protect their legal rights. The expression 'public interest' indicates something in which the general public or the community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected. The word 'litigation' means a legal action, including all legal proceedings initiated in a court of law with the purpose of enforcing a right or seeking a remedy.⁷ PIL can also be called Social Action Litigation (SAL). Generally a person who is aggrieved can ask for the remedy in the court but in the PIL the scope of aggrieved person is enlarged by the court.

In the case of **S. P. Gupta vs President of India**,⁸ the Supreme Court established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason or violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Public Interest Litigation can be filed by an NGO, Institution or an individual and it can also be filed by court suo moto.⁹ It is not necessary to have any direct interest in the matter of litigation of public interest. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution

⁷ <http://indiankanoon.org/doc/441971/>

⁸ AIR 1982 SC 149, para 17.

⁹ <http://www.answers.com/topic/public-interest-litigation-1>

should be taken by person genuinely interested in the protection of society on behalf of the community.¹⁰ It is an inexpensive legal remedy for the environment protection in the country.

The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to improve the judicial access by filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions or bodies.¹¹

In **Municipal Council, Ratlam vs Vardichand**¹², the court recognized the locus standi of a group of citizens. The court held that a few propound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered. In that sense, the case before us between the Ratlam Municipality and the citizens of a ward is a path-finder in the field of people's involvement in the justicing process. In the case of public interest litigation procedural law is applied but not so strictly.

In public interest litigation a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court against the genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.¹³ Public interest litigation can be filed in the:

1. Supreme Court under Article 32 of the Constitution;
2. High Court under Article 226 of the Constitution; and
3. Court of Magistrate under Section 133 of Criminal Procedure Code.

2.1 Definition of PIL:

The term 'Public Interest Litigation' is not defined in any Statute or in any Act. It has been interpreted by judges to consider the intent of public at large. The Supreme Court in **Bandhua Mukti Morcha vs Union of India**¹⁴, held that public interest litigation is not in the

¹⁰ Subhash Kumar vs State of Bihar, AIR 1991 SC 420.

¹¹ In Sunil Batra vs Delhi Administration & Others AIR 1978 SC 1675, The Mumbai Kamgar Sabha, Bombay vs Abdulbhai Faizullabhai & Others, AIR 1976 SC 1455, Ashok Kurnar Pandey vs State of west Bengal, (2004) 3 SCC 349.

¹² <http://www.legalblog.in/2011/02/public-interest-litigation-definition.html>
(1980) 4 SCC 162

¹³ <http://faizlawjournal.blogspot.in/2007/12/public-interest-litigation.html>

¹⁴ AIR 1984 SC para 9.

nature of adversary litigation but it is a challenge and an opportunity to the government and its officers 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 our Constitution.

Advanced Law Lexicon has defined 'Public Interest Litigation' as "The expression 'PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected."¹⁵

The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows: "Public Interest Law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."¹⁶

3. Scope of Article 21 of the Constitution of India:

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. It means a person has the right to life. But the question arises what includes in the term 'right to life'. Apex court has solved this question and explored the meaning of the right to life in various decisions from time to time under Articles 32 and 226. Right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to live with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living.¹⁷

In the case of **M.C. Mehta vs UOI**¹⁸, the Supreme Court held that Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the

¹⁵ <http://www.legalblog.in/2011/02/public-interest-litigation-definition.html>

¹⁶ Quoted in *M/s. Holicow Pictures Pvt. Ltd. vs Prem Chandra Mishra and Ors.*, AIR 2008 SC 913.

¹⁷ In case of *Re: Noise Pollution*, 2005 AIR 3136.

¹⁸ AIR 1987 SC, 1086.

fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights.

In **Chhetriya Pardushan Mukti Sangharsh Samiti vs State of U.P. & Ors**,¹⁹ the Supreme Court held that every citizen has a fundamental right to have the enjoyment of quality of life.

