ENFORCEMENT OF THE RIGHT TO ENVIRONMENT PROTECTION THROUGH PUBLIC INTEREST LITIGATION IN INDIA

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I. INTRODUCTION

The growing threats to our environment through developmental activities has created an unprecedented crisis. It has resulted in hazards for decent and healthy environment which is so crucial for human existence. The world has come a long way since the first historic effort to diagnose the global environment took place at the UN Conference on Human Environment (Stockholm, 1972).[1] The journey from the Stockholm Conference to the Earth Summit at Rio de Janeiro has led to the recognition that "all human beings are entitled to a healthy and productive life in harmony with nature".[2] The growing awareness about unhampered development has led to numerous international and national efforts to protect the environment. Human beings are the primary victims of environmental damage. Though there is no consensus at the international level regarding securing a right to environment as a fundamental human right, yet efforts have been made in some national jurisdictions to recognise such a right.

This right to environment essentially emanates from the right to life, which is the core of all fundamental human rights. The parameters of this right in the various jurisdictions may be put differently, even as the right itself is still in evolution. This emerging human right, recognised primarily through judicial interpretations, tends to offer a shield against the "developmental terrorism" which is threatening to engulf humankind, among other species, on our fragile planet. The nascent right to environment protection is likely to be frowned upon in developed as well as developing societies, as those seeking it may be dubbed anti-development. The invoking and enforcement of this right has often become controversial and difficult, as available mechanisms and judicial responses are determining factors.

II. ROLE OF PUBLIC INTEREST LITIGATION IN INDIA

A. The Rationale

The public interest litigation (PIL) in India has essentially emerged through the

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1. Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, A/CONF. 48/14/Rev. I.
2. See Principle 1, and the Rio Declaration on Environment and Development, U.N. Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, A/CONF. 151/5.

> legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.[14]

The Supreme Court has also relaxed the requirement of a formal writ to seek redress before it. In this respect the Court underscored that any member of the public can draw its attention to a legal injury or legal wrong, even by addressing a letter. The Court would cast aside all technical rules of procedure and "entertain the letter as a writ petition on the judicial side and take action upon it".[15] The assumption of jurisdiction by the Court in this way is popularly termed as "epistolary jurisdiction".[16]

A Constitution Bench of the Supreme Court unanimously reiterated this position in the *M.C. Mehta* case recently :

> Procedure being merely a hand-maiden of justice it should not stand in the way of access to justice to the weaker sections ... this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting *pro bono publico* would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of *locus standi* and what has come to be known as epistolary jurisdiction.[17]

Thus while dealing with an application for enforcement of a fundamental right, the Court looks at the substance and not the form.

The primary focus of the PIL in India has been state repression, governmental lawlessness, administrative deviance, exploitation of disadvantaged groups and denial to them of their rights and entitlements and in recent years on protection of the environment. In essence, the PIL model in India is directed towards "finding turn-around situations" for the disadvantaged and other vulnerable groups,[18] as compared to its earlier impression of being "an arena of legal quibbling for men with long purses".[19] With the expansion of the horizons of PIL, the apex court has

14. *S.P. Gupta* v. *Union of India*, AIR 1982 SC 189.
15. See n.12, p. 1483.
16. For example in the *Doon Valley* case (AIR 1988 SC 2187). The Supreme Court directed a letter from the Rural Litigation and Entitlement Kendra, Dehradun, to be treated as a writ petition under Article 32 of the Constitution.
17. *M.C. Mehta* v. *Union of India* (Shriram Gas leakage), AIR 1987 SC 1086 at 1090.
18. Bhagwati, n.4, p. 569.
19. *Keshavananda Bharti* v. *State of Kerala*, AIR 1973 SC 1461 at 1485 (per Dwivedi, J.).

human rights jurisprudence[3] built up by the Supreme Court of India. Initially the writ jurisdiction was invoked (as per Article 32 in case of the Supreme Court and Article 226 in case of the state High Courts) to enforce the fundamental rights enshrined in part III of the Constitution in the process. The PIL in India has been primarily judge-led and even to some extent judge-induced.[4] In fact some of the justices of the Supreme Court, notably Krishan Iyer and Bhagwati, began converting much of the constitutional litigation into public interest litigation through a variety of techniques of judicial activism. This was greatly facilitated by the power of "judicial review"[5] conferred upon the apex court. It covers not only executive action, but also legislative action and even over constitutional amendments.

