LEX TERRA

Center for Environmental Law, Advocacy and Research
National Law University and Judicial Academy, Assam

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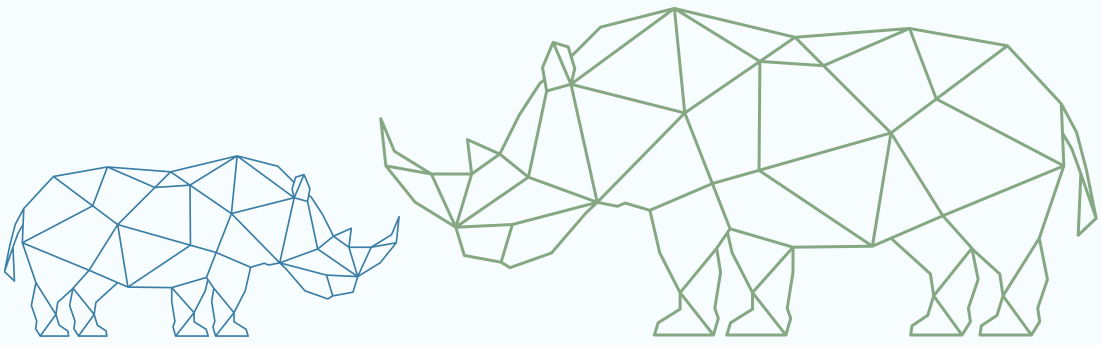
IN THIS ISSUE



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LEX TERRA

CHIEF MENTOR

EDITORIAL BOARD

DESIGNED BY

CONTENTS

ARTICLES

CASE COMMENT

ABOUT CELAR

The fundamental aim of the Centre for Environmental Law, Advocacy, and Research (CELAR), National Law University and Judicial Academy, Assam, is to participate in advocacy and research on public interest environmental concerns. It endeavours to do so by holding workshops and seminars to educate and improve skills, convening conferences to encourage an exchange of ideas, conducting training programmes for capacity building in environmental law issues, undertaking legal research, and publishing newsletters and journals regularly.

The main objectives of CELAR can be elucidated as follows:

- Providing students with hands-on advocacy experience and direct exposure to the issues to inspire and educate them.
- Strengthen access to justice by conducting high-quality multi-disciplinary research on current environmental legal issues.
- Advocate for reforms in environmental law through scientifically sound legislative proposals.
- Organize training programmes for civil servants, law enforcement agencies, non-governmental organisations, and media professionals to improve their legal capacity on environmental laws and policy.
- Publish environmental law publications and bulletins on a regular basis.

Thus, to meet the last objective, Lex Terra is an initiative undertaken by CELAR. Through Lex Terra, we strive to provide a voice to various aspects of the environment, published every month, to create a community of environmentally conscious individuals from the legal and non-legal fraternity. Each issue of Lex Terra features important environmental news from across the world and from within the nation. This bulletin is meticulously compiled by CELAR members dedicated enviro-legal enthusiasts.

MESSAGE FROM THE CHIEF MENTOR

It is, unfortunately, true that inadvertently as well eloquently, we humans are responsible for the liquidation of this planet without truly appreciating the negative consequences of minor things we do for its dilapidation. Education and awareness generation can be one of the positive moves to fix the irreparable damage that we have done to our mother nature, and in furtherance to such move, we as a legal institution, are continuously striving to bring environmentally benign news and views for several environmentally sentient readers.

In this context, it delights me to note that the Centre for Environmental Law, Advocacy and Research (CELAR), National Law University and Judicial Academy Assam, is releasing a new issue of its webzine, 'Lex Terra'. Lex Terra aims to be an e-forum that involves, promotes and engages students, scholars and anyone interested in environmental law, to express and share their opinions and ideas. It is our fervent expectation that this webzine will keep providing an academic forum to bring all ecologically conscious minds together to deliberate on environmentally benign developmental decisions.

I congratulate the entire team of CELAR for bringing out this webzine which justifies one of the significant mandates of National Law University and Judicial Academy, i.e., rendering a socially relevant legal education. I appreciate the efforts made by the student editors and peer reviewers in bringing out this webzine. I also bring on record the constant guidance being provided by CELAR teacher members to the students.

I am certain that this modest endeavour of CELAR will continue to stimulate and proliferate enviro-legal awareness.

Prof. (Dr.) V.K. Ahuja,
Vice-Chancellor, NLUJAA

EDITORIAL

The Editorial Board is pleased to present Issue 33 of Lex Terra, an initiative by the Centre for Environmental Law, Advocacy, and Research (CELAR) of National Law University and Judicial Academy, Assam. Just as the tiny drops make up the mighty ocean, through Lex Terra, we aim to contribute to the existing literature and bring forth interesting perspectives on Environmental Law. The subject is ever-changing and consists of a wide array of legislations pertaining to various facets of the environment. However, with the ever-growing population and the constant need for development, the environment is often put on backtrack; therefore, Environmental Law is one field that needs more positive and sincere attention to secure a safe future for the coming generations. The integrated effort of individuals and governments on both: a local and an international level are crucial to achieving a balance between development and environmental protection.

The perfect example of how the general strata and government can complement each other is given by Anshi Joshi in the first paper, where citizen suits under Indian Environmental Law are discussed and compared to the PIL mechanism. The author has analysed and compared statutory provisions of statutes like the Environmental Protection Act 1986, Water Act, 1974, Air Act 1981 and has thrown light on the impediments faced by the current framework.

In the second article, Dr. Manjeri Subin Sunder Raj has analysed the emerging trend of the Rights of Nature Movement concerning France as the focal point. The article discusses the impact Rights of Nature movement has made in Environmental Law by bringing a shift from an anthropocentric approach to a more inclusive eco-centric approach and has quite efficiently traced the steps taken by the French of imbibing the very spirit of eco-centrism in their legal regime.

