



## **ENSURING RIGHT TO CLEAN ENVIRONMENT THROUGH PUBLIC INTEREST LITIGATION IN INDIA: SOME REFLECTIONS**

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### *Abstract*

*The concept of public interest litigation (PIL) has emerged as a very promising instrument to further the objectives laid down in the Constitution. It is “a unique phenomenon in the Indian constitutional jurisprudence that has no parallel in the world.” This instrument helps in protection of the interest of oppressed or suppressed group of people whose voices have remained unheard in court of law due to their peculiar socio-economic conditions. In the adversarial justice system only an ‘aggrieved’ person has right to approach the court for redressal of grievances. This resulted in the denial of justice to many persons who due to poverty or social and economic depravity could not approach the court for redressal of their grievances. The Higher judiciary in India has realized this problem and has “opened its doors to public-spirited citizens and expanded the frontiers of fundamental rights”. This all could happen only by relaxation of the traditional principle of Locus Standi. The liberalization of the principle of locus standi resulted in a newer form of litigation which became popular as “public interest litigation” or “social action litigation”. This system has been proved more effective for dealing environmental matters as they are concerned with public rights and not of individual only. The Apex Court has further widened the scope of PIL by liberalizing the rule of standing to an extent that it has entertained “letters or petitions sent by any person or association through post complaining violation of any fundamental rights” under its epistolary jurisdiction and has treated them as writ petitions. Thus, in the light of this important concept of public interest litigation the present paper seeks to explore and describe as to how the higher judiciary in India has utilized this concept to evolve and enforce the right to clean environment as one of the fundamental rights of the citizens which is the greatest social justice.*

**Keywords:** Environment, Public Interest Litigation, Judicial activism, Locus standi, Constitution.

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## Introduction

The constitutional provisions contained in the Preamble, the Fundamental Rights and the Directive Principles of State Policy have been interpreted in distinguished manner to shape the legal system in India. The concept of public interest litigation (PIL) has emerged as a very promising instrument to further the objectives laid down therein and has “opened a new chapter in the Indian judicial system.”<sup>2</sup> It is “a unique phenomenon in the Indian constitutional jurisprudence that has no parallel in the world”<sup>3</sup> and “has also been proved as a vehicle for fixing the judicial lenses on matters affecting public health and humanity.”<sup>4</sup> This instrument helps in protection of the interest of oppressed or suppressed group of people whose voices have remained unheard in court of law due to their peculiar socio-economic conditions. In the adversarial justice system only an ‘aggrieved’ person has right to approach the court for redressal of grievances. This resulted in the denial of justice to many persons who due to poverty or social and economic depravity could not approach the court for redressal of their grievances. The Higher judiciary in India has realized this problem and has “opened its doors to public-spirited citizens and expanded the frontiers of fundamental rights”<sup>5</sup> and even “rewritten parts of the Constitution.”<sup>6</sup> This all could happen only by relaxation of the traditional principle of *Locus Standi*.

The liberalization of the principle of *locus standi* resulted in a newer form of litigation which became popular as “public interest litigation” or “social action litigation.” This system has been proved more effective for dealing environmental matters as they are concerned with public rights and not of individual only. The Apex Court has further widened the scope of PIL by liberalizing the rule of standing to an extent that it has entertained “letters or petitions sent by any person or association through post complaining violation of any fundamental rights”<sup>7</sup> under its epistolary jurisdiction and has treated them as writ petitions under article 32 of the Constitution. However, in *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*,<sup>8</sup> the Apex Court laid down “limits of PIL in environmental cases” and observed that “this can be done only by any person interested genuinely in the protection of the society or community.”

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<sup>2</sup> Dharmendra S. Sengar, *Environmental Law* 129 (Prentice Hall India Learning Pvt. Ltd., Delhi, 2009).

<sup>3</sup> Parmanand Singh, “Promises and Perils of Public Interest Litigation in Protecting the Rights of the Poor and the Oppressed”, 27 *Delhi Law Review* 8 at 9 (2005).

