



JUDICIAL ACTIVISM VIS-À-VIS ENVIRONMENTAL LAW

"In Environmental lawsuits, the term "judicial activism" signifies the anxiety of judges to find out suitable remedies for environmental problems. At the international level, the right to life is now acknowledged as a fundamental right to include an adequate environment for the health as well of individual beings. In the situation of such developments in the worldwide scenarios, the judicial decisions given by Indian judiciary are particularly crucial to examine." Hon'ble Justice V.R. Krishna Iyer in the case of Ratlam Municipality vs. Vardhichand', stated that "the human rights calling for the unpolluted environment must be implemented irrespective of financial constraints. The public nuisance because of pollutants is a challenge to the social justice component of the rule of law."

Various notable judgments by the Indian judiciary have supported India's environmental protection laws. Even when there was no particular law for environment protection in India, the court has done remarkable work in giving remedies to those who were victims of environmental degradation through Public Interest Litigation. While maintaining residents' rights to a clean and healthy environment, the Supreme Court has stated that economic concerns shall not overshadow the public interest, therefore Indian courts are gradually adopting a realist approach in resolving issues, owing to its highly activist approach.

INTRODUCTION

"When the state's political/executive institutions failed to successfully perform their constitutional commitments, the Indian judiciary showed a willingness to use its power. 'Judicial activism' is a term that has been used to describe this willingness. Around 1980s, the Indian legal system, notably in the realm of environmental law, underwent a major transformation, abandoning its dormant attitude in favour of charting new social justice possibilities. Administrative and legislative activism, as well as judicial activism, typified this time period. Environmental activism is a subset of this, and it has taken off in India in a big way. The loosening of the concept of locus standi, enables the general public to access the Court under Articles 32 and 226 of the Indian Constitution, is one of the reasons for judicial activism in specific environmental situations. Furthermore, the recognition of environmental rights as a "fundamental right" under Article 21 (Right to Life) of the Indian Constitution has given the right to a clean and healthy environment a constitutional sanctity.

For the most part, Indian environmental legislation has evolved during the last three decades, with major polarization in the final two decades. The Indian judiciary, particularly the higher judiciary, which includes the Supreme Court of India and the High Courts of the States, have played a significant role in the evolution of the law in this domain. In particular, India has not only implemented specific environmental legislation in the last two decades, but has also effectively incorporated a new fundamental right to a clean and healthy environment in the Indian Constitution.

The forms and procedures used in the Indian setting appear to be very similar to those used in other common law systems prima facie, but Indian environmental jurisprudence highlights the distinct characteristics of a new legal order that has gradually emerged in India. The evolving Indian environmental jurisprudence, which bears testament to the Indian judiciary's activist role, which has had a considerable impact in many areas other than environmental law, is what sets this jurisprudence apart. In short, India's environmental jurisprudence reflects the creation of a neo-judicial environmental paradigm within the constitution in post-modern public law. It contains the ideas of a variety of specialists from around the country and around the world, and it establishes a border between these ideas and the current legal structure. The Directive Principles of State Policy and Fundamental Duties; Fundamental Rights, jurisdiction of the Supreme Court and the High Courts, implementation of various International principles and creation of domestic principles to further the international obligation towards the environment-- are some of the areas in the Constitution where the judiciary has innovated techniques to further the cause of the *environment*ⁱⁱ. "

RESEARCH OBJECTIVES

Following are the main objectives behind writing this paper-

- To understand the concept of environmental law and its evolution in Indian judicial system.
- To understand the opinion of judiciary on several environmental issues which were comparatively newer for Indian judiciary, and to look into dealings of such cases.
- To understand the various doctrines and principles evolved by Indian courts and jurists to deal with environmental matters.

RESEARCH METHODOLOGY

The research method used in writing this paper is doctrinal method of study with descriptive analysis of secondary data sources available. All the sources used are authentic and creditable in nature. The secondary data is drawn from various relevant books, articles, research papers and master thesis written by various scholars published in online sources, online published journals, the provisions of Constitution of India, statistical and non-statistical data of government bodies and the news articles published by various national and international news agencies and various judicial case laws and case studies from articles, journals and reports like SCC and Manupatra. Data available on various creditable websites has also been taken by the researcher for this research paper. This research paper consists of works of various scholars and a systematic research analysis of those scholarly works. In this paper, researcher has used and analysed multiple cases filed in court of law.

JUDICIAL ACTIVISM IN INDIA

"The partial division of powers is a key aspect of the Indian Constitution. Montesquieu, a French jurist, proposed the idea of separation of powers. It is partly in India because the executive (President), legislative (Parliament), and judicial (Supreme Court and lower courts) have executive, legislative, and judicial powers. In India, the separation of powers principle is straightforward. The Executive, Legislative, and Judicial branches of government are not independently independent, but rather interdependently independent. (When nominating judges to the Supreme Court and the High Courts, the executive usurps judicial power. Likewise, the Judiciary, by its power of review examines the law passed by the legislature and the legislature also does the same with respect of impeachment of the President).

