

Course Name	LL.B 4 <sup>th</sup> sem
Subject	Environment Law
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Concept	<b>ROLE OF PUBLIC INTEREST LITIGATION IN PROTECTION OF ENVIRONMENT</b>

# **ROLE OF PUBLIC INTEREST LITIGATION IN PROTECTION OF ENVIRONMENT**

## **Introduction**

Man is Nature's best promise and worst enemy 'The ancients have stated that god sleeps in the mineral, awakens in the vegetable, walks in the animal and thinks in man. The sublime prospect that unfurls before civilization through the advances of science is darkened by the devastating misuse of technology to poison and pollute the biosphere and thereby to hold humanity in terrible peril of total liquidation of the life process. Man blinded by myopic profit-making is matricidal towards Mother Earth and is rapidly making himself and endangered species. India 'notwithstanding' its primitive rurality and worship of lorries, mice, eagles, peacocks, rivers, trees and plants is violating ecological ethics. The karuna of the Budha and the ahimsa of Gandhi stand terribly travestied by the processes of pollution in India.

## **Problems of Environment Pollution**

1. In metropolitan cities around 800-1000 tons of poisonous gases are being released every day in the atmosphere in which 50% is contributed by motor vehicles. 20% by housing fuels and the rest by industries.
2. In big cities noise pollution has reached up to 90 decibels against the human tolerance of 20-40 decibels. This may cause high blood pressure, cardiac diseases and deafness.
3. In Delhi, dust and ashes in the atmosphere has reached up to 600 microgram per cubic metre, where as in cities of western countries it amounts 150 microgram per cubic metre.
4. In our country around 6 lakh metric tons fertile soil is being washed every year in floods and land erosion, which indirectly costs around 700 crores per annum.

## **Environment and Public Interest Litigation**

In the area of water pollution, the Ganga water pollution case brought by M.C. Mehta through PIL is an important contribution. Mr. Mehta brought to the notice of supreme court that the discharge of trade effluents by tanneries near Kanpur into the municipal civil lines and ultimately in river Ganga had caused considerable damage to the life of the people who use the water of the river and to the aquatic life of the river. It was brought to the notice of the court that effluent discharge from the tanneries were ten times more noxious in comparison to the Urban sewerage water. The tanneries near Kanpur into the municipal civil lines and ultimately in river Ganga had caused considerable damage to the life of the people who use the water of the river and to the aquatic life of the river. It was brought to the notice of the court that effluent discharge from the tanneries were ten times more noxious in comparison to the Urban sewerage water. The tanneries gave an undertaking before the Supreme court for establishing primary treatment plants within a period of six months. The court also, directed the Kanpur Municipality that new licences should not be issued to establish new industries unless adequate provision have been made for the treatment of trade effluents. Doon valley case (Rural litigation and entitlement Dehradun v. State of U.P., AIR 1985 SC 652 is an example of human acts for bringing group of citizens brought to the notice of Supreme Court that the quarry owners had mined progressively steeper slopes, depriving them of trees and damaging natural structure for extracting more and more stone available in the valley. This led to land slides and blocked the underground water channels which fed many rivers and springs in the river valley. On the basis of the report of Bhargava Committee appointed by the Supreme Court, the court directed that quarries falling under C category which were situated in city limits would not be cleared unlike decision on another committee appointed by the Supreme Court. Quarries falling under category A outside the city limits of Massorrie were allowed to be operated subject to the compliance of the relevant provisions of statutes, rules and provisions. The closing of the mines was a price that had to be paid for the protection of the rights of the people and for controlling any disturbance of ecological balance.

