

## **PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS IN INDIA: AN OVERVIEW**

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DOI: 10.46609/IJSSER.2024.v09i02.016 URL: <https://doi.org/10.46609/IJSSER.2024.v09i02.016>

Received: 16 Feb. 2024 / Accepted: 29 Feb. 2024 / Published: 5 March 2024

### **ABSTRACT**

Society is an ensemble of individuals living together. To serve their purposes individuals create and develop institutions of different kinds. The state is one such institution that owes its emergence and existence to society. The state is a political institution and the society in which it is established is a politically organized society.

The state is all-pervasive, it is difficult to understand any phenomenon without referring to the state. The state is a principal actor shaping society, individuals, and their lives. The mosaic that the state establishes on the canvas consisting of the society reflects its normative character. Understanding the state from its normative standpoint (what it does to society) is important but it is equally important to see how society thinks about the state. The way the state forms its mosaic through its policies and programmes similarly society also frames its picture by interrogating the state of its policies and programs. Public interest litigations in India developed by the Supreme Court (Judiciary) became a medium through which society played this normative and interrogating role.

This article captures the interface between the state, judiciary and society with environmental issues at the centre. It deals with public interest environmental litigations filed by individuals, groups, and organisations which question the state and its claims that it protects the environment (several environmental laws have been passed by the state). The article provides an overview of environmental litigations filed in the last two decades of the 20th century.

**Key Words:** Judicial Activism, Public Interest Litigation, state,

## **II**

The idea of Public Interest Litigation in India was conceived and developed by the Judiciary which is a part of the state structure yet independent of other organs of the state. The decisions of

the judges are immune from criticism from any quarter, including the government. Judicial Review is an important function of the judiciary, it refers to the review of the laws passed by the legislature, they can be declared null and void if they are not in accordance with the Constitution. Enforcement of fundamental rights is embedded in this function and is derived from Article 13(2) which says that *“the State shall not make any law which takes away or abridges the rights conferred by this part (part III) and any law made in contravention of this clause shall to the extent of contravention be declared as void.”*

The idea of Parliamentary Democracy and Judicial Review was given by Britain to its colonies. The Indian constitutional makers being the admirers of the British model of Parliamentary Democracy wanted the Parliament to be treated as supreme and the courts to act as umpires to see that the game was played according to the rules. They were apprehensive to give wider powers to the Supreme Court.

They wanted the courts to only interpret the law in terms of what it is, divorced from morality, with emphasis only on written text rather than on the spirit underlying the texts. The issues related to policy matters, distributive justice, and economic policy were the prerogative of the executive and beyond the purview of the Judiciary. The “due process of law” clause (which gives wider powers to the courts and enables them to interpret laws based on broad principles of justice) was deliberately excluded and the principle of “procedure established by law” was adopted by the constitutional makers (which gives wider power to the Parliament). (Baxi, 2002a)

The Indian Supreme Court started as a “positivist court” (Sathe, 2002), interpreting the constitutional provisions in terms of what they are rather than what they could be. Land reforms were dealt with by the Supreme Court with this approach. (Sathe, 2002) For several years the Supreme Court blocked the road towards land reforms an initiative taken by Pt Nehru to bring about distributive Justice. As land was private property and a fundamental right many land owners went to the court on the ground that their fundamental right was being violated. The court however basing itself on Article 31(2) insisted that compensation be paid on market value.

Although the court started with a “positivist” approach but gradually evolved and adopted an “activist” approach. When the judiciary goes beyond the written text and interprets the constitution in terms of what it could be or in light of the changing conditions and circumstances, in the public interest, or in light of the principles of social justice or employs its adjudicatory power to question the structures of dominance -caste, class patriarchal-or in society then it is said to be playing an active role. (Baxi, 1985)

Judicial activism is a label that is used for judges who play this kind of role. It is “judge-led and judge-induced”. Not all judges can play this kind of role.

Public Interest Litigation (PIL) is judicial activism. It is defined as “ *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 of liabilities are affected.*” (Janata Dal v. H S Chowdhury, 1992)

### **Origin of PIL in India**

PIL in India started as a part of the legal aid movement, an important constituent of the twenty-point program, initiated by Mrs. Indira Gandhi. This movement aimed to bring justice within the reach of the common masses who were not able to reach the courts due to illiteracy, poverty, disability, or lack of awareness. The two judges who played an important role in the movement were Justice Krishna Iyer and P. N. Bhagwati. They led a nationwide movement for the promotion of legal aid services, did padyatras, organised camps in villages and came to the conclusion that a new legal philosophy was needed to solve people’s problems (Baxi, 2002b).