The growth of PIL has been strongly nurtured by the understanding that judges do not merely find the law. It did give a jolt to the traditional Anglo-Saxon myth that judges do not make law. Instead of nurturing this myth, some justice of the Supreme Court pondered over the role of a judge in a traumatically changing society such as India. Justice Bhagwati, quoting Lord Reid,[6] argued that judges do take part in the lawmaking process and regarded judicial activism as a necessary and inevitable part of the judicial process.[7] Moreover the Supreme Court and the state High Courts have often deliberately jettisoned apologist postures in regard to their active involvement in social problems and have justified aggressive judicial

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3. Various types of reliefs in a number of cases were given by the Supreme Court, especially for undertrial prisoners in jails, amelioration of the conditions of detention in protective homes for the women, for medical check-up of remand home inmates, prohibition of traffic in women and relief for their victims, for the release of bonded labour, enforcement of other labour laws, acquisition of cycle rickshaws by licensed rickshaw pullers, relief against custodial violence to women prisoners while in police lock-up, for environment protection etc.

4. P.N. Bhagwati, "Judicial Activism and Public Interest Litigation", *Columbia Journal of Transnational Law*, Vol. 23, (1985), p. 561.

5. Article 32 of the Constitution of India Provides:
   1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
   2. The Supreme Court shall have power to issue directions or orders or writ, 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.

   Thus the article provides a guaranteed remedy for the enforcement of fundamental rights and this remedial right is itself made a fundamental right, being included in Part III of the Constitution. Explaining the significance of this article, Dr. B.R. Ambedkar, chairman of the Drafting Committee of the Constitution observed : "If I was asked to name any particular article of the Constitution as the most important-an article without which this Constitution would be a nullity-I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it". See (1948) VII C.A.D. 953.

6. Lord Reid observed :
   There was a time when it was thought almost indecent to suggest that Judges make law - they only declare it. Those with a taste for fairly tales deem to have though that in some Aladdin's cave there is hidden the Common Law, in all its splendor and that on a judge's appointment there descends on him knowledge of the magic words Open Sesame. Bad decisions are given when the judge has muddled the password and the wrong door opens. But we do not believe in fairy tales any more. Reid, "The Judge as Lawmaker", J.S.P.T.L., vol. 12 (1972), p. 72. Quoted in Bhagwati, n.4, p. 563.

7. Bhagwati, n.4, p. 563.

attitudes.[8] The judicial activism has taken many forms and the Supreme Court has in the process invented an impressive range of concepts. Faced with a "legitimation crisis",[9] the Supreme Court has strived to achieve distributive justice or social justice. Justice Bhagwati in fact argued that, in a developing country such as India, the modern judiciary cannot afford to hide behind notions of legal justice and plead incapacity when social justice issues are addressed to it.[10] In the process, value accountability guides the judges in their decision making.

B. Basic Contours

As a logical corollary to the activist role pursued by the higher courts, the centre of gravity of justice has shifted from the traditional individual *locus standi* to the community orientation of public interest litigation. It was felt by the judges that in the social and cultural setting of India, the traditional rules with regard to standing require extenuation for the purpose of achieving the ends of justice.[11] Though not an aggrieved party, the liberalization of the rule of *locus standi* enabled environmentally conscious public spirited individuals or groups an easy access to the highest court of India or to judge-fashioned remedies. In this context, the PIL has been essentially viewed as a collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights conferred upon the vulnerable sections of the community and to reach social justice to them.[12] The PIL is not in the nature of adversary litigation. The Supreme Court, in the *Bandhua Mukti Morcha* case, regarded it as a challenge and an opportunity to the government "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".[13]

In fact Justice Bhagwati is considered to have given a comprehensive exposition to the concept of PIL. He laid down its scope in the *Judges Appointment and Transfer* case as follows :

> (W)here a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or

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8. G.L. Peiris, "Public Interest Litigation in the Indian subcontinent : Current Dimensions", I.C.L.Q., vol. 40, (1991), p. 67.
9. It is argued that in a country which has vast differentials, the Supreme Court cannot turn away from the claims and demands of social justice and still honour its claim to be a court for all the citizens of India. The main thrust of this argument is on maintaining credibility of the Court with the people.
10. Bhagwati, n.4, p. 566.
11. *Forward Construction Co.* v. *Prabhat Mandal* (1986), 1 S.C.C. (Supreme Court Cases), 104.
12. *People's Union for Democratic Rights* v. *Union of India*, AIR (All India Reporter) 1982 SC 1477.
13. *Bandhua Mukti Morcha* v. *Union of India ad Others*. AIR 1984 SC 802 at 811.
The Court observed that when it entertains PIL, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realization of the constitutional objectives.

been now acutely concerned with growing environmental deterioration. The Court now often tries to balance environmental concerns and developmental requirements. However, with the explicit recognition of a right to a clean and hygienic environment, as a part of Right to Life under Article 21, the former has often prevailed upon the latter.

