

# Role of the Supreme Court of India in Environmental Protection

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## Abstract

The activism of the Supreme Court of India has been reflected in various pronouncements. It has also played an active role in protecting and preserving the environment in India. The PIL is one of the important factors behind the activism of Supreme Court regarding environmental protection. Various principles like Precautionary Principle, Polluter Pay Principle and Onus of Proof have been emphasised in the pronouncements. The Supreme Court of India has not only prioritised the constitutional and statutory provisions regarding environmental protection but also issued directions to the authorities entrusted with the tasks of protection of the environment. This paper attempts to study the various pronouncements of the Supreme Court where its activism is being reflected.

**Key Words:** Judicial Activism, Environmental Protection, Supreme Court, PIL, Precautionary Principle, Polluter Pay Principle, Onus of Proof, NEERI

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## I. Introduction

“An onerous obligation ... we owe to posterity... clean air, clean water, greenery and open space. They ought to be elevated to the status of birth right of every citizen”... **Justice Frankfort**

There are various constitutional and statutory provisions regarding environmental protection but still there is pollution in India. This led to proactive (activism) role of the Supreme Court of India which has not only given directions to the respective authorities concerned but also monitoring the implementation of laws concerning environmental protection. The Supreme Court of India is also concerned with technical details of environmental actions to be implemented. The consistent commitment of the Supreme Court towards environmental protection has been reflected in its judgement (Environmental Issues and Indian Law, 2001).

### Landmark Judgements of the Supreme Court of India regarding Environmental Protection:

- **Subhash Kumar vs State of Bihar ( AIR 1991 SC 420)**

The Supreme Court declared that “right to life” referred to in Article 21 of the constitution includes the right of enjoyment of pollution free water and air for full enjoyment of life. In the pronouncement it was also mentioned that if anything endangers or impairs the quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. The Judgement also stated that under Article 32, a person, group of social workers or journalists genuinely interested in environmental protection can file case on behalf of the community. Public Interest Litigation was also emphasised in the judgement (AIR 1991 SC 420).

- **Tarun Bharat Sangh vs Union of India (AIR 1992 (2) SC 481)**

In the case of Tarun Bharat Sangh Vs Union of India it was stated in the judgement of the Supreme Court that the state government was responsible for the degradation of the environment by authorizing mining operation in the area declared as “reserve forest”. In its pronouncements the Supreme Court of India issued directions that no

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mining operation of whatever nature shall be carried on within the environment and wildlife within the protected area (Jaswal & Jaswal, 2003).

- ***Indian Council for Enviro Legal Action vs Union of India (AIR 1996 SC 1446)***

The Indian Council for Enviro Legal Action filed writ petition for appropriate remedial actions for the pollution created by the chemical industries in the Bichhri Village in Udaipur District of Rajasthan. The Supreme Court of India in its judgement highlighted various aspect of environmental protection. The remedial measures were focused in the pronouncement. The amount required for remedial measures was to be decided by the Central Government. The Ministry of Environment and Forest was entrusted with the task of restoring the soil, water sources and the environment in general and affected area of its former state. The order of the court led to the closure of Hindustan Agro Chemicals Limited, Silver Chemicals, Rajasthan Multi Fertilizers, Phosphates India and Jyoti Chemicals on the basis of the report submitted by expert committee. Environmental Audit should be conducted by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers. Establishment of Environmental Courts was also emphasised in the verdict of the Court (AIR 1996 SC 1446).

- ***M.C. Mehta vs Union of India (AIR 1996 SC 1977)***

Under Article 32 of the Constitution a case was filed by the environmentalist lawyer M.C Mehta through public interest litigation for seeking direction to the Haryana Pollution Control Board to control the pollution caused by the stone crushers and mine operators in the Faridabad- Balabgarh area. The case dealt with the preservation of environment and to stop mining operations within the radius of 5 kms from the tourist resorts of Badkal Lake and Surajkund in the state of Haryana. The Court directed the Forest Department of the State of Haryana, Chief Conservator and District Forest Officer Faridabad should undertake to develop the green belts as recommended by NEERI. All open areas shall be converted into green belts. Construction was also banned. No Objection Certificate from the Haryana Pollution Control Board as also from the Central Pollution Control Board became mandatory for renewal of mining leases within the area from 2 kms to 5 kms radius. The recommendations of NEERI should be enforced by the Director, Mining and Geology, Haryana and the Haryana Pollution Control Board so far as the mining operations in the state of Haryana concerned (AIR 1996 SC 1977).