<sup>4</sup> D.S. Sengar, “Public Access to Environmental Justice: Judicial Activism and Restraint” in D. Banerjea, A. Subramanyam *et. al.*, *Judicial Activism: Dimensions and Directions* 310 (Vikas Publishing House, Noida, 2002).

<sup>5</sup> Mostly Art. 21 has been invoked by the petitioner. The Constitution of India, 1950, Art. 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>6</sup> P.N. Bhagwati, “Judicial Activism and Public Interest Litigation” 23 *Columbia Journal of Transborder Law* 561 at 567 (1985).

<sup>7</sup> This has been termed as epistolary jurisdiction of the Supreme Court.

<sup>8</sup> AIR 1990 SC 2060.

Thus, in the light of this important concept of public interest litigation the present paper seeks to explore and describe as to how the higher judiciary in India has utilized this concept to evolve and enforce the right to clean environment as one of the fundamental rights of the citizens which is the greatest social justice.

### **Evolution, Meaning and Concept of Public Interest Litigation (PIL)**

The concept of PIL in India was evolved and developed by some activist judges of the Apex Court notable among them are Justice Krishna Iyer and Justice P. N. Bhagwati.<sup>9</sup> They realized that certain deficiencies in our legal system is becoming a hurdle in providing justice to poor and disadvantaged persons. In pursuance of this, they started disregarding the strict rules of procedure related to “standing before the court” and liberalized the rule of *locus standi* to “provide access to justice to the poor and disadvantaged sections of the society.”

In *S.P. Gupta v. Union of India*,<sup>10</sup> Justice P.N. Bhagwati evolved and developed public interest jurisdiction to provide right of standing to a person for espousing the causes of poor and disadvantaged persons who “by virtue of their socially or economically disadvantaged position are unable to approach the court for relief” and observed that “Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of 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 person by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.”

In *People’s Union for Democratic Rights* case,<sup>11</sup> the Supreme Court observed that “Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest, which demands the violation of constitutional or legal

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<sup>9</sup> “From an international perspective, the evolution of public interest litigation is an American contribution. Many trace beginnings to the landmark desegregation decisions of the 1955 when the US Supreme Court required schools in Southern American States to end racial segregation.” See, *Brown v. Board of Education*, (Brown II) 349 US 294, 299 (1955).

<sup>10</sup> 1981 (Supp) SCC 87.

<sup>11</sup> AIR 1982 SC 1473.

rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of rule of law, which forms one of the essential elements of public interest in any democratic form of government. The rule of law does not mean that the protection of the law must be available to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the *status quo* under the guise of enforcement of their civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality.”<sup>12</sup>

The court opined that “any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provisions.”<sup>13</sup> The court also opined that “the state or public authority which is arrayed as a respondent in public interest litigation should in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the state and public authorities.”<sup>14</sup>

Further, in *Bandhua Mukti Morcha v. Union of India*,<sup>15</sup> the Apex Court observed that “public interest litigation is not in the 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 the Constitution. The government and its officers must welcome PIL, because it would provide them an occasion to examine whether the poor and downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality. So that in case the complaint in PIL is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and insure to the weaker sections their rights and entitlements. When the court entertains a PIL, it does not do so in caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but

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<sup>12</sup> *Id.* at 1476.

<sup>13</sup> *Id.* at 1483.

<sup>14</sup> *Id.* at 1477.

<sup>15</sup> AIR 1984 SC 802.

its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefits of have-nots and the handicapped and to protect them against violation of their basic human rights which is also the constitutional obligation of the executives. The court is thus, merely assisting in the realization of the constitutional objectives.”<sup>16</sup>

In *Janata Dal v. H. S. Chowdhury*,<sup>17</sup> the Supreme Court had tried to define PIL and stated that “Lexically 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 have pecuniary interest or some interest by which their legal rights or liabilities are affected.” Therefore, PIL means “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 have pecuniary interest or some interest by which their legal rights or liabilities are affected.”<sup>18</sup>

Since 1980s the concept of PIL has brought revolutionary change in ensuring “social justice to the people.” In contrast to conventional litigation which involves two or more private individuals, a PIL relates to “grievance against violation of basic human rights of the poor and helpless or about the content or conduct of government policy. The petitioner seeks to champion a public cause for the benefit of the society.”