C. Right to Life

The Right to Life, enshrined as a fundamental right in Article 21, has been one of the few articles of the Constitution which has undergone profound transformation over the past more than four decades through activist judicial interpretations. The article provides that :

> No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Propelled by a strong sense of social justice, the apex court has gradually expanded the frontiers of fundamental rights and in the process has rewritten some parts of the Constitution. In this process of progressive interpretation, the right to life and liberty enshrined in Article 21 has been converted *de facto* and *de jure* into a procedural due process clause.[20]

The Supreme Court of India has come a long way since *A.K. Gopalan* case, where the "majority view threw the most important fundamental right to life and personal liberty at the mercy of legislative majorities".[21] The gradual widening of the judicial horizons has led the Court to incorporate varied facets of the right to life, keeping in tune with the changing times. It now encompasses, among others, the right to bail, the right to speedy trial, the right to dignified treatment in custodial institutions, the right to legal aid in criminal proceedings, the right to clean and hygienic environment and above all, the right to live with basic human dignity. The Court for the first time opened up a new dimension of Article 21 in the *Maneka Gandhi*[22] case and laid down that it is not only a guarantee against executive action unsupported by law but also a restriction on law making. The "procedure established by law" cannot be arbitrary, unfair or unreasonable.[23] Thus the Court expanded the scope and ambit of the right to-life and personal liberty and sowed the seed for future development[24] of the law, enlarging this most fundamental right.

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20. Upendra Baxi, "Taking Suffering Seriously : Social Action Litigation in the Supreme Court of India", *Delhi Law Review* 1979-80, p. 99.
21. *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27 at 88.
22. *Maneka Gandhi* v. *Union of India and Another*, AIR 1978 SC 597.
    The Court held, among others, that Article 21 safeguarded the petitioner's right to go abroad against executive interference, which is not supported by law. The procedure for so depriving her (impounding her passport) must fulfill principles of natural justice.
23. *Ibid.*, p. 622.
24. The decision in *Maneka Gandhi* case became the spring-board or a most spectacular evolution of the law culminating in the decisions in *M.O. Hoskot* v. *State of Bihar* (1980) 1 SCR 192, *Hussainara Khatoon* v. *State of Bihar* (1980) 1 SCC 81, *Sunil Batra* v. *Delhi Administration* (1979) 1 SCR 392 (First case), *Sunil Batra* v. *Delhi Administration* (1980) SCR 557 (Second case) etc.

The meaning of the right to life got a big boost in a landmark judgment of the Supreme Court in *Francis Coralie* case.[25] Taking a cue from the U.S. Supreme Court's observation in *Weems V. U.S.*,[26] regarding interpretation of a constitutional provision, the Court viewed that it must expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. Therefore, the Court refused to restrict the right to life to mere animal existence. It viewed life as something more than just physical survival and held :

> Every limb or faculty through which life is enjoyed is thus protected by Article 21 and *a fortiori*, this would include the faculties of thinking and feeling ... We think that the *Right to life includes the right to live with human dignity and all that goes along with it* ... the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute human-self (emphasis added)[27].

This view has been reiterated by the apex court in subsequent cases too. For example, in *Thampy Thera*, the Court observed that "it is the paramount obligation of the State to ensure availability of situations, circumstances and environments in which every citizen can effectively exercise and enjoy those (fundamental) rights".[28] The Court added another facet to the right life to include "the finer graces of human civilization" (e.g., efficient and safe means of communication).[29] The Court in *Bandhua Mukti Morcha* case sought to derive "life breath"[30] for the right to life with human dignity free from exploitation, from the Directive Principles of State Policy, particularly Article 39 (e) and (f), Article 41 and Article 42, to ameliorate the inhuman plight of the bonded labourers.[31] These the Court regarded as minimum

