

# **CRITICAL ANALYSIS ON THE ARTICLE - ENVIRONMENTAL JUSTICE: COURTS AND BEYOND BY M.K. RAMESH**

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Environmental law is undoubtedly one of the main pillars of environmental protection, but after many decades it is still suffering in most of the world from implementation. As it has been rightly noticed “almost all nations, including developing ones, have basic environmental protection laws in place, but an enormous gap exists between the letter of the law and what is actually happening on the ground”

Environment is the main essence of everything, it's the reason for the existence of each and every organism on earth therefore There's a need for protection and conservation of environment and sustainable use of natural resources which has been also reflected in the constitutional framework of India and also in the international commitments of India. The Constitution under Part IVA (Art 51A-Fundamental Duties) casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Further, the Constitution of India under Part IV (Art 48A-Directive Principles of State Policies) stipulates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Several environment protection legislations existed even before Independence of India. However, the true thrust for putting in force a well-developed framework came only after the UN Conference on the Human Environment (Stockholm, 1972). After the Stockholm Conference, the National Council for Environmental Policy and Planning was set up in 1972 within the Department of Science and Technology to establish a regulatory body to look after the environment-related issues. This Council later evolved into a full-fledged Ministry of Environment and Forests (MoEF).

MoEF was established in 1985, which today is the apex administrative body in the country for regulating and ensuring environmental protection and lays down the legal and regulatory framework for the same. Since the 1970s, a number of environment legislations have been put in place. The MoEF and the pollution control boards ("CPCB", ie, Central Pollution Control Board and "SPCBs", i.e., State Pollution Control Boards) together form the regulatory and administrative core of the sector<sup>1</sup>

Some of the important legislations for environment protection are as follows:

- The National Green Tribunal Act, 2010
- The Air (Prevention and Control of Pollution) Act, 1981
- The Water (Prevention and Control of Pollution) Act, 1974
- The Environment Protection Act, 1986
- The Hazardous Waste Management Regulations, etc.

And not only in the particular country, has it demanded its protection in whole sphere of earth. Thus, judiciary at every level and in everywhere plays pivotal role in good governance of environment.

There are several ways judicial innovative ways to make the implementation of environment laws more effective such as:

**Guidelines for implementation** in which public hearing process is one of the most important tool. Public Consultation refers to a process by which the concerns of the local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate.

**What is the process for a public hearing/consultation?**

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<sup>1</sup> [https://law.pace.edu/sites/default/files/IJIEA/Environmental\\_Courts\\_in\\_comparative\\_perspective-preliminary\\_reflections-National\\_Green\\_Tribunal\\_of\\_India](https://law.pace.edu/sites/default/files/IJIEA/Environmental_Courts_in_comparative_perspective-preliminary_reflections-National_Green_Tribunal_of_India)

1. The applicant shall make a request through a letter to Member Secretary of the Pollution Control Board, to arrange the public hearing, along with the draft EIA report in English and in the official language of the State. These copies are also to be submitted to the District magistrate/collector/Deputy Commissioner/s, Zila Parishad/Municipal Corporation/Panchayat Unions, District Industries Office, Urban local Bodies, Regional Office of the MoEF&CC.
2. The regional Office of the MoEF&CC shall widely publicize the EIA report, requesting the interested persons to send in their comments through the regulatory authorities. The pollution Control Boards also have to do the same and ensure that the report is available to the public.
3. The member-secretary of the PCB shall finalise the date, time and venue for the conduct of public hearing within 7 days of the receipt of the EIA report and advertise the same in a national daily and one regional vernacular daily. A minimum notice of thirty days is to be provided to the public for furnishing their responses.
4. The District magistrate/Collector/Deputy or their representative not below the rank of an Additional District Magistrate assisted by a representative of PCB shall supervise and preside over the public hearing.
5. Proceedings: The attendance of all present shall be noted. The proceedings shall be initiated with a presentation on project and summary EIA report. Persons present at the venue shall be granted the opportunity to seek information and clarifications on the project. A statement of issues raised by the public along with the comments of the applicant shall be prepared in the local language and English. The proceedings shall be made public by display in the offices of the Panchayat, Zila Parishad, District Magistrate/Collector/Deputy Commissioner, PCB and the latter's website. The public hearing shall be conducted within 45 days of a request to the effect from the applicant; failing which any other agency or authority shall be engaged to complete the process.<sup>2</sup>

### **Continuing Mandamus**

Continuing mandamus is basically instead of giving the direct judgement i.e. full and final judgement, court gives the directions on regular basis to the administration for implementation and report back to the court from time to time about the progress about the progress of

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<sup>2</sup> <http://www.environmentallawsofindia.com/public-hearings.html>

implementation. In case of Delhi Vehicular<sup>3</sup> instead of giving the final judgement the court the series of order to administration for better implementation.