In **Subhash Kumar vs State of Bihar**,²⁰ the petitioner filed a writ petition in this court by way of public interest litigation alleging that the respondents, West Bokaro Collieries and Tata Iron and Steel Company (TISCO) were polluting the river Bokaro by discharging surplus waste in the form of sludge/slurry as effluent from their washeries into river, making the river water unfit for drinking and irrigation purposes thereby causing risk to the health of the people. The State of Bihar and the State Pollution Control Board had failed to take appropriate steps for prevention of the pollution. The Supreme Court held that Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In **M.C. Mehta vs UOI & Ors**,²¹ the court held that every citizen has a right to fresh air and to live in pollution-free environment. In **Indian Council for Enviro-Legal Action etc. vs UOI & Ors**,²² the Supreme Court held that this writ is directed against the Central Government, the State Government and the State Pollution Control Board to perform their statutory duties on the ground that their failure to carry out their statutory duties is seriously undermining the right to life. The court held that if an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, this Court has power to intervene and protect the fundamental right to life and liberty of the citizens of this country.

¹⁹ AIR 1990 SC 2060.

²⁰ AIR 1991 SC 420.

²¹ 1992(3) SCC 256.

²² AIR1996 SC 1446.

In **M.C. Mehta vs Union of India & Ors**,²³ the Supreme Court has reiterated that right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life.

4. PIL and Environmental Law:

Public Interest Litigation is very successful and effective instrument for the development and implementation of the environment laws. In 1980s, Apex Court paid special attention to the problems of air pollution, water pollution and environmental degradation. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. etc. As a matter of fact, the Supreme Court has a regular Forest Bench (Green Bench).²⁴

The Apex Court passed a number of directions and orders to the Central Government, State Government and statutory authorities to ensure the conservation of the environment. According to the Apex Court, each day hundreds of thousands of factories are functioning without pollution control devices. Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Everyday millions of litres of untreated raw effluents are dumped into our rivers and millions of tons of hazardous wastes are simply dumped on the earth. The environment has become so degraded that instead of nurturing us it is poisoning us. In this scenario, in a large number of cases, the Supreme Court intervened and issued innumerable directions.²⁵ The Supreme Court recognised the principle of sustainable development.²⁶ The Apex Court considers and applies the precautionary and polluter pays principles, the features of sustainable development in the protection of environment. The Apex Court also established the principle of 'Absolute Liability' in case any one deals in hazardous activity. The Apex Court declared that pollution is a civil wrong. It is a tort committed against the community as a whole and the person guilty of causing pollution can also be held liable to pay

²³ 2004(12)SCC118.

²⁴ <http://www.legalblog.in/2011/02/public-interest-litigation-definition.html>

²⁵ <http://www.legalblog.in/2011/02/public-interest-litigation-definition.html>

²⁶ Vellore Citizens Welfare Forums vs UOI, AIR 1996 SC 2715.

exemplary damages so that it may act as a deterrent for others to not to cause pollution in any manner.²⁷

In **Rural Litigation and Entitlement Kendra Dehradun & Ors vs State of UP & Ors**,²⁸ the lime stone quarries which have been or which may be directed to be closed down permanently will have to be reclaimed and afforestation and soil conservation programme will have to be taken up in respect of such limestone quarries. In this case Hon'ble Mr. Justice A.N. Sen observed that industrial development is necessary for economic growth of the country. If, however, industrial growth is sought to be achieved by haphazard and reckless working of the mines resulting in loss of life, loss of property, loss of basic amenities like supply of water and creation of ecological imbalance, there may ultimately be no real economic growth and no real prosperity. It is necessary to strike a proper balance. Appropriate authorities at the time of granting leases should take all these facts into consideration and also provide for adequate safeguards.

In **M.C. Mehta vs UOI**,²⁹ the Supreme Court directed the Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate Court for claiming compensation and the Delhi Administration to provide necessary funds to the Board for this purpose. The Court also held that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute non-delegable duty to the community to ensure that if any harm results to anyone, the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm irrespective of the fact that the enterprise had taken all reasonable care and that the harm occurred without any negligence on its part.