P N Bhagwati expressed reservations against the significance and utility of the Anglo-Saxon model in the Indian context. He believed that the model was transactional, highly individualistic atomistic and incapable of responding to the needs of the groups, collectivities and common masses He held that one would have to move away from this model of governance and evolve new strategies in tune with the Indian population (Bhagwati, 1985). The idea of PIL in India emerged under these conditions but it never took off. It evolved and shaped after the emergency, in the 1980’s.

### **Growth of PIL**

Emergency brought a sea change in the attitude of the Judiciary. Emergency brought severe restrictions on individual liberty, especially freedom of speech and expression. Strict press censorship was imposed and opposition leaders were put behind bars under the Maintenance of Internal Security Act (MISA). Judicial activism emerged in the backdrop of the conditions of lawlessness, violation of rights, negligence of duties, and apathetic attitude of government functionaries.

The Supreme Court supported the decisions of the executive “endorsed emergency excesses, unjustifiable imposition of President’s rule under Article 356, extraordinary powers under security law, political immunity in high places and many manifestations of arbitrary, even despotic exercises of public power” (Baxi, 2002b). Emergency was rejected at the polls in 1977, and the anti-emergency discourse that emerged in the post-emergency phase gave rise to political opposition, vociferous press, investigative journalism, social action groups, and civil society organizations.

The excesses committed by the political executive on the one hand and the “passive” and “deferential” (Desai & Muralidhar, 2000) role of the judiciary created some kind of embarrassment, uneasiness, and guilt in the minds of the judges. Post-emergency judicial activism was inspired by this guilt. It was kind of a self-punishment that certain judges inflicted upon themselves for endorsing the decisions of the political executive (Baxi, 2002b). Judicial activism was an attempt to restore the image of the court damaged by a few emergency decisions. It was judicial “catharsis” (Ibid) an emotional outburst. Judges began to raise questions - What should a judge's role be in dramatically changing conditions? What should be the role of a judge in a situation when the state exceeds its limits? What should be the role of a judge in a situation when the common masses suffer from administrative deviance?

Socially conscious judges began to feel that the judiciary could not express its helplessness or remain a silent spectator under dramatically changing conditions on the ground that it does not have the power to act. Even if the legal system is not geared to meet the needs of the people, groups and collectivities they will have to find ways and means, evolve new strategies to solve their problems.

It was felt that the traditional legal system was transactional, highly individualistic, atomistic, and elitist, in character. It was highly expensive which prevented people from having access to the judiciary. Socially sensitive judges began to feel that the judiciary could not call itself the judiciary of all the people until it shed off its elitist character and is accessible to all particularly the disadvantaged sections of society. It was felt that legal proceedings should be made simple because illiteracy prevented people from having access to the judiciary. It was felt that people’s problems were related to violation of human rights, administrative deviance, with dominant structures of power -caste, gender, class, - in society, therefore remedies sought cannot be “compensatory” but “prospective and affirmative”.

### **Evolution of New Techniques and Strategies**

To overcome these challenges socially sensitive judges began to evolve new strategies. It was realised that the major obstacle that came in the way of people- poor and vulnerable- was the traditional rule of *locus standi* which insisted that only an aggrieved person suffering from specific harm (violation of legal rights) could go to the court for redressal. This rule therefore closed the doors of the judiciary for common masses who on account of poverty, illiteracy or any other disability could not invoke the judicial process (Bhagwati, 1985). Even free legal services would not solve people’s problems. The rule of standing was thus the major obstacle in the process of achieving justice. The Supreme Court thus decided to move away from the traditional principle of *locus standi*. It lowered the standing barriers and widened the concept of an aggrieved person by enabling a person or a “determinate class of persons” whose rights had been

violated and could not approach the court because of poverty, illiteracy or ignorance to be represented in the court. This rule came to be called “representative standing”(Ibid).

The Supreme Court also felt that any citizen or social organisation espousing the cause of the aggrieved person could just write a letter as it would not be fair to expect that person or organisation to incur expenses and prepare a petition for the enforcement of legal rights. In such a case a letter would be treated as an appropriate proceeding under Article 32 of the Constitution. (Article 32 states that individuals have the right to approach the Supreme Court (SC) seeking enforcement of other fundamental rights recognised by the Constitution.). This came to be known as “epistolary jurisdiction” (Ibid).