### **The Jurisdictional Basis of PIL**

India has a rich heritage of measures related to environment protection. Right from ancient times till modern time considerable attention has been paid towards safeguarding and protecting the environment. Legislature as well as higher judiciary in India have played very important roles in this regard. There are many legislative enactments which deal with different aspects of environment. However, the higher judiciary in India to a great extent has shaped the landscape of Indian environmental jurisprudence through the exercise of writ jurisdiction. The concept of “Judicial activism” and “public interest litigation” have their origin in the “writ jurisdiction of the Supreme Court and High Courts” which have proved to be potent instruments to bring change in the processual jurisdiction. Article 32 and Article 226 of the constitution vest a right in the citizens to invoke the writ jurisdiction of the Supreme Court and High Courts through PIL.

One distinguished feature of the Indian constitution is that the citizens have been vested with

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<sup>16</sup> *Id.* at 811.

<sup>17</sup> AIR 1993 SC 892.

<sup>18</sup> P. M. Baxi, *Public Interest Litigation*, 3 (Ashoka Law House, New Delhi, 2<sup>nd</sup> edition, 2004).

the “right to move the Supreme Court for the enforcement of fundamental rights”.<sup>19</sup> The Apex Court has been granted writ jurisdiction under article 32 of the constitution. Similarly, the High Courts have been vested with writ jurisdiction under article 226 of the constitution. In exercise of writ jurisdiction the Supreme Court and High Courts can “issue any direction, order or writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* whichever is appropriate.”<sup>20</sup> In respect of writ jurisdiction High Courts are at advantageous position as their writ jurisdiction is wider than that of Supreme Court as “one can move Supreme Court only for the enforcement of fundamental rights whereas the writ jurisdiction of the High Court can be invoked for enforcement of fundamental rights or any other purpose as the case may be.” However, the law declared by the Supreme Court is law of the land and binding on all courts in India.

### **Right to Clean Environment: An Offshoot of Judicial Interpretation**

The expressions such as “the right to life”, “personal liberty” and “procedure established by law” enshrined in Article 21 of the Constitution were not given dynamic interpretation and were in dullness state till the end of the infamous “national emergency” in the mid-seventies.<sup>21</sup> The famous case of *Maneka Gandhi v. Union of India*<sup>22</sup> sounded a conceptual revolution and held that “the right in Article 21 can be infringed only by a procedure, just, fair and reasonable.” It was held that the provision not only generates processual justice but also expands substantive “right to life”. The right does not mean the “mere right to have animal existence but the right to live with human dignity.” However, the court at that time seemed to be reluctant in holding expressly that these new dimensions also embrace “right to health, hygienic conditions, open space and natural environment” but a close examination of the facts and decisions of a catena of cases involving environmental questions reveals that the court was heading towards declaring that “the concept of right to life in Article 21 of the Constitution also includes right to healthy environment.”<sup>23</sup> In *Rural Litigation Entitlement Kendra v. State of U.P.*,<sup>24</sup> it was contended that the indiscriminate quarrying of limestone had resulted into ecological imbalance

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<sup>19</sup> The Constitution of India, 1950, Article 32(1). “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”

<sup>20</sup> *Id.* Article 32(2). “The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

<sup>21</sup> P. Leelakrishnan, “Judicial Activism and Environmental Law” in D. Banerjea, A. Subramanyam *et. al.*, *Judicial Activism: Dimentions and Directions* 259 (Vikas Publishing House, Noida, 2002).

<sup>22</sup> AIR 1978 SC 597.