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25. *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi and others*, AIR 1981 SC 746.
26. *Weems* V. *US* (1909) 54 L. Fd. 793 (801). The US Supreme Court observed :
Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had, therefore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than mischief which gave its birth. This is peculiarly true of constitutions. They are not ephemeral enactments designed to meet passing occasions ... The meaning and vitality of the constitution have developed against narrow and restrictive construction.
27. See n.25, p. 753.
28. *Dr. P.N. Thampy Thera* V. *Union of India and Others*, AIR 1984 SC 74 at 79.
29. One writer, Professor S.K. Agrawala, has argued that imposition by a government of repromulgated ordinances is violative of human dignity in a democratic society. *Journal of the Indian Law Institute, vol. 25* (1983), p. 127 at p. 133.
30. See n.13.
31. The right to life with human dignity must include, among others, protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

requirements which must exist in order to enable a person to live with human dignity. It categorically held that any "inaction on the part of the state in securing implementation of such legislation would amount to denial of the right to live with human dignity".[32] Again in *Neerja Chaudhary* the apex court reaffirmed its view that Article 21 and 23 (prohibition of traffic in human beings and begar and other similar forms of forced labour) "would require not only the identification and release of bonded labourers, but also their rehabilitation on release".[33]

D. Right to Environment Protection

The interpretation of the right to life took a major turn when the Supreme Court was faced with adjudging the conflict between environment protection and industrialization in the *Doon Valley*[34] case. In that case, involving a large number of lessees of limestone quarries, the Court ordered the closure of all but eight limestone quarries.[35] The Court took notice of the fact that limestone quarrying and excavation of the limestone deposit affects the perennial water springs. Taking a serious view of this environmental disturbance the Court recognized that the right to life includes the right to a wholesome environment and observed :

> The consequence of this order made by us would be that the lessees of limestone quarries would be thrown out of business. This would undoubtedly cause hardship to them, but it is 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 of ecological balance and without avoidable hazard to them, to their cattle, homes and agriculture and undue affectation of air, water and environment.[36]

The *Doon Valley* case became a forerunner to cases involving issues of environment protection and the citizens right to a clean and hygienic environment.[37] The case opened the floodgates for writs for enforcement of the newly recognized fundamental right to environment protection. *The Doon Valley* case categorically underscored that the right to life without clean and hygienic environment is meaningless.

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32. See n.13, p. 812. In pursuance of the mandate given in Article 23 (fundamental right to prohibition of traffic in human beings and begar and other similar forms of forced labour), Parliament enacted the Bonded Labour System (Abolition) Act in 1976.
33. *Neeraja Chaudhary* v. *State of M.P.*, AIR 1984 SC 1099.
34. *Rural Litigation and Entitlement Kendra, Dehradun* v. *State of Uttar Pradesh*. The Supreme Court has issued among others, these opinions and orders : 12 March 1985, AIR 1985 SC 652 : 13 May 1985, AIR 1985 SC 1259 : 30 September 1985, 1985 (2) Scale 906 ; 18 December 1986, AIR 1987 SC 359 ; 19 October 1987, AIR 1987 SC 2426 : 30 August 1988, AIR 1988 SC 2187; 16 December 1988, JT 1988 (4) SC 710 and 4 May 1990, JT 1990 (2) SC 391.
35. *Ibid.*, 1985 (1) *Scale* 408.
36. *Ibid.*
37. Bharat Desai, "Public Interest Litigation : Environmental Pollution Control", *The Hindustan Times* (New Delhi), 24 March 1986.

Generally the writ jurisdiction is invoked against the "State" (as defined in Article 12), as compared to any private company. However, the Supreme Court took an unusual step when it issued a writ of mandamus against Shriram Foods and Fertilizer Industries in *Shriram Gas Leakage*[38] case, to safeguard citizen's right to life from hazardous substances. The case in a sense became historic, as the Court did not say that Shriram is not a state instrumentality[39] and there was no majority for the view it is so (and subject to jurisdiction under Article 32), yet the private industry complied with all orders, including those requiring them to subsidize the Court's fact finding. The Court also tacitly recognized that citizen's right to life was adversely affected due to leakage of oleum gas from the premises of Shriram and hence in addition to preventive relief, it proceeded to determine remedial relief under Article 32.[40] In the process, the Court radically transformed the criteria of liability and compensation under the law of torts. A Constitution Bench of the apex court in the case unanimously articulated a new standard of hazardous industry's "absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity".[41] Such industry is to be subjected to strict and absolute liability without exceptions and the measure of compensation is to be correlated to the magnitude and capacity of the enterprise.[42] Thus the Court's concern to protect the citizen's right to wholesome environment under Article 21 did not deter it to issue mandamus even against a private enterprise (without explicitly bringing it within the ambit of "State") and to award compensation to the victims of oleum gas leakage.