The Supreme Court also introduced the idea of “citizen standing”. There was a realisation that many times the injury caused is not specific but rather diffused. for instance, the situations where government action or inaction threatens to harm the environment under these circumstances the traditional rule of standing does not come to help as no specific harm can be seen. To deal with such circumstances where no individual has suffered any specific harm or the impact of government lawlessness, administrative deviance is diffused, the Supreme Court evolved the principle of ‘citizen standing’. The ‘citizen standing’ means that any member of the citizen in his own right to whom a public duty is owed, can go to the court and challenge government actions in the name of public interest. While talking about the Citizens' standing the court held that- *“If public duties are to be enforced and social collective diffused rights and interests are to be protected, we have to utilize the initiative and zeal of public-minded persons and organizations by allowing them to move the court and act for a general interest, even though may not be directly injured in their own rights. It is litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social collective, diffused rights and interests or vindicating public interest and any citizen who is acting bonafide and who has sufficient interest has to be accorded standing.....”* S.P. Gupta vs Union Of India & Anr (30 December 1981).

### **Constitutional Backing**

The Supreme Court got the moral backing to undertake the activist role from the Preamble, Part III (Fundamental Rights), and Part IV (Directive Principles of State Policy) of the Indian constitution. The Constitution which was read earlier in a “positivist” way began to be read as a whole. The Directive Principles and Preamble became the reference point for interpreting the actions and inactions of the political executive. The court started taking the “rights” and “sufferings” of the people seriously it not merely questioned the political executive but also the structures of dominance prevalent in the society.

If fundamental rights, directive principles of state policy, and preamble gave judges moral backing for the activist role then Articles 32 and 226 of the constitution gave the constitutional backing needed for this role. Article 32 (1) guarantees the right to move the Supreme Court and gives the court the power to issue writs ("*habeas corpus*", "*mandamus*", "*prohibition*", "*quo warranto*", and "*certiorari*") for the enforcement of fundamental rights. Article 226 gives similar power to every High Court of the states.

### **Impact of New Techniques**

The broadening of standing helped ordinary and helpless people to have justice. It helped the prisoners awaiting trials for very long periods in jails in the state of Bihar, the case was filed by an advocate Kapila Hingorani. The advocate discovered that 80, 000 prisoners had been languishing in jails awaiting trials for periods longer than they would have served if convicted. (Hussainara Khatoon v Home Secretary, state of Bihar, 1979); helped to improve the conditions of inmates at a protective home for women, (the petition was filed by Dr Upendra Baxi, in 1981); helped the construction workers who were being paid less than the minimum wage by the contractor, the People's Union filed the case for Democratic Rights, 1982); helped to secure the release of the bonded labourers working at stone quarries in Faridabad, (the case was filed by a voluntary organization Bandhua Mukti Morcha, in December 1983).

The Citizens Standing was used in environmental cases where the impact of harm to the environment as well as citizens was not specific but diffused. These cases included -Rural litigation and the Entitlement Kendra case (filed in 1983), in this case, limestone quarries in the Dehradun region affecting the environment and the people were closed; Ganga Pollution Tanneries case in which tanneries polluting the Ganga River were closed, was filed in 1985; Shri Ram Industries Gas Leak case, filed in 1985.

The Article that underwent real transformation was Article 21, dealing with the right to life and liberty. Article 21 appears to be a negative right (it says that 'no person shall be deprived of life or personal liberty except according to the procedure established by law') but was given a positive effect by judicial interpretations. The right to life became a kind of canvas on which the judges painted a picture of new rights. It became a repository of many meanings. Many new rights emerged from this right. It was interpreted to mean -the right to live with human dignity (Francis Colaire Mullin v. Administrator, Union Territory of Delhi, 13th Jan 1981); the right to a healthy environment (M C Mehta vs Union of India); the right to pollution-free air and water (Indian Council for Enviro- Legal Action); Protection against hazardous industries (Vellore Citizens Welfare Forum case); the right to health (Consumer Education and Research Centre V. Union of India); the right to Shelter (Olga Tellis v. Bombay Municipal Corporation); the right to food and clothing (People's Union For Civil Liberties v. Union of India & Others); the right to

education (Unni Krishnan v. State of A.P). In the beginning, the emphasis of PIL was on the human rights of the weaker sections of society- prisoners, undertrials, unorganised labour, women in protective homes; on issues related to governance, lawlessness, administrative negligence and then environmental issues came to dominate.

## **Section II**

### **Public Interest Environmental Litigation Cases in the Formative Years**

This section provides an overview of some of the important public interest environmental litigation cases that were filed in the initial years of judicial activism.