<sup>23</sup> P. Leelakrishnan, “Judicial Activism and Environmental Law” in D. Banerjea, A. Subramanyam *et. al.*, *Judicial Activism: Dimentions and Directions* 260 (Vikas Publishing House, Noida, 2002).

<sup>24</sup> AIR 1985 SC 652.

in the Doon Valley. The court took a serious note of it and ordered closing of mining operations. The court considered the “hardship caused to the lessees as a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance to ecological balance.” The Apex Court evolved the “right of people to live in a healthy environment” in this case but the source of this right was not discussed or mentioned by the court.

Later on in many *M.C. Mehta* cases,<sup>25</sup> the Apex Court given its approval to the right to healthy environment, however, the Court did not expressly declare it. In *Sriram Gas Leak case*,<sup>26</sup> the Supreme Court said that “the case raised some seminal questions concerning the scope and ambit of Articles 21 and 32 of the Constitution”. The Court while doing so was indeed referring to “the concept of right to life in Article 21 and the process of vindication of that right in Article 32.”<sup>27</sup> In *M.C. Mehta v. Union of India*,<sup>28</sup> the court deliberated on “a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activity.” However, the Court again did not clearly declare “the right to a clean and healthy environment” as part of Article 21. In *M.C. Mehta v. Union of India*,<sup>29</sup> the court observed that “the pollution of the river Ganga is affecting the life and health of the people and also the ecology of the Indo- Gangatic plain.” The court further went on to “issue directions to the tanneries to set up effluent treatment plants within six months, failing which, the tanneries would be closed.” The Court noted that “though the closure of tanneries might result in unemployment and loss of revenue, life, health and ecology had greater importance.” In *M.C. Mehta v. Union of India*,<sup>30</sup> the court directed the Mahapalika “to get the dairies shifted to a place outside the city, to lay sewerage line where the same is not constructed as also to increase the size of the existing sewers in labor colonies, to construct public latrines and urinals for the use of poor people free of charge, to ensure with the help of police that dead bodies or half burnt bodies are not thrown into the Ganga and to take action against the industries responsible for the pollution.”

The Supreme Court until now did not declare that “the right to a clean and healthy environment is part of rights under Article 21.” However, in all these cases the court entertained the matters under Article 32 of the Constitution which is used “to enforce fundamental rights for the

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<sup>25</sup> AIR 1987 SC 965, AIR 1987 SC 982, AIR 1987 SC 1086, AIR 1988 SC 1037, AIR 1988 SC 1115.

<sup>26</sup> *M. C. Mehta v. Union of India*, AIR 1987 SC 965.

<sup>27</sup> P. Leelakrishnan, *Environmental Law in India* 114 (LexisNexis, New Delhi, 2000).

<sup>28</sup> AIR 1987 SC 1086.

<sup>29</sup> AIR 1988 SC 1037.

<sup>30</sup> AIR 1988 SC 1115.

purpose of protecting the lives of the people, their health and ecology.” The pronouncements of the Apex Court were indirectly approving that “the right to life under Article 21 included the right to clean and healthy environment.”

In late 1980s, the High Courts went ahead in openly recognizing that “the right to a clean and healthy environment is an integral part of the right to life.” The Andhra Pradesh High Court in *T. Damodar Rao v. S.O. Municipal Corporation, Hyderabad*,<sup>31</sup> observed that “acquisition for housing colony of a land earmarked under development plan for recreational purposes was contrary to the right to enjoy life guaranteed by the Constitution.” The court further held that “... environmental law has succeeded in unshackling man’s right to life and personal liberty from the clutches of common law theory of individual ownership. Examining the matter from the constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gifts without which the life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of the Constitution.”<sup>32</sup> In *Attakoya Thangal v. Union of India*,<sup>33</sup> the Kerala High Court noted that “... the administrative agencies cannot be permitted to function in such a manner as to make inroads into the fundamental right under Article 21. The right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet water and the right to free air are attributes of right to life, for, these are the basic elements, which sustain life itself.” The Rajasthan High Court in *L. K. Koolwal v. State of Rajasthan*,<sup>34</sup> held that the provision contained in Article 51 A (g) has been referred to as a fundamental duty but it “gives citizens the right to approach the court for a direction to the municipal authorities to clean the city as maintenance of health, sanitation and environment falls within Article 21.” Thereby the court enabled the citizens to take affirmative action for enforcement of fundamental rights. The Karnataka High Court in *V. Lakshmipathy v. State of Karnataka*<sup>35</sup> prevented conversion of residential area into an industrial site and held that “entitlement to a clean environment is one of the recognized basic human rights and human