Several other public interest litigations have been brought before the Supreme Court through writ petitions. These petitions sought the Courts' directions to the authorities for carrying out their obligations under relevant environmental legislations. However, to qualify for relief under Article 32, the petitioners did argue that the impugned action violated citizen's right to a wholesome environment under

38. *M.C. Mehta* v. *Union of India*. There are three main orders in this case : 17 February 1986, AIR 1987 SC 965; 10 March 1986, AIR 1987 SC 982 and the Constitution Bench judgement of 20 December 1986, AIR 1987 SC 1086.

39. As regards absence of any definite stand on whether Shriram would be characterized as "State" (as per Article 12), the Court justified it as : "We have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on 15 December 1986, and we are called upon to deliver our judgement within a period of four days... We are, therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage..." AIR 1987 SC 1086 at 1098.

40. The Supreme Court is free under Article 32(1) to devise any procedure appropriate for the enforcement of a fundamental right and the Court has the implicit power under Article 32(2) to secure this enforcement. The power is not only injunctive in ambit i.e., preventing the infringement of a fundamental right but it is also remedial in scope and provides relief against a breach of the fundamental right already committed. The court explicitly stated in *M.C. Mehta* case that "We must, therefore, hold that Art. 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Art. 32. The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases". AIR 1987 SC 1086 at 1091.

41. AIR 1987 SC 1086 at 1099.

42. *Ibid*.

Article 21. The *Ganga Pollution*[43] case is unique in this respect. In this important litigation, the petitioner, though not a riparian owner who suffered due to pollution in the river Ganga, was allowed to maintain the petition. Because of the nature of the litigation, the Court decided to hear it in different parts and has so far given two orders in the case (which is still, pending), relating to tanneries and municipalities. In the first order, the Court did not allow any pretext on the part of the tanneries in view of the highly toxic nature of effluents thrown into the Ganga. Rejecting arguments of loss of revenue or loss of employment, the Court ordered closure of all those tanneries who did not care to enter their appearance before the Court.[44] The Court emphatically observed that "We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".[45] In the second order, the Supreme Court took a serious view of the fact that "river water is not fit for drinking, fishing and bathing purposes", and directed the Kanpur Municipal Corporation to bear the major responsibility for it.[46]

The apex court again recognized the citizen's right to fresh air and pollution-free environment in the *Stone Crushers*[47] case and ordered the closure of all mechanical stone crushers in Delhi and Faridabad area. These stone crushers were operating without requisite licences and emitted hazardous dust round-the-clock. Passing strictures against the concerned authorities for failure to perform their statutory duties in protecting environment, the Court ruled that "the quality of environment cannot be permitted to be damaged by polluting air, water and land to such an extent that it becomes a health hazard for the residents".[48] Similarly in the *Sariska Bio-reserve*[49] case the Supreme Court expressed its anguish against damage done to the environment, ecology and wildlife by mining activities in the protected forest areas. It prohibited all mining activities in areas of Sariska National Park and the area notified as Tiger Reserve.[50]

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43. *M.C. Mehta* v. *Union of India* (Ganga Pollution case). The two orders so far issued in the pending litigation are : AIR 1988 SC 1037 (Tanneries) and AIR 1988 SC 1115 (Municipalities).
The case is unique as the Court directed the issue of notice, under 0.1, R. 8 of the Code of Civil Procedure, by treating it as a representative action by publishing the gist of the petition in the newspapers in circulation in northern India and calling upon all the industrialists and the municipal bodies having jurisdiction over the areas through which the river Ganga flows. They were asked to appear before the Court and to show cause as to why directions should not be issued to them, as prayed by the petitioner, asking them not to allow the trade effluents and the sewage into the river Ganga without appropriately treating them before discharging them into the river.
44. AIR 1988 SC 1037 at 1046.
45. *Ibid.*, p. 1048 (per Singh, J.).
46. AIR 1988 SC 1115 at 1123 and 1126-27.
All the directions issued to the Kanpur Municipal Corporation in this order, applied *mutatis mutandis* to all other municipal corporations and municipalities, which have jurisdiction over the areas through which the river Ganga flows.
47. *M.C. Mehta* v. *Union of India* (Stone Crushers case), Writ Petition (Civil) NO. 4677/85.
48. *The Times of India* (New Delhi), 16 May 1992.
49. *Tarun Bharat Sangh, Alwar* v. *Union of India*. The main two orders passed in the litigation are at AIR 1992 SC 514 and AIR 1993 SC 293.
50. AIR 1992 SC 514 at 515.