#### **Forests Conservation Related Cases**

When we think about forests we think about the myriad functions that forests perform. Forests stabilize water systems, cycle carbon, nitrogen, and oxygen, regulate climate, and are a rich source of biological diversity. Apart from this ecological role, forests and forest products have numerous utilitarian values, they fulfil the needs of almost all sections of the society and economy. Large industrial houses use forests as the source of material for pulp, paper, and rayon mills. Small businesses depend on forests as the source of wood for a range of products. Forestland is sacrificed for big development projects. Forests are a source of fuel, fodder, herbs, medicines building materials, and minor products for tribal communities. The rural communities and many city dwellers are dependent upon wood for cooking purposes. Thus, when we think about forests we think about the diverse role that forests play. On the one hand, the competing claims over forests, forest products and forest space have given rise to several conflicts, protests and movements. On the other hand, the issue of sustainable development has led people and non-governmental organisations to file Public Interest litigations.

**Rural Litigation Entitlement Kendra, Dehradun V state of UP (1983)** Rural Litigation Entitlement Kendra, an NGO working in Dehradun wrote a letter to the Supreme Court on 14<sup>th</sup> July 1983, complaining against illegal mining in the valley, which was disturbing the ecological balance and becoming a hazard to healthy living. The letter was taken as a writ petition under Article 32 of the constitution and Article 21 dealing with the right to life was invoked.

The quarrying operations, careless disposal of mine debris, and blasting operations disturbed the ecological balance by disturbing the natural water systems of the region. Blasting operations destroyed green forests and shook up the hills damaging the property, cattle, and agricultural lands of the villagers compelling them to move to other places. The Supreme Court appointed Bhargava Committee to assess the total effects of quarrying operations and based on its recommendations it stopped mining operations. Justice Amarendra Nath Sen, while passing an

order on 30<sup>th</sup> September 1985, held that exploitation of mineral resources is important for industrial development, but it should be done in such a manner that it does not disturb the ecology and affect the livelihood and the living conditions of a large number of people. If development is to be achieved by disturbing the ecology and destroying the basic amenities of life then it may not lead to economic growth and prosperity. He held that it is important to strike a balance between economic growth (development) and conservation. If all these considerations had been taken into account by the authorities while giving mining leases then people would not have suffered and mines would not have been closed.

Justice Ranganath Misra while giving the final order on the case went into the ecological history of the Himalayas, how they supported the Ganges, Yamuna, forests, and air and were indispensable gifts of nature to human life, and held that while meeting the development needs, the government must strike to maintain some kind of balance between conservation and development. (Rural Litigation and Entitlement Kendra AIR 1987 SC 359). The judgement delivered in this case became a foundation upon which other cases were decided.

**Kinkri Devi vs State Of Himachal Pradesh And Others (1987).** The petitioner Kinkri Devi, in this case, alleged that unscientific and uncontrolled quarrying of the limestone was causing damage to the Shivalik Hills and was posing a danger to the ecology, and inhabitants of the area. The High Court found that the allegations were true and followed the observations of the Supreme Court in the Dehradun quarrying case. The High Court held that fundamental rights guaranteed under Articles 14 and 21 of the constitution will be violated if a balance is not struck between development and ecology and environment, The court observed that “.....natural resources have got to be tapped for social development but tapping has to be done with care so that ecology and environment may not be affected in any serious way. The natural resources are permanent assets of mankind and are not intended to be exhausted in one generation..... If industrial growth is sought to be achieved by reckless mining resulting in loss of life, loss of property ... water supply and creation of ecological imbalance there may ultimately be no economic growth and no real prosperity.” (Kinkri Devi vs State Of Himachal Pradesh, AIR 1988 H.P 4)

While referring to Article 48A and the constitutional duty of the citizens under Article 51A (g) the court observed that “... there is both a constitutional pointer to the State and a constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forests, the flora and fauna, the rivers and lakes and all the other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian, high or low, is bound to uphold and maintain.” (Kinkri Devi vs State Of Himachal Pradesh, AIR 1988 H.P 4)



The court appointed a committee to examine whether mining leases in Tehsil Paonta Sahib had been given following the statutory provisions and whether the need to maintain a balance between tapping the mineral resources for industrial and development purposes on the one hand and ecology and environment on the other had been kept mind while making such grants. The court further held that no lease for the mining of limestone would be granted or renewed till the committee submits its report.