The sanctity and credibility of the democratic legal system is intrinsically linked to the enforceability of rights, a task typically adjudged to the judiciary. However, the constitutional court's image as the defender of rights has come into scrutiny due to its incapability of ensuring government compliance, especially in cases requiring enforcement of positive state duties. Socio-economic rights, for instance, propose a major challenge to the judicial and legal system where coercing state action is at times an insurmountable task. The Indian Supreme Court, tiptoeing around the constitutional separation of powers, has devised the novel writ remedy of 'continuing mandamus' to prevent the failure of constitutional promises. Instead of passing a final judgement that would end the litigation, it keeps the case pending, entering into a dialogue with the political and administrative wing, prodding to alter government action, or inaction. This paper discusses the Supreme Court's procedural innovation in the backdrop of the enforcement conundrum. Locating the need for the remedy in constitutional and rights theory, the paper traces judicial trends, and extensively reviews the use of the remedy by the Indian Supreme Court over the years. The authors assess the effectiveness of how the remedy is being administered, identifying reasons for the success of some interventions, vis-à-vis others, trying to locate the shortcomings and roadblocks to the court's approach.<sup>4</sup>

### **Finding Facts**

In order to search the exact facts by the court and reach to the ultimate conclusion for a better decision. In case of *Banwasi Seva Ashram v State of Uttar Pradesh*<sup>5</sup> in this case it was held that NTPC was dislocating the tribal people from their own place without providing adequate rehabilitation centre therefore, court found the exact facts and directed the company to rehabilitate them first.

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<sup>3</sup> *M.C.Mehta vs Union Of India And Ors* on 14 March, 1991 Equivalent citations: 1991 SCR (1) 866, 1991 SCC (2) 353

<sup>4</sup> [Nujslawreview.org](http://Nujslawreview.org)

<sup>5</sup> *Banwasi Sewa Ashram vs State Of U.P. And Ors* on 20 November, 1986 Equivalent citations: 1987 AIR 374, 1987 SCR (1) 336

### **Amicus Curie**

It is basically friend of court. Latin for "friend of the court." Plural is "amici curiae." Frequently, a person or group who is not a party to an action, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court's decision. Such briefs are called "amicus briefs."

Rule 37 of the Rules of the Supreme Court of the United States dictates the content, format, and circumstances of amicus briefs before the U.S. Supreme Court. Rule 29 of the Federal Rules of Appellate Procedure governs amici curiae in federal courts in general. State rules of civil and appellate procedure govern amici curiae in state cases. In addition to advocating for an outcome through briefs, amici curiae sometimes participate in oral arguments before an appellate court.<sup>6</sup>

### **Special Commission And Expert Opinions**

Sometimes the court directs its decisions based on expert opinions in case of Irish Butter<sup>7</sup> it involved numerous expert opinion and ultimately it lead to better and appropriate decision.

**PIL** is one of the great tool for the protection of environment. Public Interest Litigation is directly filed by an individual or group of people in the Supreme Court. It was felt that their interests are undermined by the government. In such a situation, the court directly accepts the public good. It is a new legal horizon in which court of law can initiate and enforce action to serve and secure significant Public Interest. It has several negative as well as positive aspects.

If we talk about **positive aspects** it includes the broader meaning of article 21 which is right to life and also includes right to clean environment under ambit of article 21 itself held in the case of Shubhas Chandra v State of Bihar<sup>8</sup>. It has also expanded the prospect of human rights in several ways in case of aqua culture<sup>9</sup> judiciary played a excellent role to reduce aqua farming as it was destroying the aquatic life at large scale. It also protects the rights of tribal people and

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<sup>6</sup> [https://www.law.cornell.edu/wex/amicus\\_curiae](https://www.law.cornell.edu/wex/amicus_curiae)

<sup>7</sup> <https://thewire.in/tag/irish-butter-case>

<sup>8</sup> Subhash Kumar vs State Of Bihar And Ors on 9 January, 1991 Equivalent citations: 1991 AIR 420, 1991 SCR (1) 5

<sup>9</sup> Fisherman cooperative society and ors v state of orissa

evolves several principles such as polluter pays, precautionary principle and public trust doctrine for better implementation.