In India, judicial activism can be seen in instances involving the Supreme Court's review jurisdiction under Article 32 and the High Courts' review power under Article 226 of the Constitution, particularly in public interest lawsuit matters. The current global burning problem, which is caused by environmental pollution, was first brought to light 40 years ago. The Supreme Court was instrumental in establishing various environmental contamination principles.

For example, in the *Oleum Gas Leak case*ⁱⁱⁱ, the doctrine of "absolute liability" was established, and so was the Public Trust Doctrine in the *Kamalnath case*^{iv}. Furthermore, the Supreme Court is implementing the Polluter Pays principle to impose maximum liability on industrialists who are found guilty for environmental damage. The notion of "Preventive Rules" was also developed by the court. To control and prevent environmental contamination, industrialists must closely adhere to preventive laws. In addition, the Supreme Court has issued a number of guidelines to prevent contamination in various circumstances. For example, *Ratlam Municipality case*^v, *Oleum Gas Leak case*^{vi}, *Ganga Pollution case*^{vii}, and so on^{viii}."

RELAXATION OF LOCUS STANDI

Power of parties to stand before the court is referred to as locus standi. Civil litigation is often time-consuming, costly, and takes a long time to resolve. This places a burden on the plaintiff, and persons with serious environmental grievances rarely receive civil remedies. The Supreme Court has shown great sensitivity to the plight of the poor and oppressed by granting "representative standing," which allows the poor and oppressed to be represented by NGOs and other professional organizations. In cases of bonded labor, providing women their rights in protective homes, paying construction workers, and so on, the concept of representative standing has shown to be extremely effective.

"The court has streamlined the procedural norms in social action litigation by loosening the standing litigations. Any concerned individual, NGOs, or professional groups can simply write to the High Courts and the Supreme Court to report any violations of the poor or oppressed people's fundamental rights. This letter is treated as a writ petition by the court, which examines the situation, provides legal aid if necessary, hears the case, and issues appropriate orders.





Had the court not taken above mentioned step, there could have been multiple petitioners facing the grave miscarriage of justice and not getting the suitable and appropriate remedies they deserve. As one of India's leading Indian jurist, Dr. Upendra Baxi, for the first time ever opined that, "the Supreme Court of India became a Supreme Court of all Indians"^{ix}. This new form of litigations was known as Public Interest Litigation (PIL) which was initiated in Indian judiciary by Justice P. N. Bhagwati. PIL is measured to be a non-adversarial approach, with the contribution of amicus curiae, the engagement of experts, supervisory committees by the court^x, and the issue of comprehensive interim orders in the structure of constant mandamus under Article 32 and Article 226.

In a variety of circumstances, Public Interest Litigation has aided many aggrieved persons in seeking judicial relief. The case was heard under Article 32 of the Constitution in Rural Litigation Entitlement

Kendra v. State of UP^{xi}. The court ordered the closure of limestone quarries in Mussoorie Hills, which were harming the environment and posing a health and safety risk to residents. The petitioner was awarded locus standi in the *Oleum Gas Leak case*^{xii}. In this decision, the court determined that the exception in *Rylands v. Fletcher*^{xiii}, i.e., the use of natural land, no longer applies to enterprises in India that engage in "dangerous or intrinsically harmful" operations. The Supreme Court has laid down the concept of "absolute liability" principle over-powering the "strict liability" doctrine. The court acknowledged the citizens' right to live in a safe and healthy environment in this decision, stating that industries involved in harmful or intrinsically dangerous activities could no longer hide behind the strict liability concept. The Supreme Court has declared in a series of judgments that industries that do not follow environmental laws' rules and regulations would be shut down."

TORT BASED LITIGATION

The concept of "nuisance" under tort law lies at the root of all environmental legislations around the world. Tort-based litigation is one of the oldest remedies for resolving environmental law issues, despite the fact that it is focused with the protection of third-party interests. Trespass to land, nuisance, public nuisance, and carelessness are among torts that can be used to cause environmental harm. Despite the fact that tort-based litigation in India has a limited scope, it has been shown to be an effective strategy to address environmental harm issues. In tort-based environmental lawsuit, there are three conceivable outcomes:

1. Compensation
2. direction/injunction, and
3. punishment^{xiv}

The Indian courts have made significant contributions to the development of tortious responsibility in environmental law matters. In *Municipal Council, Ratlam v. Vardhichand*^{xv}, Justice Krishna Iyer invoked section 188 of the Indian Penal Code to give extra weight to an executive magistrate's order originating under Section 133 CrPC. A penalty will be imposed if the public servant's directive is not followed.

THE PRECAUTIONARY PRINCIPLE

"The government and health authorities are expected to take adequate efforts to limit and regulate environmental pollution under this premise. Environmentalists feel that a lack of complete assurance does not justify preventing anything that could cause substantial or irreparable harm. The court in *S. Jagganath v. Union of India*^{xvi} directed the authority to deal with the crisis produced by the shrimp business and issued remedial orders based on the precautionary principle and polluters pay Principle."