**T N Godavarman v. Union Of India (1995).** T N Godavaram case is an “ongoing and unparalleled” forest case in the history of environmental litigations in India. A writ petition was filed by T.N. Godavarman Thirumulkpad of Nilambur, (Tamil Nadu) along with Kalpavriksh (a Pune-based non-governmental organisation) and Society For Andaman and Nicobar Ecology (SANE) (a Port Blair-based NGO) and the Bombay Natural History Society (BNHS), in the Supreme Court of India in 1995 to safeguard and protect the forest land of the Nilgiris as it was being exploited through deforestation by unlawful timber activities. In this case, the Court became a “super-administrator” and passed several orders regulating the felling, use and movement of timber across the country thereby freezing activities in wood-based industries. The Court ordered the enforcement of forest conservation laws in India. The entire country came within the gamut of the case from the Nilgiris in the South to the North-Eastern states, Kashmir to parts of Central India. (Diwan, S& Rosencranz, A, 2001).

**Tarun Bharat Sangh V. Union of India (1993).** This writ petition was filed by an NGO, Tarun Bharat Sangh (TBS) working in the Alwar region of Rajasthan to stop illegal mining which was going on in the Sariska National Park. The petitioner held that Sariska National Park constitutes a Reserved Forest (1951), a Sanctuary under the Wild Life Protection Act (1971), A tiger Reserve (1978), a National Park (1982) and a Protected Forest all these statutory regulations prohibit mining activity in the region. TBS through its Secretary Rajinder Singh, held that mining activity was causing a major threat to the environment- it was disturbing the aquifers, springs, and water holding capacity of the Aravali range; it was destroying the forests and endangering the lives of the wild animals and stone powder emanating during mining operations were rendering the land uncultivable due to mining deposits. The petitioner society held that mining operations were being carried out in 495 sites, most of the mines involved blasting, chiselling, and drilling. The mine owners after clearing the vegetation blasted the rocks to take out marble and then dumped the rubble in the forests. After extracting minerals the mine owners shifted to other areas leaving the site as a wasteland. Through this petition, the petitioner sought the enforcement of the Wildlife Protection Act (1971), Environment Protection Act (1986), and various Forest Laws in Sariska National Park.

The Court, after going through the facts banned all mining operations in the protected area from 31st December 1991. The Court also appointed a Committee to ensure the enforcement of the

notifications and the orders of the court; to demarcate the boundaries of the protected areas, where mining leases had been granted and mining was going on; to recommend to the state government alternate mining areas for those mine operators whose lease had not expired and areas fell within the protected area and had been asked to leave the mining operations; to assess the damage done to the environment, ecology, and wildlife by mining activity in the protected area and make appropriate recommendations for restoring the land to its original form and reforestation. (AIR 1992, SC 514)

### **Ganga Pollution Cases**

**M C Mehta v Union of India (Kanpur Tanneries)** - In 1985, environmentalist lawyer, M. C. Mehta filed a writ petition (Writ of Mandamus) under Article 32 of the constitution. The petition was aimed at Kanpur Municipality which had failed to prevent wastewater from polluting the river Ganga. The petitioner through the writ petition asked the Court to order government authorities and tanneries located in Jajmau near Kanpur to stop polluting the river Ganga with sewage and untreated effluents.

The Court held that towns inhabited by millions of people, large factories, and industries developed on the banks of the Ganga have been discharging sewage and trade effluents into the Ganga continually. The writ has been petitioned because neither the government nor the people are giving adequate attention to stop the pollution of the river.

The Court treated this case as a “representative action” initiated by an activist lawyer and published the gist of the petition in the newspapers in northern India calling upon the industrialists and municipal corporations to why directions should not be issued to them for not allowing sewage and trade effluents into the Ganga river without treating them before discharging them into the river Ganga (AIR 1988 SC 1037).

The court first took the case against the tanneries at Jajmau (near Kanpur). The court cited directive principle 48–A (provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country); 51 A (imposes a fundamental duty on the citizens to protect and improve the natural environment); and the proclamation adopted by the United Nations Conference on the Human Environment of 1972 for the right to a clean and healthy environment. The court invoked the Water Act (to show that factories, industries and municipalities were violating the provisions of the act by discharging sewage and untreated effluents into the river Ganga) and the Environment Protection Act (1986) (AIR 1988 SC 1037).

There was no dispute about tanneries in Jajmau, the tanneries were discharging highly toxic waste into the river. The Court questioned the owners of the tanneries for not setting up Effluent

Treatment Plants. On being told by the owners of the tanneries that they were not in a financial position to set up the plants, the Court held that “ just like an industry which can not pay minimum wages to its workers can not be allowed to exist, a tannery which cannot set up a primary treatment plant can not be permitted to continue.” The court held that the “effluents discharged from a tannery are ten times noxious as compared with the domestic waste.” The Court closed the tanneries, which had not set up effluent discharge plants and maintained that closure would bring unemployment and loss of revenue but life health, and ecology have greater importance to the people (AIR 1988 SC 1037).