III. ENFORCEMENT

It is indeed interesting to note, as the above discussion shows, how the right to life has been transformed into the most vibrant fundamental right through judicial interpretations. The right to a clean and hygienic environment now intrinsically forms part of this broad right to live with basic human dignity free from exploitation. The Indian Supreme Court, through the device of public interest litigation, has played an effective role in the task of social engineering. Through varied innovative judicial techniques, the Court has tried to enforce the citizen's right to life in general and the right to clean and hygienic environment in particular. The environmental litigations being technical in nature, the Court has deftly used the device of socio-legal commissions of enquiry and services of expert panels for fact-finding and granting relief.[51] The Court has been very careful to steer clear of any controversy in dealing with environmental cases, so that its directions are respected and complied with. However, it has made very clear that whenever citizens right to a clean and hygienic environment is concerned, the traditional arguments will not hold water. Time and again the Court has demonstrated remarkable judicial wisdom in dealing with polluting industries, municipal bodies and concerned authorities. The judges have underscored in granting relief that they are not acting as a parallel government but merely enforcing the constitutional and legal rights of the citizens.[52] Yet, the effective enforcement of the Court's directions to protect the environment has been a difficult process, warranting judicial firmness, restraint and patience.

A. Varied Techniques

In view of the very nature of the PIL cases, the courts have to often issue detailed directions to ameliorate the situation warranting immediate attention. Sometimes it amounts to taking over the direction of administration in the area concerned from the executive.[53] Moreover, the Court has to see that there is faithful compliance with its directions by the concerned polluters or authorities. Therefore, the Court has devised a technique of monitoring mechanism and periodic reporting

51. The Supreme Court, for instance, in the *Doon Valley* case constituted the Bhargava Committee to evaluate the environmental impact of limestone quarrying operations; in *Shriram Gas leakage* case, the Nilay Chaudhary Committee as well as the G.D. Aggarwal Committee (on behalf of the petitioner, pursuant to the liberty given by the Court) were constituted to advise the Court on whether Shriram's hazardous chemical plant should be allowed to recommence operations; in the *Sariska Bioreserve* case, the M.L. Jain Committee was appointed to demarcate the area prohibited for mining in the protected forest around Sariska National Park.

52. Bhagwati, n. 4, p. 576.

53. S.K. Agrawala, *Public Interest Litigation in India : A Critique* (Tripathi : Bombay, 1985), p. 32. For instance, if the mater related to the non-implementation of labour laws, as in the *Bandhua Mukti Morcha* case, the Supreme Court provided reliefs not only to the persons named but the administration of several provisions of many labour laws was also taken over by the Court over the whole of the State of Haryana and suggestions were also given to all the state governments in the country on the subject. See AIR 1984 SC 8021 at 827, 828.

to the Court.[54] This in fact necessitates keeping the litigation pending before the Court. As a result, most of the environmental litigations brought to the Court have not been concluded and it is open to the petitioner to seek Courts indulgence, as and when required.

The sense of urgency involved in petitions seeking enforcement of the citizens right to a clean and hygienic environment, necessitates that fact-finding commissions or expert committees had to be constituted and interim orders to be issued-even before a decision on the rights. This was shown in the *Doon Valley* as well as *Shriram Gas Leakage case*. In the latter case, the Court ordered the caustic chlorine plant to be closed, set up a victim compensation scheme, and then ordered the plant reopening subject to extensive directions, all within ten weeks of the gas leak, without even first deciding whether it had jurisdiction under Article 32 to order relief against a private corporation.[55]

The orders made by the Court in a PIL matter are not self-executing. They have to be enforced through state agencies. Therefore, any failure on the part of the state machinery to secure enforcement of the Court orders would create hurdles in giving effect to the citizens fundamental rights. Thus enforceabiliby of the directions of the Court is crucial to uphold its authority. Generally in all environmental litigations the Supreme Court prescribed time limits within which the order is to be carried out, periodic submission of progress reports by the concerned authorities and sometimes roped in the state High Courts to monitor actual implementation.[56] In the process, ostensibly, the apex court seeks to prescribe all possible follow-up measures so as to minimize the possibility of non-compliance. The ultimate sanction at the disposal of the Court for non-compliance with its directions is to haul up the concerned persons for contempt of the court. This power is sparingly resorted to. What the Court normally does is to pass strictures against concerned authorities, ask for personal appearance and explanation of officials, extend time limit for compliance, closure of industrial unit etc.