- ***Vellore Citizen Welfare Forum vs. Union of India (AIR 1996 SC 2715)***

Public Interest Litigation was filed by Vellore Citizen Welfare Forum under Article 32 of the Constitution against the pollution which was caused by enormous discharge of untreated effluent by the tanneries and other industries in the state of Tamil Nadu. This case is of immense value as the Supreme Court of India stressed upon Precautionary Principle, Polluter Pay Principle and the Onus of Proof. The Court directed the Central Government to constitute an authority under section (3) of the Environment Protection Act, 1986 and to confer power upon it to deal with the situation created by the tanneries and other polluting industries in the state of Tamil Nadu. The Precautionary Principle and Polluter Pay Principle shall be implemented by the authority constituted by the Central Government. Sustainable Development was emphasised by the Supreme Court as a balancing concept between ecology and development. The Court directed the Collectors to create Environment Protection Fund for compensating the affected people as identified by the authorities and also for restoring the damaged environment. The Supreme Court of India also requested the Chief Justice of the Madras High Court to constitute a special bench "Green Bench" to deal with this case and other environmental matters (AIR 1996 SC 2715).

- ***B.L Wadhera vs Union of India (AIR 1996 (2) SCC 594)***

In Dr. B.L. Wadhera Vs Union of India the petitioner sought direction to the Municipal Corporation, Delhi (MCD) and the New Delhi Municipal Council (NDMC) to perform their statutory duties, in particular the collection, removal and disposal of garbage and other wastes. On the other hand MCD and NDMC pleaded the non-availability of funds inadequacy or inefficiency of staff and insufficiency of machinery for the non-performance of their duties. The Court considered all problems of management of solid wastes in cities and in an effort to see that the capital of India is not branded as being one of the most polluted city in the world. The Court issued the following directions:

- i) To have the city of Delhi scavenged and cleaned everyday and transported to the designated places for disposal.
- ii) To construct and install incinerators in all the hospitals/ nursing homes with 50 beds and above.
- iii) The All India Institute of Medical Sciences, New Delhi was directed to install sufficient number of incinerators in all equally effective alternatives to dispose of hospital waste.

- iv) MCD and NDMC were directed to issue notice to all private hospitals/ nursing homes in Delhi to make their own arrangements for the disposal of their garbage and hospital wastes and asking them to construct their own incinerator.
- v) The Government of National Capital Territory (NCT) of Delhi was directed to appoint Municipal Magistrate (Metropolitan Magistrates) under section 469 of Delhi Municipal Corporation Act and section 375 of the New Delhi Municipal Council Act, 1994 for the trial of offences under these Acts and to educate residents of Delhi through Doordarshan and by way of announcements in the localities that they shall be liable for penalty in case of they violated any provision of the Act in matter of collecting and disposal of garbage and other wastes.
- vi) Doordarshan was directed to undertake a programme of educating the residents of Delhi regarding their civic duties under the law by making appropriate announcements, display on television and informing them about the penalties which can be imposed for a violation of the law.
- vii) The Compost Plant at Okhla was directed to be revived and put into operation. The MCD shall also examine the construction of four additional compost plants. The MCD was directed to develop forests and gardens on 12 sites.
- viii) The MCD and the NDMC were directed to construct/ install additional Garbage Collection Centers in the form of Trolley/Steel Bins – within four months.
- ix) The Union of India and NCT, Delhi Administration was directed to consider the grant of financial assistance to MCD and NDMC by way of subvention on any other manner to enable them fulfill their obligations under the law.
- x) The NCT, Delhi Administration, MCD and NDMC were directed to join hands and engage an expert body like National Environmental Engineering Research Institute (NEERI) to find out alternatives methods of garbage and solid wastes disposal (Jaswal&Jaswal,2003).