### **M C Mehta v Union of India (Municipalities)**

After deliberating on the tanneries in Jajmau the Court took up the case against municipal bodies in Uttar Pradesh. The Court dealt with the Kanpur Nagar Mahapalika and cited excerpts from the Uttar Pradesh Mahapalika Adhiniyam which applies to the municipalities of Kanpur, Allahabad, Varanasi, Agra and Lucknow. (AIR 1988 SC 1115).

Based on the report prepared by the Industrial Toxicology Research Centre and Council of Scientific & Research Centre, the court held that the river Ganga is unfit for drinking, fishing, and bathing purposes, and nullahs were discharging polluted wastewater into the river Ganga. It criticized the municipalities and other local bodies and the Pollution Control Board for ignoring the pollution of the river and for not performing their statutory duties.

The Court ordered the Kanpur Nagarpalika to direct the dairies to shift outside the city; construct public latrines and urinals to prevent defecation by poor people on open land; and prevent the burning of corpses and semi-burnt corpses into the river Ganga. It also maintained that action be taken against industries polluting water and that new industries should be prevented from giving licenses until they had installed effluent treatment plants. The court held that directions given to Kanpur Municipal Corporation would apply *mutatis mutanis* to other Municipal Corporations and Municipalities as well (AIR 1988 SC 1115). The Supreme Court directed the Central government to direct all educational institutions -- to include the subject of the national environment in textbooks and to observe ‘Keep City Clean’ week to make people aware of the importance of cleanliness and the hazards of pollution (AIR 1988 SC 1115).

### **M C Mehta v Union of India (Calcutta Tanneries)**

The Ganga pollution case, which was initially launched against the tanneries located in the city of Kanpur was enlarged and the tanneries located in the eastern fringe of the city of Calcutta were also included in the case and were directed to stop discharging untreated waste into the river. This case came to be called as Calcutta Tanneries case. This area of Calcutta covered around 550 tanneries. NEERI surveyed these areas in September 1995 and pointed out that in the

absence of wastewater treatment facilities in the tanneries and wastewater drainage and collection systems water flows through open drains causing serious environmental, health, and hygiene problems. Based on this report the Court ordered the closure of the tanneries and asked them to shift Leather Complex set up by West Bengal.

**Taj Trapezium case-** In the Taj Trapezium case the Supreme Court held that the Taj Mahal is not only a piece of cultural heritage but an industry in itself. The Court held that emissions generated by coal and coke foundries, chemical industries, and refineries at Mathura were causing damage to the Taj. The Court asked the 292 industries to change over to natural gas and the industries that are not in a position to change will have to shut down and reallocate outside the Taz Trapezium. (AIR 1997 SC 734)

**The Chilika Lake case** -In 1991, the Orissa government came up with a new lease policy related to fisheries. The new lease policy distinguished between “Capture” and “Culture” fisheries (Prawn/ shrimp farming) and gave culture fishery sources to the non-fishing communities. This distinction was not made earlier and fishery sources were given to the Central Cooperative Marketing Society (CCMC) for 3 years, which in turn leased out the sources to the Primary Fishermen Cooperative Societies (PFCSs).

By making the distinction between capture and culture fisheries and giving away some of the culture fishery sources to the non-fishing communities the government of Orissa was trying to go for Aquaculture farming in a big way. It was trying to legitimise aquaculture farming which was going on an illegal basis for many years because of the big demand for prawns abroad especially in countries like the US, North Korea and Europe. Aquaculture farming fetched quick and easy money because of the short gestation period of the crops. Given the demand and profit Prawn ponds -“gherra bandi’s” [mud embankments] - started mushrooming in the eighties, in Chilika Lake. Given the revenue generation that the government would earn the Orissa government entered into an agreement with the TATAs for a semi-intensive prawn culture project called the Integrated Shrimp Farm Project (ISFP). When the fishing communities opposed the project the Orissa government changed its nomenclature to Chilika Aquatic Farms Limited (CAFL) to avoid public attention.

The entry of TATAs and other corporate sectors into the fishing sector was the major cause of anger among the fisherfolks. They held that the government was taking their “traditional, customary and exclusive rights” to fishing something which they had been enjoying since times immemorial. They held that the government was commercializing the Chilika Lake in a big way which was detrimental to the ecology of the lake and the fishing communities.

The Chilika Bachao Andolan was launched by the fishing communities to protect the Chilika Lake from commercial exploitation by big business. The Chilika Aquatic Farms Ltd. was the centre of the attack. The Chilika Bachao Andolan expressed concerns about the social-economic and ecological consequences of the new lease policy. Along with the ecological concerns the Andolan raised socio-economic concerns of the fishing communities.