The court stated in *MC Mehta v. Union of India (CNG Vehicles Case)*^{xvii} that even if there is a shortage of Compressed Natural Gas (CNG), there is no reason why CNG should not be supplied if crude oil can be supplied for fuel and diesel. The court stated that the responsible government should be aware of the rise in respiratory ailments among youngsters in Delhi as a result of rising air pollution. The health risks posed by pollution in Delhi were judged to be more severe than those posed by the Bhopal Gas Disaster. The increase in respiratory ailments was discovered to be related to the government's failure to offer CNG or any other untainted fuel. It was noted that, in these grave circumstances, it was the court's responsibility to step up and take action so that future generations would not suffer.

THE POLLUTER PAYS PRINCIPLE

"Another environmental policy theory is the Polluter Pays Principle, which states that "the cost of pollution should be paid by those who caused it." In *MC Mehta v Union of India*^{xviii}, the Supreme Court determined damages based on an evaluation of the case by the court, taking into account considerations such as the award's deterrent aspect^{xix}. In cases like *Enviro-Legal Action v Union of India*^{xx} and *Vellore Citizens' Welfare Forum v Union of India*^{xxi}, the Polluter Pays Principle was applied. The Supreme Court has ruled that the jurisdiction to

award damages under Article 32, including exemplary damages to compensate for environmental harm, does not extend to the imposition of a pollution fine^{xxii}.”

THE SUSTAINABLE DEVELOPMENT PRINCIPLE

“Sustainable development” is “development that can be sustained by nature/ecology with or without mitigation,” according to the court in *Narmada Bachao Andolan v Union of India*^{xxiii}. The conventional notion that development and ecology were mutually exclusive was rejected in *Vellore Citizens’ Welfare Forum v Union of India*^{xxiv}, and sustainable development was chosen instead. This approach was applied again in the *Taj Trapezium Case*^{xxv}, which ruled that, while mining and industries were necessary for economic progress, they could not trump the importance of environmental conservation. The court banned forest-based enterprises in *State of Himachal Pradesh v Ganesh Wood Products Ltd*^{xxvi}, holding that the principle of inter-generational equality was critical for forest protection and sustainable development.

CONCLUSION

“Despite its inherent flaws, the Indian judiciary has clearly demonstrated its interest for environmental protection through historic and unorthodox judgements. The Supreme Court’s efforts in environmental pollution management through public interest litigation (PIL) are commendable, especially when the legislature is delaying in bridging the gap in the existing legal framework. These efforts, however, should be simple and standardized. Projects that harm the environment should not be approved only on the basis of cost savings if they contravene environmental regulations.

In India, judicial activism is a driving force behind the fight against pollution and Public Interest Litigation (PIL) is here to stay. The way has been shown for citizens to participate in the judicial process. The system would have fallen and disintegrated under the weight of its insensitivity if this had not been done^{xxvii}.” However, environmental activity in India cannot be attributed to the entire judiciary, but rather to a select group of judges. This has a significant impact on the movement within the judiciary. From the highest to the lowest levels of the system, efforts should be made to make judges recognize the purpose of a right to a clean as well as healthy environment^{xxviii}.”

ⁱAIR 1980 SC 1622

ⁱⁱSingh, A., 2020. Judicial Activism on Environment in India. SSRN Electronic Journal.

ⁱⁱⁱAIR 1987 SC 1086

^{iv}(1998) 1 SCC 388

^vAIR 1980 SC 1622

^{vi}AIR 1987 SC 1086

^{vii}AIR 1988 SC 1115

^{viii}Judicial Activism And Environment - Indian Judiciary Notes

^{ix}Dias, A. (1994). JUDICIAL ACTIVISM IN THE DEVELOPMENT AND ENFORCEMENT OF ENVIRONMENTAL LAW: SOME COMPARATIVE INSIGHTS FROM THE INDIAN EXPERIENCE. *Journal of Environmental Law*, 6(2), 243-262.

^xSingh, Amit. (2014). Judicial Activism on Environment in India. SSRN Electronic Journal. 10.2139/ssrn.2383144.

^{xi}AIR 1985 SC 652

^{xii}AIR 1987 SC 1086

^{xiii}(1868) LR 3 HL 330

^{xiv}How has tort law responded to environmental harm issues in India? (legalserviceindia.com)

^{xv}AIR 1980 SC 1622

^{xvi}(1997) 2 SCC 87

^{xvii}2002 (2) SCR 963

^{xviii}AIR 1987 SC 1086

^{xix}Singh, Amit. (2014). Judicial Activism on Environment in India. SSRN Electronic Journal. 10.2139/ssrn.2383144.

^{xx}AIR 1996 SC 1446

^{xxi}AIR 1996 SC 2115

^{xxii}Supra 21

^{xxiii}[2000] INSC 518

^{xxiv}Supra 23

^{xxv}AIR 1997 SC 734

^{xxvi}AIR 1996 SC 149

^{xxvii}JUDICIAL ACTIVISM IN ENVIRONMENT PROTECTION IN INDIA (iralr.in)

^{xxviii}Singh, Amit. (2014). Judicial Activism on Environment in India. SSRN Electronic Journal. 10.2139/ssrn.2383144. ■

Author



Kanhaiya Singhal

(The author is a BA-LLB student, PES University)