- ***Almitra H. Patel vs Union of India (AIR 2000 (2) SCC 679)***

The high levels of pollution in Delhi and the lack of accountability at all levels of municipal authority concerned and the inaction of respondent authorities were brought to light in Almitra H. Patel Vs Union of India. In connection with the directions issued in Dr. B.L. Wadhwa's case, the Court issued the following additional directions.

- a) The MCD, NDMC and other concerned officials were directed by the Supreme Court to ensure that the relevant provisions of the law relating to sanitation and public health prohibiting accumulation of any rubbish, filth, garbage on other polluted obnoxious matter in any premises be scrupulously complied with.
- b) On a daily basis including Sundays and Public Holidays the streets, public premises such as parks etc. shall be cleaned.
- c) Any person littering or violating the provisions of laws relating to sanitation and health and for violating the direction should be levied and charges to be recovered.
- d) Disposal of waste in a manner properly and scientifically should be ensured so as to sub serve the common good.
- e) Land fill sites should be identified for the requirements of Delhi for the next twenty years in consideration of environment.
- f) For setting up compost plants sites must be identified to make available to MCD and NDMC.
- g) For complaint/grievance by the citizens of Delhi there should be regular publication of the names of Superintendents of Sanitation concerned and such equivalent officers together with their latest office and residential telephone numbers and addresses, who are responsible for cleaning Delhi.
- h) For ensuring compliance with the provision of law Magistrate should be appointed under section 20 and 1 or section 21 of the Cr.P.C.
- i) All the authorities concerned were directed to file compliance report of these directions within eight weeks of the order.
- j) To file an affidavit the Central Pollution Control Board was asked with the same period indicating the extent to which the directions were complied with (Jaswal & Jaswal, 2003).

- ***M.C. Mehta (Taj Trapezium Pollution) vs Union of India and Others (AIR 2001(9) SCC 235)***

M.C. Mehta filed a writ petition for prevention and control of air pollution in Taj Trapezium area. Brick Kilns were considered as one of the major sources of air pollution in the Taj Trapezium area by the Supreme Court. The National Environmental Engineering Research Institute (NEERI), Nagpur was directed by the Apex Court to send an inspection team to visit the brick kilns. The team was interested with the task to find out the extent of pollution generated by the brick kilns. Secondly the team had to report whether the operation of brick kilns to be permitted or not considering its effect on Taj Mahal and other important monuments.

The Supreme Court of India finally gave the following directions on the basis of the recommendations of the NEERI report :

- i. The directions included the closure of all licensed brick kilns within the radius of 20 kms radial distance of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary. The Government of Uttar Pradesh was directed to render all possible assistance to the licensed brick kiln owners in the process of relocation beyond Taj Trapezium, if the owner so desire.
- ii. The Court also issued directions to district Magistrate and the Superintendent of Police to close all unlicensed and unauthorized brick kilns operating in the Taj Trapezium with immediate effect.
- iii. The Uttar Pradesh Pollution Control Board was directed not to issue new licenses for the establishment of brick kilns within 20 kms radial distance from Taj Mahal, other monuments in Taj Trapezium and Bharatpur Bird Sanctuary.
- iv. The Pollution Control Board was also directed to issue notices regarding installation of pollution control devices to all the brick kilns operating in the Taj Trapezium( beyond the distance of 20 kms radial) on the recommendations of NEERI(AIR 2001(9) SCC 235).

- ***Deepak Nitrite Ltd. vs State of Gujarat and Others (AIR 2004 (6) SCC 402)***

The appeal was made against the order given by the High Court on a petition which was filed before the High Court in public interest alleging large scale pollution caused by industries located in Gujarat Industrial Development Corporation (GIDC) Industrial Estate at Nandesari. It was alleged that effluents discharged by the Deepak Nitrite Ltd. had exceeded certain parameters fixed by the Gujarat Pollution Control Board (GPCB) there by causing damage to the environment was alleged. An order on 19.05.1997 was passed by the High Court directing the industries to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of environment within a stipulated time.