In **M.C. Mehta vs UOI**,³⁰ Supreme Court issued interim directions observing that notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986, no effective steps appear to have

²⁷ <http://www.elaw.org/node/1360>

²⁸ 1985 AIR 652.

²⁹ AIR 1987 SC 1086.

³⁰ AIR 1988 SC 1037.

been taken by the State Board and the Central Government to prevent the discharge of effluents of the Jajmau near Kanpur to the river Ganga and to stop the grave public nuisance caused by the tanneries. Tanneries at Jajmau area near Kanpur had been polluting the Ganga in a big way. Those tanneries which had failed to take minimum steps required for the primary treatment of industrial effluent were directed to be closed. No doubt closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.

In **M.C. Mehta vs UOI**,³¹ the Supreme Court was of the view that the petitioner was entitled to move the Court in order to enforce the statutory provisions which imposed duties on the Municipal Authorities and the Boards under the Water Act, on account of failure of which to obey the statutory duties for several years, the water in the River Ganga at Kanpur had become so much polluted that it could no longer be used by the people for drinking or bathing. The Court directed that the Mahapalika should submit its proposals for sewage treatment works to the State Board within six months. New industries should be refused unless adequate provision had been made for the treatment of trade effluents flowing out of the factories, and immediate action should be taken against the existing industries found responsible for the pollution of water. The Court further directed that the Kanpur Nagar Mahapalika should made bye-laws to prevent pollution of the water in the river Ganga by waste accumulated of dairies having about 80,000 cattle. The dairies might either be shifted outside the city so that the waste at the dairies did not ultimately reach the river Ganga, or, in the alternative, the Mahapalika might arrange for the removal of the waste by motor vehicles. Court also directed the Kanpur Nagar Mahapalika to construct sufficient number of public latrines and urinals to prevent defecation by people on the open land.

In **Charan Lal Sahu etc. vs UOI & Ors**,³² the Supreme Court held that every sovereign State has plenary and inherent power to do all things which promote the health, peace, moral, education and good order of the people and tend to increase the wealth and prosperity of the State.

In **M.C Mehta vs UOI**,³³ the Supreme Court issued the following directions:

- i) the Cenaral Government, the State Government and Union Territories should invariably enforce as a condition of license of all cinema halls, touring Cinemas and video parlours to

³¹ AIR 1988 SC 1115.

³² 1990 AIR 1480.

³³ 1992 AIR 382.

exhibit free of cost at least two slides/messages on environment in each show undertaken by them.

- ii) The national network, the State Door-Darshan Centres, All India Radio, Television should take proper steps to exhibit films and interesting programmes on environment issues.
- iii) The environment and its pollution problems should be taught as a compulsory subject at every level of education. University Grants Commission should prescribe a course on environment in a graded manner as a compulsory subject in college education

In **M.C. Mehta etc vs UOI and others etc**,³⁴ the supreme court held that environmental changes are the inevitable consequence of industrial development in our country, but, at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health-hazard for the residents of the area. The authorities concerned in the Union Territories of Delhi have been wholly re-miss in the performance of their statutory duties and have failed to protect the environment and control air pollution in the Union Territory of Delhi. Utter disregard to environment has placed Delhi in unenviable position of being the world's third grubbier, most polluted and unhealthy city as per a study conducted by the World Health Organisation. It is, therefore, directed that

- i) the mechanical stone crushers which do not have valid licences and in respect of which closure orders/directions have been issued by the Central Pollution Control Board under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 or by the Central Government under Section 5 of the Environment (Protection) Act, 1986, should stop functioning/operating with immediate effect;
- ii) the authorities concerned of the State of Haryana should demarcate and allot the sites to the stone crushers in the newly approved 'crushing zone' at village Pali - set up with the object of rehabilitating the existing stone-crushers who are being stopped from functioning as a result of the orders of this Court by draw of lots or by any other fair and equitable method.

In **Vellore Citizens Welfare Forum vs Union of India & Ors**,³⁵ the Supreme Court held that where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The Central Government shall constitute an authority under Section 3(3) of the

³⁴ 1992(3) SCC 256.