B. Sanctions

Despite all this the Court often remains helpless as its action depends upon violations of orders being brought to its notice by the petitioner. For instance in *Bandhua Mukti Morcha* case, the petitioner brought to the notice of the Court non-

54. Through this technique the Court remains seized of the matter and ensures that its directions are carried out. For example, in *Shiela Barse* (AIR 1983 SC 378) the apex court asked a woman judicial officer to visit the police lock-ups periodically and to report to the High Court whether the directives were being carried out; in the *Doon Valley* case, a Joint Secretary in the Ministry of Labour was appointed to visit the stone quarries after about three months to ascertain whether the directions given by the Court had been implemented or not; in another *Sheila Barse* case, the Supreme Court declared lodging non-criminal mentally ill persons in jails in West Bengal, illegal and unconstitutional and asked judicial magistrates to send quarterly reports about the number of persons sought to be screened and sent to places of safe custody to the Calcutta High Court (see the *Times of India* (New Delhi), 19 August 1993).

55. Cunningham, "Public Interest Litigation in Indian Supreme Court : A Study in the Light of American Experience", 29 *Journal of the Indian Law Institute* 494 (1987) at 516-517.

56. For instance, *Shiela Barse* v. *Union of India*, AIR 1983 SC 378.

compliance with its 21 directions (passed on 16 December ; 1983) by the Haryana Government. However, the court merely preferred to issue a warning that "if any of these directions is not properly carried out by the Central Government or the State of Haryana, we shall take a serious view of the matter".[57] Similarly, in the case of the *Mandsaur State Pencil Industry Workers*, inspite of the Supreme Courts directions to the state government to ensure installation of high efficiency dust control devices by the factory owners, failing which their licences could be cancelled, hardly any factory owner complied with the order.[58]

In the *Doon Valley* case (initiated in 1985 and still pending) the Supreme Court did apply sanctions for violation of the conditions laid down by it and surreptitiously indulging in fresh mining operations by the lessee, damaging the environment. The Court, therefore, in its decision[59] castigated the lessee for making a false representation, directed that the activities of the lessee be stopped and he was asked to pay a sum of Rs. 3,00,000 to the fund of the monitoring committee by June 1991.[60] The Court was, however, content with issuing a warning in the *Stone Crushers*[61] case, when the petitioner drew its attention to round-the-clock operation by two stone crushers in total violation of the Court's earlier order. Curiously, the Court preferred not to "touch" the actual violators but warned the Haryana government and the deputy commissioner of Faridabad to "haul up" them if stone crushing was allowed.[62] A callous disregard for the apex courts directives was reported recently, when a major blast in a fireworks factory in Sivakasi (Tamil Nadu) claimed 16 lives mostly of children and women.[63] The Court had in the *Sivakasi Factories*[64] case, constituted a three member Jain Panel for an on-the-spot study of wanton exploitation of child labour in cracker units and hazardous conditions in which they worked. The expert panel suggested for strict action against erring Sivakasi factory owners.

A three-judge bench of the Supreme Court in the *Taj Mahal* case recently took a very serious view of violation of its directive by 241 industries to install air pollution control devices in order to save the historic Taj Mahal from intermittent acid rain.[65] The bench made it known that delinquent industries emitting toxic smoke and discharging carcinogenous effluents would not be permitted to operate with impunity and may face closure. In the famous *Ganga Pollution* case also the

57. AIR 1984 SC 802 at p. 834.
58. Desai, n. 37.
59. *Rural Litigation Kendra, Dehradun* v. *State of U.P.*, (1991) 3 SCC 347.
60. *Annual Survey of Indian Law* 1991 (New Delhi. 1991), p. 45.
61. *M.C. Mehta* v. *Union of India*, Writ Petition (Civil) No. 4677/85.
62. *The Times of India*, 17 September 1992.
63. *The Times of India*, 15 September 1992.
64. *M.C. Mehta* v. *Union of India*. Writ Petition (Civil) No. 465/86.
65. *The Times of India*, 15 August 1993. Many foundries, bangles and chemical manufacturing industries were found to be defiant of the court's directives despite public notices published in the national dailies, calling upon them to take necessary precautions or face closure. Of the 511 industries, including the Mathura Refinery identified as hazardous to the Taj Mahal, 270 have readily complied with the directives. *M.C. Mehta* v. *Union of India & Ors*. Writ Petition (Civil) No. 13381/84.