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<sup>31</sup> AIR 1987 A.P. 171.

<sup>32</sup> *Id.* at 181.

<sup>33</sup> 1990 (1) K.L.T. 580.

<sup>34</sup> AIR 1988 Raj. 2.

<sup>35</sup> AIR 1992 Kant. 57.



rights jurisprudence cannot be permitted to be thwarted by *status quoism* on the basis of unfounded apprehensions.” The court further observed that “the right to life inherent in Article 21 of the Constitution of India does not fall short of requirement of quality of life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and quality of environment are threatened or affected, the court would not hesitate to use its innovative power... to enforce and safeguard the right to life to promote public interest.”<sup>36</sup> In *Free Legal Aid Cell v. Government of NCT of Delhi*,<sup>37</sup> the Delhi High Court took note of “challenges of noise pollution during festivals and marriages.” The court observed that “the effect of noise on health has not yet received full attention of our judiciary, which it deserves. Pollution being wrongful contamination of the environment which causes mental injury to the right of an individual, noise can well be regarded as pollutant because it contaminates environment, causes nuisance and affects the health of a person and would therefore, offend Article 21 if it exceeds reasonable limits.” In *Sayed Masood Ali v. State of M.P.*,<sup>38</sup> the Madhya Pradesh High Court opined that “life is a glorious gift from god.... Great achievements and accomplishments in life are possible only if one is permitted to lead an acceptably healthy life.... The term ‘life’ as employed under Article 21 of the Constitution does never mean a bare animal existence but conveys living of life with utmost nobleness and human dignity which is an ideal worth fighting for and worth dying for.... Right to live in its ambit includes right to health and health gives a serene and halcyon signification to life.... The health of an individual enhances the quality of the collective and in a welfare state it is bounden obligation of the state to see that people remain in a healthy society.”

The Andhra Pradesh High Court in *M.P. Ram Babu v. The District Forest Officer*,<sup>39</sup> while refuting the contention that “any sort of deprivation on the right to trade in pawn farming would affect the right to life under Article 21 thereby violating the means of livelihood of many farmers”, held that “unless the trade or profession is environment friendly, such trade had no right over the societal right to clean and healthy environment.” The court therefore gave more weightage to “right to clean and healthy environment” over “right to livelihood and right to trade.” The Madras High Court in *M. K. Janardhan v. The District Collector, Toruvallur*,<sup>40</sup> held that “the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gifts without which life

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<sup>36</sup> *Id.* at 70.

<sup>37</sup> AIR 2001 Del. 455.

<sup>38</sup> AIR 2001 A.P. 220.

<sup>39</sup> AIR 2002 A.P. 256.

<sup>40</sup> 2002-1-LW. 262.

cannot be enjoyed and environmental degradation violates the fundamental right to life.”