Shrimp have a short gestation period, the fishing communities held that the use of chemicals and other harmful products for early yield would affect the long-term availability of the fish in the lake. The mud embankments would prevent the movement of fish and prawns for breeding purposes which in turn would affect the natural regeneration of fisheries. They also raised concerns about the threats of flood and water logging due to the construction of the embankments. The movement also highlighted that the project, Chilika Aquatic Farms Ltd had gone ahead without environmental impact Assessment; that the land leased out to the project was a reserved wetland of international importance under the Ramsar Convention, (1971) that the land was under the Coastal Zone Regulation Act, a legal regime established by the Union government to protect the coastal areas. The movement thus raised questions concerning environmental law- that the project violated several environmental legal regimes established to protect the environment.

The fisherfolks also asked- "To whom does the Chilika belong?; If multinational corporations or big businesses enter into the primary sector of the economy then where will the producing sections of the society the artisans, peasants, fishermen and others go?; What is the priority of the state, welfare of the state or earning foreign exchange?"

Three Public Interest Litigations were filed, in 1991, by three primary fishermen cooperatives expressing the above-mentioned concerns and they were supported by thirty-six other fishermen cooperatives. These primary cooperatives were Uttar Chilika, Kholamuhana and Gajapatinagar. Since these three petitions dealt with the same issue, they were taken together by the court and a single committee was established to investigate the claims of fishermen and the orders passed by the court applied to all the three cases. (Kholamuhana Primary Fishermen vs. State Of Orissa And Ors. AIR 1994 Orissa 191.)

The Court banned Intensive, semi-intensive and supra-intensive methods of prawn culture and held that they are harmful and are destroying the ecology of the lake. It held that the contribution of culture fisheries to the state exchequer cannot be the basis for continuing such a policy. 'Revenue cannot be earned by sacrificing the larger interests of the people. A balance has to be struck between gains to the state and loss to the society.' It also held that prawn culture cannot be stopped completely, it could be accepted by "pruning, trimming, and dressing". Prawn culture could continue by traditional extensive methods. By saying so the court banned

intensive, semi-intensive and supra-intensive methods of prawn culture. The court accepted a method, which would not stress the environment (Ibid).

The Court's judgment halted TATA's project which was in mid-way. However, it rejected the contention of the fishermen that the lease policy had sacrificed their traditional rights as they were enjoying their rights to capture sources.

**S. Jagannathan Case v. Union of India (1991)** In December 1996, another Supreme Court judgment came that banned prawn culture in the coastal areas, including the Chilika Lake. This judgment was given in S. Jagannathan v. Union of India case, it was a Public Interest Litigation filed by S. Jagannathan, Chairman of the Gram Swaraj Movement, a voluntary organisation working for upliftment of the weaker sections of society. In this case, the petitioner, S. Jagannathan, demanded the enforcement of the Coastal Zone Regulation Act (CRZ) (1991) and that intensive and semi-intensive prawn culture be stopped in ecologically fragile coastal areas. The court, in this case, ordered that -no part of the agricultural land could be converted into aquaculture farms; no shrimp farms could be constructed in the coastal regions; all the functioning aquaculture industries and shrimp farms be closed and demolished by 31st March 1997; aquaculture industries functioning within the radius of 1km of the Chilika Lake must compensate the affected persons; an authority should be constituted under the Environment Protection Act (1986) which shall implement precautionary and polluter pays principle; aquaculture industries outside the coastal zone regulation should obtain prior permission and clearance from the authority. The two major court orders (the Chilika Lake case & S. Jagannathan case), banned intensive, semi-intensive and supra-intensive prawn culture. (AIR 1997 SC 811)

### **Vellore Citizens Welfare Forum Case**

This case was filed by the Citizens Welfare Forum of Vellore, a city located in the southern part of Tamil Nadu. The citizens' welfare forum complained that tanneries located in Vellore were discharging untreated effluents into the agricultural fields, roadsides, waterways and open lands.

The Supreme Court held that the "precautionary principle" and "polluter pays principle" have become part of the environmental law of the country and are a fundamental part of the "Sustainable Development." Applying the "precautionary principle" in this case would mean necessary action on the part of the state government and the statutory bodies to anticipate, and act (meaning first prevent and then attack) on the causes of environmental degradation. Lack of scientific evidence could not become the basis for postponing measures to prevent environmental degradation; it was the industrialist's responsibility to show that his action was environmentally

benign. The court held that ecology and development are not opposed to each other. Sustainable development can bridge the gap between the two extreme positions.