Lets come to **negative aspects**, the interest of individual character has been involved at large scale and great number of scope of arbitrariness and inconsistency and also problems related to expert opinions in case of Taj Trapezium<sup>10</sup>, the committee NEERI came up with the solution of implementation of CNG and court adhered to that but there could be a better way than CNG which is ultra-low Sulphur diesel. (ULSD).

## Conclusion

Indian Constitution guarantees Right to life and liberty under Article 21, which says that “*No person shall be deprived of his life or personal liberty except according to a procedure established by law.*” Here, putting emphasis on “Life” part of the Article, will see that how it has broad contours to substantiate this right. Life is not construed in Article 21 of the Constitution merely the physical act of breathing. It does not connote mere animal existence. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man’s life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Hence, our life sustains itself through the outside factors also along with biological mass.

The Healthy Environment is the comprehensive term encompassing all such natural and biotic factors that make possible to entertain Right to life in true spirit. The environment furnishes all essentials for life and so there has been a close link between the environment and human beings. Without a natural and congenial environment, human existence is not possible on earth. Since time immemorial, the man had made conscious and determined efforts to make use of the natural resources and to modify his surroundings so that the adverse impact caused by extremes

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<sup>10</sup> <https://lawupdaterblog.wordpress.com/2016/08/22/case-analysis-mc-mehta-taj-trapezium-matter-v-union-of-india/>

of temperature rainfall and predators may be reduced. In the quest of making life more comfortable the man has always exploited the nature. Agriculture, industrialization and infrastructural developments are the causes of exploitation of natural resources. Human activities create a variety of wastes and bye-products which accumulate over a period of time and may become toxic to the naturally growing plants, animal and the mankind. Indiscriminate use of fertilizers and pesticides has added to the problem. The rapid and unplanned industrialization has given birth to factories emitting noxious gas fumes and toxic effluents, making life more difficult on earth. These things are constantly causing damage to environment. It is also the duty of the state to protect the environment as embodied under article 48-A, 39 (e) and 47 of the Indian Constitution. So in order to deal with these ever-growing problems, many acts have also been enacted by the parliament but it is a court which always keeps a check on proper implementation of these enactments and judiciary had played an important role in interpreting the laws to protect the environment. It has been recognized to be inseparable part of Right to Life under Article 21 and well established if we take into account some other provisions of the constitutions.<sup>11</sup>

At the turn of the present century, when world started to encounter the ill-effects of industrialization, “Right to live in Healthy Environment” gained importance. The Indian Judiciary, the custodian of constitution, has been giving beacon light for such valuable Right while interpretation the constitution in positive manner. Judicial Chronology is full of landmark decisions, which embarked upon that Right to life far exceeds mere breathing and walking and developed Environment Jurisprudence. Judiciary plays the vital role in the protection of environment. One of the main developments in the Indian Judiciary is the Public Interest Litigation (PIL). It is the new jurisprudence and is called “Jurisprudence of Masses”. It is started in the year 1970. Writ petitions in the form of PILs have been accepted by the High Court’s under Article 20, Article 47, Article 32 is right to constitutional remedies and Article 226 (Power of High Courts to issue certain writs) of the Indian Constitution. The PILs got constitutional sanction in the 42nd Constitution Amendment Act 1974, which introduced Article 39-A in the Indian Constitution to provide equal justice and free legal aid. The PIL encouraged the affected individuals (affected by any project), public minded individuals,

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<sup>11</sup> <https://legaldesire.com/role-of-judiciary-in-environmental-protection/>

voluntary organizations, NGOs; Judges on their own, to start without paying any court fees. Due to PILs, many landmark judgments are published. Many authorities are observing the works of the Govt., whether court orders of PILs are carrying out or not. PIL of court indicates a person, authorities or Govt., to work morally. The Supreme Court and the High Courts have been entertaining environmental petitions under Articles 32 and 226 of the Indian Constitution as constituting violation of Article 21.

Therefore, judiciary has its pros and cons but it has one of the most prominent role to protect the environment and effective implementation of environmental laws.