It was traced out by the Supreme Court that no finding was given regarding the cause which led to damage to the environment compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it because of these it was necessary to be ascertained.

The High Court was directed by the Supreme Court to further investigate and find out broadly whether there has been any damage caused by any of the industrial units by their activities is not observing the norms prescribed by Gujarat Pollution Control Board as reported by the Modi Committee appointed by the High Court or by an expert body like NEERI. The Supreme Court of India issued direction to the High Court to reexamine the aspect as to whether there is degradation of environment and as a result of there of any damage is caused to any victim and what norms should be adopted in the matter of awarding compensation in that regard. The Supreme Court also emphasised that it is open to the High Court to consider whether 1% of the turnover itself would be an appropriate formula or not as applicable to the present case (AIR 2004 (6) SCC 402)

- ***Forum for Prevention of Environment and Sound Pollution vs Union of India (AIR 2005 SC 3525)***

For the implementation of the laws for restricting use of loudspeakers and high volume producing sound a case was filed by the Forum for Prevention of Environment and Sound Pollution.

The Supreme Court of India emphasised upon the right to life (Under Article 21) as not of mere survival or existence. It guarantees a right of persons to live with human dignity .It includes all the aspects of life which make a person life meaningful, complete and worth living. The Court also stated that Article 21 in its ambit also includes the right of the citizen to live in peace, comfort and quiet environment free from noise pollution and it is also the right of the citizens to prevent the noise as pollutant.

The Court in its verdict also pronounced that nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers under Article 19 (1) the freedom of speech and right to expression. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears in minds of others. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person is violating the right of others for a peaceful, comfortable and pollution free life guaranteed by Article 21.

Article 19 (1) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. The Court also emphasised on the meaning of term noise and noise pollution as defined in the AIR (Prevention and Control of Pollution) Act (Section 14 of 1981). Noise means undesirable sound and noise pollution means disturbance which is produced in environment by undesirable sound.

The Supreme Court of India has given the following directions:

- a) The fire crackers shall be evaluated on the basis of chemical composition which is more practical and workable in Indian circumstances.

b) The Department of Explosives may divide the fire crackers into two categories- (i) Sound emitting fire crackers (ii) Colour/light emitting fire crackers. The Department of Explosives shall specify the proportion/ composition as well as the maximum permissible weight of every chemical used in manufacturing fire crackers.

c) There shall be complete ban on bursting sound emitting firecrackers between 10 pm and 6 am. It is not necessary to impose restrictions as to time of bursting of colour/light emitting fire crackers.

d) Every manufacturer shall on the box of each fire crackers mention details of its chemical contents and that it satisfies the requirement lay down by Department of Explosives. In case of a failure on the part of the manufacturer to mention the details or in the cases where the contents of the box do not match the chemical formula as stated on the box, the manufacturer may be held liable.

e) Fire crackers for the purpose of export may be manufactures bearing higher noise levels subject to the following condition:

- i. The manufacturer should be permitted to do so only when he has an export order with him and not otherwise.
- ii. The noise levels for these firecrackers should conform to the noise standards prescribed in the country to which they are intended to be exported as per the export order.
- iii. These firecrackers should have a different colour packing, from those intended to be sold in India.
- iv. They must carry a declaration printed there on somethings like 'not for sale in India' or only for export to country must be specified.

f) The noise level at the boundary of the public place, where loudspeaker on public address system on any other noise source is being used shall not exceed to 10 dB (A) above the ambient noise standard for the area on 75 dB (A) which ever is lower.

g) No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 pm and 6.00 am) except in public emergencies.

h) The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place.

i) No horn should be allowed to be used at night (between 10pm and 6 am) in residential area except in exceptional circumstances.

j) There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the text books which teach civic sense to the children and youth at the initial/ early level of education. Special talks and lectures be organised in the schools to highlight the menace of noise pollution and the role of the children and younger generation in preventing it.