The court held that sustainable development has been accepted from the Stockholm Conference to the Rio Conference. It is customary law in which features like -the use and conservation of natural resources, environmental protection are embedded with features like international equity, polluter pays principle, precautionary principle, and eradication of poverty. Obligation to assist others, and financial assistance amongst others.

With these observations, the Supreme Court directed the Central government to constitute an authority with all the necessary powers under the Environment Protection Act (1986) to deal with situations created by tanneries and other polluting industries in the state of Tamil Nadu. The authority shall implement the precautionary and polluter pays principle. (AIR 1996 SC 2715)

### **Indian Council For Environ- Legal Action.**

This case is famously called the Bicchari case, Bicchari village in Udaipur was the centre of attention. Five factories producing Hyaluronic Acid (H- acid) in Bicchari Village were discharging untreated and highly toxic effluents into the soil, thus damaging underground soil, underground water and the environment in general. The water in around 60 wells spread over 350 hectares turned red and became unfit for drinking and household purposes and the land became infertile. A writ petition was filed by Indian Council For Enviro-Legal Action an environmentalist organisation in the Supreme Court. The court dealt in detail with the issues concerned and referred to the Bhopal Gas Tragedy, ShrRam Gas leak case and applied the Principle of Absolute Liability and ordered the closure of all five factories and ordered them to pay the damages up to Rs. 4 crores for the restoration of the ecology of the area. The Court also suggested setting up of Green Benches in all the State High Courts. (AIR 1446, 1996 SCC (3) 212)

### **Summing Up**

The constitutional makers wanted the Parliament to play a supreme role in shaping society and wanted the Judiciary to act as an umpire to see that the game is played according to the rules established by the constitution. All the matters relating to policymaking, distributive justice, and economic policy were the exclusive privilege of the Parliament. The courts were not expected to question the validity of these decisions.

In the initial years of independence, the political executive sought to make its mosaic by bringing progressive policy of land reforms but the legislations were blocked by the Judiciary on the ground that they violated the property right, a fundamental and inviolable right. The court's

approach was positivist it was interpreting the Constitution in terms of what is rather than what it could be.

However, the post-emergency phase saw the court breaking its shackles from the past and emerging in a new avatar. Emergency infringed the fundamental rights of the citizens especially the freedom of speech, and imposed censorship of the press. Judiciary instead of defending the rights of individuals played a passive and deferential role. The post-emergency phase saw the emergence of vociferous press, civil society organisations, and united opposition. Emergency was rejected at the polls and subsequently by the Judiciary also, there was uneasiness in the minds of judges for the decisions that they had taken. This and the traumatically changing conditions in the country, lawlessness, apathetic attitude and negligence of the duties on behalf of the state functionaries, and violation of rights of the individuals set the background against which Judicial activism emerged. New techniques and strategies were evolved to bring justice to the common masses. These opened the floodgates for Public Interest litigation. The Preamble, Directive Principles of State Policy, and the spirit with which the Constitution was written became the torchlight for interpreting the Constitution and in the dispensation of justice. The court took up the issue of the violation of human rights of the weaker sections, the issues related to governance questioning government apathy, and negligence and then environmental issues, many of these issues were also governance issues.

The court dealt with issues related to mining (Kinkri Devi case, Rural Litigation and Entitlement Kendra case; Sariska National Park case); forest conservation cases (T N Godavarman case); aquaculture farming (S. Jagannathan case; Chilika Lake case); river pollution (Ganga Pollution cases; Vellore Citizens Welfare Forum against tanneries in Tamil Nadu), air pollution (Taj Trapezium case, Hazardous industries in Delhi, Shriram Gas Leak case) and so on so forth in the initial years of Judicial activism. All these decisions were impacting society and the economy. The court was appointing commissions headed by scientific experts to investigate the scientificity of the issues involved and collect facts and data. Expert bodies like the Central Pollution Control Board (CPCB), and National Environmental Engineering Research Institute (NEERI) were relied upon. The court sometimes appointed *amicus curiae* to collate and analyse the data. Based on the committee reports, and expert comments judges delivered interlocutory judgments to provide interim relief.

The court assumed massive administrative tasks questioning violations of acts, dereliction of duties, and issuing interim relief orders. It was acting as a super-administrator. It was doing what was supposed to be the duty of the political executive, in a way it was exposing its absence or pointing at the deficiencies in its duties. In a way, the judiciary was overstepping from the role traditionally subscribed to it. Its functioning was blurring the divide between the various organs of the government. These evaluations acquired the form of criticism later on. The court's orders



were not self-implementing and executing, the court was relying on the very agencies that it was interrogating.

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