³⁵ AIR 1996 SC 2715.

Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu.

In **M.C. Mehta vs UOI & Ors**,³⁶ the Supreme Court, in view of the categorical findings of the National Environmental Engineering Research Institute (NEERI) and of several reports by the West Bengal State Pollution Control Board held that there is no possibility of setting up of common effluent treatment plants at the existing locations of the Calcutta tanneries and the Calcutta tanneries shall have to be relocated from their present locations. The Calcutta tanneries are under an obligation to obtain consent from the Board before they are permitted to discharge the trade effluent into a stream or on land. A large number of Calcutta tanneries had not obtained the required consent. The Calcutta tanneries were also violating the mandatory provisions of the Environment (Protection) Act, 1986. Accordingly, directions were issued for unconditional closure of all the Calcutta tanneries with effect from 30.9.1997. On the basis of Polluter Pays Principle they must pay to reverse the damages caused. Pollution fine of Rs. 10,000 each was imposed on all the Calcutta tanneries. The compensation amount recovered from the polluting tanneries was to be deposited under a separate head called “Environment Protection Fund” and shall be utilised for restoring the damaged environment and ecology. The “Green Bench” of the Calcutta High Court was to monitor further progress in these matters.

In **M.C. Mehta vs UOI & Ors**,³⁷ the Supreme Court held that the old concept that development and ecology cannot go together is no longer acceptable. ‘Sustainable Development’ is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystem have to be protected. The pollution created as a consequence of development must commensurate with the carrying capacity of our ecosystems. The emissions generated by the coke/coal consuming industries are air-pollutants and have damaging effect on the Taj and the people living in the Taj Trapezium Zone (TTZ). The atmospheric pollution in TTZ has to be eliminated at any cost; in view of the precautionary principle, the environmental measures must anticipate, prevent and attack the causes of environmental degradation. Accordingly, 292 industries were directed to change over to the natural gas as an industrial fuel. The industries³⁶ which were not in a position to obtain gas

³⁶ 1997(2) SCC 411.

³⁷ 1997(2) SCC 353.

connections for any reason were directed to stop functioning with the aid of coke/coal in the TTZ and may relocate themselves.

In **S. Jagannath vs Union of India & Ors**,³⁸ the petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.2.1991 and stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas. The Court passed significant directions that the Central Government shall constitute an authority conferring on the said authority all the powers necessary to protect the ecologically fragile coastal areas, seashore, waterfront and other coastal areas and specially to deal with the situation created by the shrimp culture industry in coastal States. The farmers who were operating traditional and improved traditional system of aquaculture may adopt improved technology for increasing production productivity and return with prior approval of the “authority” constituted by that order. Aquaculture industry/shrimp culture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the “authority” as constituted by the Court. The authority, shall frame schemes for reversing the damage caused to the ecology and environment by pollutions.

In **M.C. Mehta vs Kamal Nath & Ors**,³⁹ the Supreme Court held that Public Trust Doctrine is a part of the law of the land, in which certain resources like air, sea, water and the forests are a gift of nature. The State as a trustee is under a legal duty to protect these natural resources. These resources meant for public use cannot be converted into private ownership. In the present case, large area of the banks of river Beas which is part of protected forest had been given on a lease purely for commercial purposes to the Motels. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. The State Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. The Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river. It is settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts. The Motel shall pay compensation by way of cost for the restitution of the

³⁸ (1997) 2 SCC 87

³⁹ 1997(1) SCC 388.

environment and ecology of the area. The Court directed to NEERI to inspect the area through its Director, if necessary and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. The State Pollution Control Board was also directed to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel was not conforming to the prescribed standards, action in accordance with law be taken against the Motel. The Board had to inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them were discharging untreated effluent/waste into the river, the Board should take action in accordance with law.

In **M.C. Mehta vs UOI & Ors**,⁴⁰ the Supreme Court with a view to tackle the problem of vehicle pollution in the National Capital Territory of Delhi gave the direction that all commercial/transport vehicles which are more than 15 years old shall be phased out and not permitted to ply in the National Capital Territory Delhi. This order shall apply to all commercial/transport vehicles whether registered in the National Capital Territory of Delhi or outside (but ply in Delhi) which are of more than the stipulated age.