## **Public Interest Litigation: Instrument of Environmental Protection**

Public interest litigation has emerged as a growing mechanism in the field of environmental protection in India. Most of the case discussed above arose in the form of PIL initiated by a public spirited citizen or by public interest groups rather than by the affected party. Obviously, environmental issues relate more of then to the diffuse interests of a group of people than to ascertainable rights of individuals. In India class action against public nuisance can be brought under section 91 of the Code of civil procedure and section 133 of the Code of Criminal procedure. It is through invocation of the original jurisdiction of the supreme Court under Article 32 and that of the High Court under Article 226 that the PII. relating the environment has grown in recent times. The Rural litigation and Entitlement Kendra and M.C Mehta cases bear testimony to the fact that the traditional rule of locus standi did not stand in the way in cases where environmental questions were raised and that the Supreme Court interfered and give direction after direction to the Government for taking environmental protection measures in the interest of the general public. When residents of a particular locality were aggrieved by emission of pungent smell from a bone factory which made their miserable, the High Court of Andhra Pradesh gave them relief in Dr. N.S. Subba Rao v. The Government of A.P. In L.K. Koolwal. V. State of Rajasthan, the Rajasthan High Court allowed a petition of the citizens of Jaipur for the preservation of Sanitation in the city. In Kinkri Devi. v. State of Himachal Pradesh, the High court directed the closure of mining activities dangerous to environment. Rejecting the individualistic theories of common law our Parliament has recently enacted the Environment Act. 1989 for the purpose of protecting and improving our environment. It widely distributed Powers on all those who are traditionally classified as not aggrieved persons to take environmental dispute to courts. The is clearly harmony with our Constitutional goals which not only mandate the state of protect and impose the environment and to safeguard the forests and wildlife of the contryu (Article 48-a); but which also hold it to be the duty of everyone of out citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The Supreme Court in case of Rural Litigation and Entitlement Kendra Dehradun and others v. State of U.P. ordered the closing down of certain categories of limestone quarries to maintain ecological balance and to preserve public health on recommendation of Bandopadhya Committee. It was the first of its kind in the country invoking the issues relating to environment and ecological balance. In another case by the same parties the

Supreme Court held in February, 1987 that it was for the government and the Nation, and not for the Court to decide whether the limestone deposits should be exploited at the cost of ecology and environmental conditions or industrial requirements should otherwise be satisfied. The H.P. High Court in case of *Kinkri Devi v. State of HP*, held that to ensure the attainment of Constitution goal of the protection and improvement of natural wealth and environment and of the safeguarding of forests, the lakes, the rivers and the wildlife and to protect the people inhabiting the vulnerable areas from hazardous consequences of the arbitrary exercises of the power granting mining leases without due regard to their life liberty and property the court will be left with no alternative but to intervene effectively by issuing appropriate orders and directions including the closure of mines.

In case of *L.K. Koolwal v. State of Rajasthan*, it was held that it is the primary duty of the Municipal Council to remove filth, rubbish, night soil or any other notions matter. The maintenance of health, preservation of sanitation and environment fall within the purview of Article 21 as it adversely affects the life of citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazard created, if not checked. Moreover a citizen has a right to know about the activities of the State and its agencies working for the health and sanitation.

In *M.C. Mehta v. Union of India and Shri Ram Food Fertilizer Industries V. Union of India*, it was held by the Supreme Court that it was not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries, even if hazardous have to be set up since they are essential to economic development and advancement of well being of the people. The court directed for the payment of compensation in case of escape of chlorine gas resulting in death or injury to the workmen or other, the management of Shri Ram Food & Fertilizer Industries should deposit Rs. 20 lakh with the Court by way of security for payment of compensation to the victims of gas leakage.

In *Calcutta Youth Front v. State of West Bengal*, by a writ petition the petitioners had challenged the legality and propriety of the grant of licence by the Calcutta Municipal Corporation of the Subsoil of Satyanarayan Park to respondent No. 14

Messrs Happy Homes and Hotels private limited for a period of 30 years of the implementation of development scheme, namely, construction of a two storeyed air conditioned underground basement market and parking place on the manifold grounds inter alia that the construction of said underground market would affect the ecological balance because the park was In Calcutta Youth Front v. State of West Bengal, by a writ petition the petitioners had challenged the legality and propriety of the grant of licence by the Calcutta Municipal Corporation of the Subsoil of Satyanarayan Park to respondent No. 14 Messrs Happy Homes and Hotels private limited for a period of 30 years of the implementation of development scheme, namely, construction of a two storied air conditioned underground basement market and parking place on the manifold grounds inter alia that the construction of said underground market would affect the ecological balance because the park was Journal of Environmental Research And Development Vol. 1 No. 1, July-September 2006 100 situated in densely populated area like Burra bazaar in the Metropolitan City of Calcutta that the construction would effect traffic jams in or about the said area leading to a further ecological imbalance and that the corporation had no authority to grant the licence of the subsoil of the part for the implementation of any development scheme which was not for the development of the park by way of proper and adequate or proper utilization of such part. The Court held, “There would be parch green in the thickly congested Burra bazaar area which would tend to improve rather than retard, ecological balance and there would be a place of recreation for all and in particular for the children as a playground.” Environment is a concern of every one of us. Howsoever, advanced the human civilization, science, technology may be at a given moment of time, man still is dependent upon the other forms of life for its existence. He is dependent on nature. The protection of environment is a common subject to all, Article 48-A of the constitution of India provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A of the Constitution imposes as one of the Fundamental Duties on every citizen the duty, to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.