Court issued show cause notices for contempt to 24 industries (which were earlier ordered to shut down by the Court) situated on the bank of the river Ganga in West Bengal for violation of its directives to install effluent treatment plants. Three railway officials are already facing contempt proceedings in this case.[66]

IV. CONCLUSION

The emergence of public interest litigation in India has provided an important tool for the enforcement of the fundamental right to environment protection. This could not have been possible without liberalization of the traditional rule of *locus standi*, facilitating "access to justice" by invoking the writ jurisdiction. In the process, instead of merely delivering legal justice the higher judiciary, especially the Supreme Court, has been dealing with issues of "social justice" as well. This has led to remarkable judicial activism and innovations. Not professing to act as a parallel government, the judiciary has sought to enforce the constitutional and legal rights of the underprivileged by activating the governmental agencies. Leaving behind the traditional Anglo-Saxon myth that the judges do not make law, the Supreme Court has blazed a new trail of constitutional and legislative interpretations. The transformation of the right to life (Article 21) under the Constitution of India is a fascinating example of judge-made law. The edifice of the environmental jurisprudence being built up by the apex court in recent years is premised upon it. Barring a few exceptions, the PIL activism has been confined to the Supreme Court, not having effectively percolated down to the state High Courts. This judicial activism has not been free from criticism.

The growth of PIL in India is also conditioned by several factors. The PIL basically aiming at governmental lawlessness and administrative deviance, faces problems as regards enforceability of the directions issued by the court. To overcome this, the apex court has devised a monitoring and reporting mechanism, which sometimes may amount to taking over the task administration in the matter. The Court has wielded its judicial power with considerable finesse in some of the big environmental litigations (e.g. *Ganga Pollution*, *Taj Mahal* cases) - issuing show cause notices to concerned industries and municipal bodies through newspapers, closing them down for failure to enforce statutory requirements, passing strictures or even hauling up authorities for contempt of court. Since the environmental cases are technical in nature, the apex court did realize quite early the need for neutral scientific expertise to assist the court. In this respect, its recommendation (in the *Shriram Gas Leakage* case) for setting up of environmental courts[67] in India on a regional basis, alongwith an ecological sciences research group (as compared to the ad hoc practice of appointing commissioners), has still not borne fruit. The Ministry of Environment and Forests has introduced a belated and half-

66. *M.C. Mehta* v. *Union of India & Ors*. Writ Petition (Civil) No. 3727/85. The Court Order dated 23 July 1993, pp 2 and 5.
67. AIR 1987 SC 965 at 982.

hearted National Environment Tribunal Bill[68] in the lower house (Lok Sabha) of Parliament, whose fate is still uncertain. The Bill falls far short of the original idea propounded by the Court. Nevertheless, it does indicate how even recommendations of the Supreme Court, as *obiter dicta*, can influence the course of development of environmental legislation and policy.

The judicial activism in environmental litigations has played a significant role in securing enforcement of the fundamental right to environment protection. Yet PIL cannot be regarded as a panacea. Primarily, the judiciary has to deal with these issues due to failure on the part of the administration, in general and enforcement machinery (set up under various environmental legislations), in particular to carry out their obligations. The Court has, being acutely concerned with "legitimation" of its existence, instead of taking shelter under legal technicalities, only stepped in to enforce the constitutional and legal rights of the people. Of late, the apex court has been cautious and has tried to avoid any frivolous litigation. Despite this, the Court is much more environmentally conscious and judicially mature today than before, to steer clear of any potential conflict between the imperatives of environmental protection and developmental priorities. The right to life with basic human dignity remains a guidepost for the Court in this process.

68. The Bill No. 133 of 1992 was Introduced in the Lower House of Parliament on 5 August 1992 by the Minister. The Bill, in its original form, has a very limited mandate. It seeks to provide for strict liability for damages *arising out of any accident occuring while handling any hazardous substance* and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment.