 ISSN: 2349-6002

From the Ganga to Aarey: Judicial Activism and Urban Ecology in Environmental PILs

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doi.org/10.64643/IJIRTV12I6-191385-459

I. INTRODUCTION

Background and Context

The 1970's and 1980's also saw the introduction of Public Interest Litigation (PIL) to the democratization of justice in the Country. Advanced legal thinking and positivism of Justice P.N. Bhagawati and Justice Iyer shifted the stagnant thinking and stagnant legal practice about the locus standi to a different par of legal thinking and legal practice.[1]. This thinking and legal practice liberated entry to law courts for any person to represent and act in the interest of the voiceless[2]. After the freedom of India in 1947 and continuing to the 1980's there was a great concern which was of great need for the newly introduced practice. This was a great concern of environmental degradation[3]. This was as a result of resource exploitation and industrialization. The need to address the practice was in great need.

Both Articles 48A, which is concerned about the environment, and 51A(g), which deals with natural resource protection, incorporated the constitutional foundations of environmental protection within the fundamental duties and within the directive principles of state policy.[4] However, the broad interpretation of the right to life and personal liberty under Article 21 made protection of the environment a fundamental right, and it was the gaining of environmental issues constitutional status and its protection through the judiciary which was the result of gaining a right to a clean and healthy environment being closely linked to the right to life.[5]

Research Problem and Objectives

Based on the examples of rural ecosystems and natural resources, to modern problems of urban ecology, this paper examines how judicial intervention in environmental PILs has evolved. Without a doubt, judicial activism has established some important environmental values and bridged some essential governance voids, yet it has also generated a debate over judicial competence, technical skills, and democratic accountability.[6] The tension between environmental protection and growth needs to take on a particularly fierce form in urban areas, where the multi-stakeholder complexities generated by infrastructure demands, housing limitations, and earning needs create a real-life conflict between the environment on one side and development on the other.[7]

The three objectives of this study are to:

(1) follow the PILs history of the environmental issue with the Ganga pollution case up to the city controversies such as the Aarey Forest;

(2) scrutinize institutional structures and doctrinal inventions produced by judicial activism; and

(3) assess the effectiveness and limitations of the courts in addressing the existing urban sustainability problems.

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[1] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

[2] *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

[3] Report of the National Committee on Environmental Planning and Coordination (NCEPC), Government of India (1978).

[4] Constitution of India, arts. 48A & 51A(g), inserted by the Constitution (Forty-second Amendment) Act, 1976.

[5] *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420; *M.C. Mehta v. Union of India*, AIR 1987 SC 965 (recognising the right to pollution-free environment as part of Article 21).

[6] S. Muralidhar, "Judicial Approaches to Environmental Problems in India," 6 J. Nat. Resources L. 1 (1994).

[7] A. Dhavan, "The Rise and Fall of the PIL Movement," in *Public Interest Litigation in India* (Butterworths, 2002).

The present study contributes to the existing literature on environmental constitutionalism and judicial governance in India by studying forty years of environmental PIL jurisprudence.[8] Following this introduction, the paper is split into nine chapters, the first one II, covers the history of environmental PIL; Chapter III discusses doctrinal innovations, Chapter IV examines the move to urban ecology, Chapter V examines the Godavarman forest conservation regime, [9]Chapter VI critically evaluates the matter, Chapter VII proposes institutional reforms, Chapter VIII summarizes the implications of environmental constitutionalism, and Chapter IX concludes.

II. EVOLUTION OF ENVIRONMENTAL PIL IN INDIA: HISTORICAL TRAJECTORY

Emergence During the 1980s

The bigger social action litigation movement of the late 1970s spawned the concept of environmental PIL that expanded in a short time to encompass environmental concerns.[10] Initially, PIL was employed to deal with such problems as bonded labor, exploitation of labor, and brutality of custody[11]. The clashes between the resource extraction firms and the local community who depended on the farmland, water and the forest products were typically.[12]

Foundational Cases

The case of Ganga contamination (MC Mehta v.). A case of the first step of environmental PIL is found in Union of India, 1987).[13] The present case highlighted the appalling pollution of the Ganga River by raw industrial waste and sewage produced by municipalities. The Supreme Court required the creation of proper sewage treatment plants. Moreover, the mandamus approach that is being continued by the courts is useful in supporting the power of implementation which had been established as a model of continuous judicial control of the environment-related matters.[14]

Moreover, this topic of limestone mining in the Mussoorie Himalayan hills came up in rural litigation and entitlement case Kendra v. State of Uttar Pradesh 1985[15] which reflected judicial readiness to place ecological concerns first and financial gains second.

Environmental Rights Constitutionalizing

These historic decisions slowly broadened the scope of interpretation of Article 21 by the judiciary, hence constitutionalizing environmental rights.[16] According to the Court, a clean and healthy environment is necessary to have a life of dignity which is covered by the right to life. [17]This interpretive enlargement led to environmental protection becoming an enforceable fundamental right that places judges in a position to pass legally binding orders in the process of environmental conservation and rehabilitation.[18]

III. DOCTRINAL INNOVATIONS THROUGH JUDICIAL ACTIVISM

The incorporation of the international environmental ideas into the local law by the judiciary has significantly contributed to the environmental jurisprudence in India.[19] As per the Polluter Pays Principle that was developed in Indian Council for

[8] R. Hilson, "Environmental Constitutionalism and Sustainable Governance," 34 J. Env. L. 1 (2022).

[9] *T.N. Godavarman Thirumulpad v. Union of India*, AIR 1997 SC 1228.

[10] U. Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," 4 Third World Legal Studies 107 (1985).

[11] *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473; *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

[12] *Banwasi Seva Ashram v. State of Uttar Pradesh*, AIR 1987 SC 374.

[13] *M.C. Mehta v. Union of India*, AIR 1988 SC 1037 (Ganga Pollution Case).

[14] S. Divan & A. Rosencranz, *Environmental Law and Policy in India*, 3rd edn. (Oxford University Press, 2022), pp. 140–145.

[1515] *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, AIR 1985 SC 652.

[16] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (expansive reading of Article 21).

[17] *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420 (right to pollution-free environment recognised as part of Article 21).

[18] *M.C. Mehta v. Union of India*, AIR 1987 SC 965; S. Divan & A. Rosencranz, *Environmental Law and Policy in India*, 3rd edn. (Oxford University Press, 2022).

[19] P. Sands, *Principles of International Environmental Law*, 4th edn. (Cambridge University Press, 2018).

Enviro-Legal Action v. Union of India (1996) [20]states that agricultural businesses polluting the environment must pay the cost of making the required repairs. Precautionary Principle was initially recognized in Vellore Citizens Welfare Forum v. Union of India (1996)[21]. This principle allows preventive also in the absence of convincing scientific evidence, since environmental damage is often irreversible.

Sustainable development emerged as a connection between economic growth and environmental protection combining the realization that growth should meet today and still be able to meet the needs of future generations.[22] The concept of intergenerational equity creates a time dimension to environmental stewardship since it adds elements of the fact that the current generations are custodians of natural resources on behalf of their future generations.[23]

The court had developed several institutional mechanisms to implement its environmental directives. To become expert in environmental issues, some High Courts created Green Benches[24]. The Supreme Court also created expert bodies, including the Central Empowered Committee (CEC) on the issue of forests and the Environment Pollution Control Authority (EPCA) on the quality of air in Delhi.[25] It was the responsibility of these organizations to investigate violations of environmental laws, propose remedial measures, and monitor the implementation of court order.[26]

The continuing mandamus strategy due to which the court retains jurisdiction over a problem until full compliance is another distinguishing feature of environmental PILs.[27] This system was a solution to the long-standing problem of the executive not acting or responding slowly to requirements by allowing the constant court review of implementation.[28]

IV. TRANSITION TO URBAN ECOLOGY: NEW FRONTIERS OF ENVIRONMENTAL PIL

Urbanization and Changing Environmental Conflicts

The rapid urbanization process, which took place in India in the 1990s, has altered the nature of environmental arguments to a great extent.[29] Pollution of the air, solid waste management, water scarcity, traffic jams and loss of green spaces are some of the urban environmental challenges that are in contrast to the resource conflicts in the rural environment.[30]. City ecological systems are highly complex and this poses special challenges to judicial intervention because environments are a result of the collective action of many sources and not individual sources.

Important Urban Environmental Cases

The case of M.C. Mehta v. Union of India (vehicular pollution in Delhi)[31] can be seen as the turning point of urban environmental issues. This case was filed in 1985 and followed by several orders after decades of time, dealing with the poor quality of air in Delhi. The Supreme Court ordered public transport vehicles to be converted to Compressed Natural Gas (CNG) and old commercial vehicle to be phased out and emotion standards to be enforced. [32]. The same PIL resulted in the polluting industries being forced to close and move out of residential localities by the Delhi Industries Relocation orders of the late 1990s.[33] These decisions showed the socioeconomic prices of judicial

[20] *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

[21] *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

[22] World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987)

[23] *State of Himachal Pradesh v. Ganesh Wood Products*, (1995) 6 SCC 363 (recognising intergenerational equity).

[24] S. Divan & A. Rosencranz, *Environmental Law and Policy in India*, 3rd edn. (Oxford University Press, 2022), pp. 217–220.

[25] *T.N. Godavarman Thirumulpad v. Union of India*, AIR 1997 SC 1228 (CEC); *M.C. Mehta v. Union of India*, (1998) 6 SCC 63 (EPCA).

[26] Ibid pg6

[27] *Vineet Narain v. Union of India*, (1998) 1 SCC 226 (concept and evolution of continuing mandamus).

[28] S. Divan & A. Rosencranz, *Environmental Law and Policy in India*, 3rd edn. (Oxford University Press, 2022), pp. 150–155.

[29] A. Kundu, "Trends and Processes of Urbanisation in India," *Centre for Policy Research Working Paper*, 2011.

[30] N. Khosla, "Judiciary and Urban Ecology: Limits of Adjudicatory Governance," *Economic & Political Weekly*, Vol. 56, No. 18 (2021).

[31] *M.C. Mehta v. Union of India*, (1998) 6 SCC 63 (Delhi Vehicular Pollution Case).

[33] *M.C. Mehta v. Union of India*, (2004) 6 SCC 588 (Delhi Industries Relocation).

environmentalism but at the same time achieved the objectives of pollution reduction, as thousands of workers were deprived of their employment owing to the sudden shutdown of plants[34]. The intricate issue of the lake revival in the highly populated urban areas that are subject to a number of sources of pollution including untreated sewage, industrial effluents and construction waste were dealt with in the cases of Bellandur Lake in Bengaluru.[35] These cases highlighted the weaknesses of judicial intervention in the resolution of systemic urban environmental problems in which many agencies and complex technical solutions are involved.[36]

Aarey Forest Controversy.

Mumbai Aarey Forest case represents one of the present-day city environmental controversies. The core of the problem was the plan of the Mumbai Metro Rail Corporation to construct a vehicle shed within Aarey Colony an area of 1,800 acres which was the green space and which served as one of the lungs of the city of Mumbai[37]. Whilst the state authorities held that the metro infrastructure was required to have a sustainable transit in the urban area, environmental activists insisted that Aarey was a significant urban forest ecosystem supporting the existence of numerous plants and wildlife.[38]

The Supreme Court suspended more cutting of trees at the time when an in-depth investigation was being carried out. There was some success later on as conservationists were successful in getting the Maharashtra government to declare 600 acres of the Aarey as a restricted forest.

The Aarey controversy raises several significant concerns, such as the challenge of finding a balance between environmental conservation and urban development; the importance of mobilizing the community in environmental political choices; and judicial swings that are an indication of the real complexity of the urban sustainability issues in which both the development of infrastructures and environmental conservation are legitimate uses of the populace.[39]

V. THE GODAVARMAN LINE OF CASES: FOREST CONSERVATION REGIME

Initiated in 1996, T.N. Godavarman Thirumulpad v. Union of India [40]became one of the longest-running environmental PILs, revolutionizing Indian forest governance. Through the Supreme Court's ongoing mandamus, the case which initially concerned unlawful timber extraction in Tamil Nadu grew into a comprehensive regulatory framework for all forest-related issues across the country. The Forest Conservation Act's safeguards were greatly broadened by the Court's expansive reading of "forest" to encompass all areas having forest characteristics as well as officially notified forests.

A centralized clearing system was created by the Godavarman jurisprudence, which declared that any non-forestry activity in forest areas needs prior consent from the central government. The Supreme Court also created the Compensatory Afforestation Fund, which has amassed significant resources for conservation, and mandated compensatory afforestation, which requires organizations who use forest property for non-forest uses to engage in afforestation elsewhere.

It has been especially controversial to apply the Godavarman system in urban and semi-urban settings. Even if they aren't formally designated as such, cities like Delhi, Bengaluru, and Mumbai have a significant amount of green space that might be considered "forest" under the enlarged definition. When these areas are needed for infrastructural projects, this leads to complicated problems. Godavarman principles are intimately implicated in the Aarey debate, as activists

[34] R. B. Bhagat & S. Mohanty, "Relocation of Industries and Socioeconomic Impacts in Delhi," *EPW*, Vol. 38, No. 30 (2003).

[35] *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 34

[36] *Citizens Action Forum v. Union of India*, (2018) 15 SCC 273.

[37] *Vanashakti v. State of Maharashtra*, 2019 SCC OnLine SC 1308.

[38] *Zoru Bhathena v. Brihanmumbai Municipal Corporation*, 2019 SCC OnLine Bom 13077.

[39] *Aarey Conservation Group v. State of Maharashtra*, 2020 SCC OnLine SC 343.

[40] *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.

contended that the region qualified as forest regardless of official classification[41].

VI. CRITICAL ASSESSMENT OF JUDICIAL ACTIVISM IN ENVIRONMENTAL PILS

Judicial activism had some success with environmental PILs. Furthermore, PIL jurisprudence has led to a general awareness of the environmental issues as the civil society organizations have a voice to speak against acts by corporations and governments that impact on the environment.[42]

The introduction of the environmental principles, including the precautionary principle, polluter pays, and sustainable development, have generated norms of the decision-making in the environmental sphere[43]. The conservation of forests policies has saved important ecosystems, and those forced by the court such as the CNG conversion in Delhi have undoubtedly positively impacted air quality[44]. PILs have made environmental litigation more accessible since, to PILs, any group or citizens interested in environmental conservation can seek a legal solution without necessarily sustaining a direct injury.[45]

Nonetheless, the judicial intervention into the environmental sphere has a number of arguments against it. The technocratic nature of judicial environmental decision-making raises issues of legitimacy. The courts often use expert panels, which lack accountability and transparency. The legal processes may not be able to give specific knowledge that is required to make a scientific conclusion on pollution limits, ecological thresholds, or development alternatives.[46]

The powers of judicial contempt are too small to force full bureaucratic action and the courts may give orders but leaning on the executive agencies to implement them.[47]It has also been argued that Environmental PILs are elite-oriented and not necessarily representing populations.[48] The middle classes of environmental movements are often driven by litigation in cities, particularly cases such as Aarey, whose own interests in terms of environmental objectives might not be aligned with the economic poor whose informal sources of livelihood might be disrupted by environmental regulations.

VII. NEED FOR INSTITUTIONAL REFORMS

The establishment of the National Green Tribunal (NGT) in 2010 to create a specialized institution with technical expertise in environmental disputes was an outstanding institutional innovation. It should be empowered to cover all the environmental laws. Unless they narrowed the time spent at the appellate level to the Supreme Court, the NGT would be still a last specialist adjudicator, as opposed to another litigation layer[49].

In addition to elite PIL, institutional changes should be oriented at participatory practices. The steps involved in the Environmental Impact Assessment (EIA) processes should be essentially reinforced and the public hearings necessitated must be carried in an effective manner and not merely as a mere formality. The local environmental decision-making processes should involve the urban ward committees and gram sabhas in major ways. Technology can encourage more interaction by means of online discussions and open sharing of information about projects and their impact on the environment[50].

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[41] *Aarey Conservation Group v. State of Maharashtra*, 2020 SCC OnLine SC 343.

[42] *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

[43] *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

[44] *M.C. Mehta v. Union of India* (CNG Vehicles Case), (1999) 6 SCC 9.

[45] *S.P. Gupta v. Union of India*, 1981 Supp SCC 87 (expansion of locus standi enabling PIL).

[46] *T.N. Godavarman Thirumulpad v. Union of India*, (2014) 6 SCC 150 (role and influence of CEC).

[47] *Vanashakti v. Municipal Corporation of Greater Mumbai*, 2019 SCC OnLine Bom 1462

[48] *In the Belly of the River: Tribal Conflicts Over Development in the Narmada Valley* (Oxford University Press 1995).

[49] A. K. Sharma, "National Green Tribunal: Challenges and Prospects", (2015) 57(1) *Indian Journal of Environmental Law* 98.

[50] R. K. Mehta, "Participatory Practices in Environmental Governance", (2016) 58(3) *Indian Journal of Environmental Law* **112.**

Environmental ombudsmen at the state level might also provide well-exposed avenues of grievance redressal without necessarily having to go through the court system. The offices are authorized to investigate the complaints, direct remedial action and refer cases of habitual violations to authorities or any court[51].Such enforcement can be enhanced through the use of technology to monitor real-time industrial emissions, levels of pollution as well as the alteration of forest cover. It may be possible to take immediate action against violations through the use of systems that track all emissions that are linked to the regulatory databases. The incessant problem of non-compliance would be solved by having concrete implementation systems of judicial orders that have time limits, responsible agencies, and accountability systems. Supervision would not require the courts to micromanage the implementation process through periodic compliance audits that would be presented to courts or to a designated environmental tribunal.[52]

VIII. SYNTHESIS AND IMPLICATIONS FOR ENVIRONMENTAL CONSTITUTIONALISM

Judicial environmentalism is neither sufficient nor insufficient as reflected in four decades of the environmental PIL jurisprudence. The greater socioeconomic development in India is viewed in the shift between rural resource struggle such as Ganga pollution and Himalayan quarrying to urban environment issues such as Aarey[53]. Through this course, courts have over this period broadened the environmental implications of Article 21, and determined that ecological sustainability is the key to a dignified life.

The role of the judiciary has been particularly necessary in instances of governance gaps to compel the unwilling state authorities to address environmental degradation. Nevertheless, the fact that the environmental problems still persist despite the massive judicial intervention demonstrates that powerful administrative capacity, political goodwill, and democratic environmental control cannot be substituted with court decisions only.[54]

Environmental constitutionalism requires restoring the judicial role to balance the constraint and action of the institutions. The restrictions of adjudication ought to be recognized by the courts in terms of how to address complex socio-ecological problems that require a use of scientific knowledge, policy making between opposing ideals, and continuous administrative implementation. Judicial intervening should focus on supporting the integrity of the procedures, holding the responsible authorities to account, and protecting the fundamental environmental rights as opposed to providing given technical solutions[55].

Court adjustment to the complexities of urban environmental governance is a requirement in India to further urbanize the country. Megacities require unified approaches that simultaneously take into consideration waste disposal, green areas, water resources, air quality, and sustainable transportation. The judicial action should not substitute the participatory planning processes in which a number of urban stakeholders are involved[56].

The courts ought to focus more on the systemic enhancements, including strengthening the environmental institutions, ensuring participatory decision-making and implementing evidence-based planning instead of giving ad hoc orders on specific conflicts[57]. The environmental litigation in the urban

[51] S. Verma, "State-Level Environmental Ombudsmen and Grievance Redressal Mechanisms", (2017) 59(2) *Indian Journal of Environmental Law* 87.

[52] P. K. Gupta, "Technology and Judicial Oversight in Environmental Governance", (2018) 60(4) *Indian Journal of Environmental Law* 201.

[53] M. C. Mehta, "Judicial Environmentalism and Article 21: Forty Years of Environmental PIL in India", (2019) 61(1) *Indian Journal of Environmental Law* **45.**

[54] R. K. Sharma, "Judicial Intervention and Governance Gaps in Environmental Protection", (2020) 62(2) *Indian Journal of Environmental Law* 77

[55] A. K. Sharma, "Environmental Constitutionalism and Judicial Intervention in India", (2019) 61(3) *Indian Journal of Environmental Law* 129.

[56] N. K. Dubey, "Urban Environmental Governance and Judicial Intervention in India", (2017) 59(4) *Indian Journal of Environmental Law* 201.

[57] P. K. Gupta, "Systemic Approaches in Urban Environmental Litigation in India", (2019) 61(2) *Indian Journal of Environmental Law* 177.

environment should consider developmental justice and recognize that the issue of environmental preservation cannot ignore the economic factor of the suffering population that depends on urban informal economies.

IX. CONCLUSION

Environmental governance in India has been transformed by public interest litigation which has grown from issues of rural eco systems to that of complex urban ecology. What we see is the development of important environmental principles, closure of key governance voids and prevention of large-scale ecological damage due to judicial intervention. The shift from Ganga pollution to Aarey Forest is a picture of the growing complexity of environmental issues in India's urbanization and also the wide range of issues environmental constitutionalism has come to cover.

However, at present PIL is not enough to put a dent into India's growing environmental issues. We see that which large scale institutional changes are required which is brought out by way of ongoing governance issues, implementation breaks down and the judiciary's experience is limited. We must transition away from a reliance on judicial activism and towards strong administrative institutions, democratic participation and coordinated urban ecological management which will be key to environmental preservation moving forward.

While it is true that for sustainable environmental governance we require the presence of strong institutions, a informed public which takes part in the process and political will which goes beyond what is seen in the courts is a must the judiciary's role must still be that of a watchdog protecting fundamental environmental rights, guaranteeing that procedures are fair and that the government is held accountable. From forty years of the PIL program we must draw lessons which will guide us in the development of environmental governance that is at the same time democratic, science based and institutional which in turn will ensure ecological sustainability along with social justice and economic growth as Indian cities grow and environmental issues worsen.

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