k) Police and Civil administration should be trained to understand the various methods to curb the problem and also the laws on the subject. The state must play an active role in this process.

l) Resident Welfare Associations, Service Clubs and Societies engaged in preventing noise pollution as a part of their projects need to be encouraged and actively involved by the local administration, special public awareness campaigns need to be carried out of festivals, events and ceremonial occasions where crackers are likely to be used.

m) The above said guidelines are issued in exercise of power conferred on this court under Articles 141 and 142 of the Constitution of India. These would remain in force until modified by this court or suspended by an appropriate legislation.

n) The states shall make provisions for seizure and confiscation of loudspeakers, amplifiers and such other equipment are found to be creating noise beyond the permissible limits.

o) Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 makes provisions for specifying ambient air quality standards in respect of noise for different areas/ zones, categorisation of the areas for the purpose of implementation of noise standards authorizing the authorities for enforcement and achievement of laid down standards.

The Central Government/ State Governments shall take steps for laying down such standards and notifying the authorities where it has not already been done.

p) Though the matters are closed consistently with the directions as above issued in public interest, there will be liberty of seeking further directions as and when required and in particular in the event of any difficulty arising in implementing the directions (AIR 2005SC3525).

• ***Orissa Mining Corporation vs Ministry of Environment and Forest & Others (AIR2011 SC180)***

This is one of the landmark judgement of Supreme Court of India. The Dongaria Kondh raised their voice against UK based Vedanta Aluminum Limited, when the Niyamgiri Hill was leased for mining. The Supreme Court of India considering the rights of tribal emphasised upon PESA and FRA. The Court referred to the provision of Gram Sabha under PESA that the Gram Sabha will decide leasing out of Niyamgiri for mining.

The Gram Sabhas voted against the mining proposal and which is also considered the country's first environmental referendum. The application of FRA as directed by the Supreme Court led to the protection of community rights of the tribal (Krishnan&Naga,2017). This Judgement has also its importance as by protecting the rights of the tribal simultaneously, it led to the protection of forest and other natural resources.

## **II. Conclusion**

The activism of Supreme Court of India opened a new chapter in environmental protection. The pronouncement of the Supreme Court led to various interpretation of law like the ambit of Article 21 did not remain mere a right to life rather it included right to live in pollution free environment. Hygienic environment is an integral part of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.

The Supreme Court of India has discarded the traditional concept that the development and ecology are opposed to each other. The Court has emphasised Sustainable Development as a balancing concept between ecology and development. Development should be undertaken but keeping in mind that it will not degrade the environment. The essential features of the Sustainable Development are considered as Precautionary Principle and Polluter Pay Principle by the Supreme Court of India. The Supreme Court of India has accepted the Precautionary Principle and Polluter Pay Principle as part of the law of land. The Onus of Proof has also been mentioned in the pronouncement of Supreme Court of India. The Supreme Court of India has also emphasised upon specifically the establishment of environmental courts manned by legally trained persons/judicial officers to deal with cases relating to environment which will help out to resolve the cases regarding environment protection quickly. In its pronouncement the Supreme Court of India has stated that action should not only be taken against erring industries but also against erring officers who are responsible for environmental pollution. The Court had also directed closure of many industries which were polluting the environment. The Supreme Court has also responded to the environmental issues which affected the monuments like Taj Mahal etc. The Supreme Court of India has also considered the report of some expert bodies like NEERI while giving its pronouncement in different environmental cases. The Supreme Court of India in its pronouncements has also directed the High Court to do in depth investigation before pronouncing its judgement regarding environmental cases.

PESA and FRA were also referred to protect the rights of tribal which further led to the environmental protection. The Supreme Court of India not only emphasised upon the constitutional and statutory provisions regarding environmental protection but also issued directions to the concerned authorities who were entrusted with the task of environmental protection. The mechanism of PIL led to more pro activeness of the Supreme Court in protection and preservation of the environment. The Supreme Court of India through its activism has tried to protect and preserve the environment.

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