In **A. P. Pollution Control Board vs Prof. M. V. Nayadu & Ors**,⁴¹ the Supreme Court held that we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.⁴²

In **M.C. Mehta vs UOI & Ors**,⁴³ the Supreme Court held that in order to preserve environment and control air and noise pollution within the vicinity of two tourist resorts Badkal Lake and Surajkund of Haryana caused by stone crushers, pulverisers and mining operations in the surrounding, it would be reasonable to direct the stoppage of mining activity within two km radius of this area. Directions given to maintain ecological balance and to create and maintain green belts as recommended by the NEERI and renewal of mining leases within the area of 2 km to 5 km radius was restricted.

In **M.C. Mehta vs Union of India & Ors**,⁴⁴ the Supreme Court held that the natural sources of air, water and soil cannot be utilized, if the utilization results in irreversible damage to environment. There has been accelerated degradation of environment primarily on

⁴⁰ 1998(8) SCC 206.

⁴¹ (1999) 2 SCC 718.

⁴² <http://www.elaw.org/node/1942>.

⁴³ 2001(9) SCC 235

⁴⁴ 2004(12) SCC118.

account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. The Regulatory Authorities have to act with utmost care in ensuring compliance of safeguards norms and standards to be observed by the entrepreneurs. They must act in the manner enjoined upon them. Where these authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples' life, health and property, the principles of accountability for restoration and compensation have to be applied. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on but balance has to be struck. Air pollution due to fines, dust and smoke or gaseous emissions during mining operations and related activities should be controlled and kept within 'permissible limits' specified under various environmental laws by the holder of mining lease. Further, noise arising out of such operations should be abated or controlled by the lessee at the source so as to keep it within the permissible limit. The basic objectives of the National Forest policy are maintenance of environment stability through preservation and, where necessary, restoration of the ecological balance.

In **re Noise Pollution**,⁴⁵ about the problem of noise pollution the Supreme Court viewed that in our country the people generally lack consciousness of the ill effects which noise pollution creates. There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the text-books which teach civic sense to the children and youth at the initial/early level of education. The young children of impressionable age should be motivated to desist from playing with firecrackers, use of high sound producing equipments and instruments on festivals, religious and social functions, family get-to-gathers and celebrations etc. which cause noise pollution.

In **Karnataka Industrial Areas Development Board vs Sri C. Kenchappa & Ors**,⁴⁶ the Supreme Court held that the concept of sustainable development, whose importance is the resolution of environmental problems, is profound and undisputed. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development

⁴⁵ AIR 2005 SC 3136.

⁴⁶ AIR 2006 SC 2038.

must not exceed the carrying capacity of ecosystem. Court directed that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment. Sustainable use of natural resources should essentially be based on maintaining a balance between development and ecosystem.

5. Conclusion and Suggestions:

The present study reveals that the Constitution of India does not provide specifically, the right to pollution free environment in the chapter of fundamental rights. Only the interpretation made by the Apex Court included this right in the ambit of Article 21 of the Constitution of India. Shri M.C. Mehta a leading advocate and an eminent environmentalist has played an important role for the protection of environment. Regarding environmental issues higher judiciary in India has played a remarkable role. It is PIL by which the Apex court introduced the concept of absolute liability in India. It shows the interest of the judiciary in the protection of the environment. It recognised the concept of sustainable development and applied the precautionary and polluter pays principles and also imposed heavy fine on the polluters for the protection of environment. Public Interest Litigation is an effective and inexpensive tool which should not be used to settle the personal grudge. It should be used only for the public interest point of view. The study stresses that citizens must be made aware about the concept of public interest litigation and protection of environment pollution. They must know their constitutional duty under Article 51 A (g) and co-operate the government to achieve the goal of protection of environment from degradation. All the guidelines provided by Apex Court and the Statutes for the protection of the environment must be followed by the Industrial Community.