Interestingly, the Supreme Court in *M. K. Sharma v. Bharat Electricity Ltd.*,<sup>41</sup> laid down “the guidelines for the protection of workers health” and held that “living in polluted environment endangers the life of human beings, animals and plants.” The process continued further and the Supreme Court in *Ganga Water Pollution* case,<sup>42</sup> while referring to “the plea of financial inability to set up treatment plant” opined that “just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot setup a primary treatment plant cannot be permitted to be in existence for the adverse effect on the public at large.” Thus, the court recognized “the right to a clean and hygienic environment as a part of Article 21 of the Constitution.” Further, *Chhetriya Pardushan Mukti Sangarsh Samiti v. State of U.P.*,<sup>43</sup> is perhaps the first case where the court expressly held “that right to environment is contemplated in Article 21 of the Constitution.” Sabyasachi Mukerji, CJ opined that “every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything, which endangers or impairs that quality of life, is entitled to take recourse to Article 32 of the Constitution of India.” In *Subhash Kumar v. State of Bihar*,<sup>44</sup> the Apex Court held that “right to life enshrined in Article 21 means right to full enjoyment of life with pollution free water and air. If anything endangers or impairs the quality of life, an affected person or a person genuinely interested in the protection of society would have recourse to Article 32.” However, in both these cases the Apex Court could not apply its pronouncements to the facts since the allegations of environmental violations were found to be false and tainted with bias. In *Bangalore Medical Trust v. B.S. Muddappa*,<sup>45</sup> the Apex Court confronted with a question as to “whether an open space laid down as such by a development scheme can be leased out for private nursing home by the very development authority which had formulated the scheme.” The court observed that “the conversion is contrary to the constitutional mandate for the protection of individual freedom and dignity and attainments of a quality of life which a healthy and clean environment guarantees.” The court further observed that “protection of environment, open space for recreation and fresh air, play grounds for children... are matters of great public concern and of vital interest to be taken care of in a development scheme... the public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or

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<sup>41</sup> AIR 1987 SC 1792, 1793.

<sup>42</sup> AIR 1988 SC 1037.

<sup>43</sup> AIR 1990 SC 2060 at 2062.

<sup>44</sup> AIR 1991 SC 420, 424.

<sup>45</sup> (1991) 4 SCC 54.

selling such sites to provide persons for conversion to other uses. Any such act... would be in direct conflict with the constitutional mandate to ensure that any state action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of quality of life which makes the guaranteed right a reality for all citizens.” Significantly, with this pronouncement the Supreme Court widened the scope of affirmative action by holding that the right to life generates and demands such action to protect and preserve various dimensions of a clean and hygienic environment.

In *B.L. Wadhera v. Union of India*,<sup>46</sup> the Apex Court while referring to *Municipal Council Ratlam v. Vardichand*,<sup>47</sup> observed that “residents have constitutional as well as statutory right to live in a clean city and authorities concerned have a mandatory duty to collect and dispose of the garbage or waste generated from various sources in the city. Non-availability of funds, inadequacy or inefficiency of staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.” Also, in *Vellore Citizen Welfare Forum v. Union of India*,<sup>48</sup> the Apex Court opined that “the constitutional and statutory provisions protect a person’s right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment... Our legal system having been founded on the British Common Law, the right of a person to pollution free environment is a part of basic jurisprudence of the land.” The notable case of *Indian Council for Enviro- Legal Action v. Union of India*<sup>49</sup> shows that the sludge remaining as lethal waste years after closure of chemical industries cause immense suffering to the whole village due to spread of disease, death and disaster. Imposing absolute liability on the errant industries and directing the authorities to carry out their statutory duties, the Supreme Court observed in a very categorical sense that “if this court finds that the said authorities have not taken the action required by them by law and that their inaction is jeopardizing the right to life of the citizens of this country, or of any section thereof, it is the duty of this court to intervene....”

In *Andhra Pradesh Pollution Control Board v. M.V. Nayudu*,<sup>50</sup> the Supreme Court gave emphasis on the importance of environmental aspects of right to life under Article 21 and observed that “environmental concerns arising in the Supreme Court under Article 32 or under Article 136 or under Article 226 in the High Courts are of equal importance as human rights concerns. In fact, both are to be traced to Article 21 which deals with fundamental right to life

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<sup>46</sup> (1996) 2 SCC 594.

<sup>47</sup> (1980) 4 SCC 162.

<sup>48</sup> AIR 1996 SC 2715.

<sup>49</sup> AIR 1996 SC 1446.

<sup>50</sup> (1999) 2 SCC 718.

and liberty.” It was further observed that “while environmental aspects concern ‘life’, human rights aspect concern ‘liberty’. In our view, in the context of emerging jurisprudence relating to environmental matters, as in the case of matters relating to human rights, it is the duty of this court to render justice by taking all aspects into consideration.” Further the Apex Court in *T.N. Godavarman Thirumalpad v. Union of India*,<sup>51</sup> observed that “the right to life guaranteed in Article 21 of the Constitution of India includes a right to an environment adequate for health and well-being.” In *Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch*,<sup>52</sup> the Apex Court emphasized on the “nexus between the protection of environment and Article 21 of the Constitution” and held that “any disturbance of basic environmental elements, namely, air, water and soil, which are necessary for life, would be hazardous to life within the meaning of article 21 of the Constitution.” In *State of M.P. v. Kedia Leather and Liquor Ltd.*,<sup>53</sup> the Apex Court observed that “environmental, ecological, air and water pollution amount to violation of the right to life assured by Article 21 of the Constitution of India. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.”

The courts have slowly but steadily expanded the “concept of quality of life and living” and correlated the same to different facets of environment. In launching the “right to clean and healthy environment”, the High Courts took an early plunge and the Supreme Court later on widened the horizons of environmental protection. The courts based the decisions mainly on Article 21, though sometimes they have also relied on “fundamental rights”, “directive principles of state policy” and “fundamental duties”. Environment being a compendium of many things, biotic as well as abiotic, the term “person” used in Article 21 may possibly be construed in future widely including other beings too. Justice Douglas of the United States Supreme Court said “even inanimate objects may also be considered as invisible parties in environmental litigations.” The *sludge* case is an illustration to this aspect of the sufferings of a village, its soil, irrigation canals, wells, cattle and trees and about the untold miseries they had suffered from the accumulated poisonous waste remaining for long. When written law is found to be weak or agencies imposed with duties are found lethargic, judicial interpretation reaches its zenith with the support of the right to quality of life against environmental hazards.

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<sup>51</sup> (2002) 10 SCC 606.

<sup>52</sup> (2000) 3 SCC 29.

<sup>53</sup> (2003) 7 SCC 389.

## Conclusion

The higher judiciary in India has done a commendable job in protecting and safeguarding the environment. There are many landmark judgments delivered in catena of cases where the jurisdiction of courts was invoked through PIL. The judiciary has recognized PIL as a constitutional obligation on courts. Public spirited persons have approached the Supreme Court and High Courts under their writ jurisdiction and their petitions have been entertained by liberalizing the rule of *locus standi* and they have been encouraged to espouse various public causes including environmental. The Apex Court has accepted informal information under its epistolary jurisdiction and provided with remedies. The time has now come when there is a need to bring the environmental cases before the lower judiciary too, with options to approach the appellate courts if it fails to deliver environmental justice.

PIL is a welcome step as it provides opportunities to the courts to examine and focus lenses on environmental issues affecting public health and sustainable development. PIL in India has given new dimensions to the concept of *locus standi* and thus, revolutionized the concept and procedure to access environmental justice. It is also true that Indian courts have provided access to environmental justice through the use of PIL in many cases, but there are also limitations on the part of the judiciary.

It was only with the advent of PIL and relaxation of *locus standi* principle that the environment became the core concern of public- spirited person to move forward for the protection of environment. The courts have played a great role in this regard and have brought several unarticulated rights into the domain of fundamental rights through liberal interpretation. The enforcement of environmental rights in India has been basically due to the unprecedented ‘judicial activism’ in environment conservation.

It is very important to note that one important aspect of PIL is that it has been instrumental in the evolution and development of new norms and principles and doctrines to prevent environmental pollution and degradation. The courts while interpreting the environmental rights in Article 21 of the Constitution have also made reference of the provisions of Directive Principles of State Policy and Fundamental Duties to remind the state as well as citizens of their duties and responsibilities.

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