In the third piece, Aum Purohit has taken up the task to discuss the development of Environmental Law from the Indian perspective, where the author has reflected on the various Constitutional mandates in India with regard to Environmental Law and has discussed various major international conventions and framework of law in the field.

Issue 33 of Lex Terra also includes a case comment by Sanjana D. Rayapati. The author has given an analysis of the case where the Supreme Court, among other questions, has given its disposition with regard to the judiciary's responsibility to balance ecological interests with economic development.

It has been a learning and fruitful experience working on the 33rd Issue, and we hope to keep contributing to the field of Environmental Law with this and the forthcoming issues of Lex Terra. We would like to thank Dr. Chiradeep Basak, Assistant Professor of Law, NLUJAA, for his assistance and encouragement at every step, which helped us complete this edition of Lex Terra. Mere words cannot do justice to exclaim how grateful we are to him. The Editorial Board is also grateful to the peer reviewers who have taken out the time from their busy schedules to select the articles for this issue. We would like to express our gratitude to the Honourable Vice-Chancellor of NLUJAA, Prof. (Dr.) V.K. Ahuja for his keen interest and guidance, which made this issue of the webzine possible. Lastly, we thank the esteemed Registrar of NLUJAA, Dr. Indranoshee Das, for her continuous support throughout this endeavour.

All and any errors are, of course, ours and ours alone. We hope you enjoy reading Issue 33 of Lex Terra.

Please keep working towards attaining a harmonious relationship with the environment. Every tiny step counts.

Thank you.

Lex Terra Editorial Board
2021 - 2022

CITIZEN SUITS IN ENVIRONMENTAL CASES IN INDIA: A CRITICAL ANALYSIS

Anshi Joshi*

Introduction

Environment protection is a living concern since many years, and is becoming a more pressing issue by every passing day. From simple waste management to climate change, there are numerous environmental issues which require serious and positive attention of both international and national fraternity. Many issues, such as public participation in environmental matters (Aarhus Convention), control of trans-boundary movement of waste (Basel Convention), and organic pollutants (Stockholm Convention on Persistent Organic Pollutants) etc. have been taken cognizance under various treaties, conventions, and legislations. Under agreements and resolutions like these, many states have come together to recognise and honour their obligation towards the environment.

However, there are times when both public and private entities breach their obligations towards the environment. Their obligations may be enlisted under legislations or be of the tortious nature. In such cases, often the environmentally conscious citizens bring suits to courts to stop the occurrence of such infractions, and remedy the situation by pinning the liability and requesting the courts to impose measures. Generally, the recourse is taken to Public Interest Litigation (PIL) mechanism to address such wrongs. PIL has its own limitations, and hence, cannot be taken resort to every time there is some crime against environment. Prominent environmental law statutes in India such as Environment Protection Act, 1986[1], Water Act, 1974[2], and Air Act, 1981[3] provide for the citizen suits. As the name suggests, these are the suits that normal, regular citizens can file in their personal capacity.

This paper discusses the position of citizen suits under the Indian environmental law, and compares it with the PIL mechanism. It also analyses the statutory provisions under the three statutes i.e., Environment Protection Act, 1986, Water Act, 1974, and Air Act, 1981 with respect to their pros and cons, and contrasts them with each other. Lastly, it throws light at the

* Fifth Year Student, B.A., LL.B. (Honours), Maharashtra National Law University, Nagpur
[1] The Environment (Protection) Act, 1986 (Act 29 of 1986).
[2] The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974).
[3] The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).

impediments that the current framework is facing, and suggests changes required to overcome those impediments.

Citizen Suits: A Brief Overview

Citizen suits are statutory provisions that allow any person or organisation such as an NGO to approach the competent court in order to remedy a wrong done to environment. These suits are considered as a tool of environmental activism, especially when the state machinery fails to deliver on its commitment to environmental protection. Under the citizen suit provisions, a suit can be brought against an individual or an organisation or the administration for the enforcement of the environment law concern. There are several jurisdictions which have adopted the environmental citizen suits in order to grant extra protection to environmental concerns. Many states such as the USA, India, South Africa, Nigeria, the Philippines, etc have a citizen suit regime in place.[4] Citizen suits are vital for a pro-environmental regime of representation of commons, which is important for achieving the sustainable development approach towards the environment.[5]

Citizen suits are specialised mechanisms, aimed solely towards the objective of creating a mechanism which is different from the Public Interest Litigation's right based approach, and can deal with statutorily recognised environmental wrongs within the four corners of the statute. At the heart of citizen suits, the idea is to enhance the awareness amongst the public and make public participation mainstream. Citizen suits have a twofold role to play in the context of environmental action. Firstly, it serves as a means to combat environmental infractions by either public or private parties, and secondly, it encourages the citizens to be sensitive towards environmental laws. In this process, it also sheds light on failures of the government to save environment.

Citizen suits can be filed to challenge the failure of the government to save the environment and prevent further deterioration. It may also include private entities that have made statutory environmental violations. Since these are specialised suits, there is no such requirement to be fulfilled except for that provided under the respective statute.[6] Therefore, the need of public

[4] Emeka Polycarp Amechi, "Strengthening Environmental Public Interest Litigation through Citizen Suits in Nigeria: Learning from the South African Environmental Jurisprudential Development", 23 *AFR. J. INT'l & COMP. L.* 383 (2015).
[5] *Ibid*.
[6] *Supra* note 1.

cause under the PIL mechanism in India, or violation of a fundamental human right under the PIL mechanism in Nigeria, or requirement of a class action in USA, is not required in the case of citizen suits.[7]

Public Participation with Citizen Suits

Citizen suits enable public participation in an evolved manner, as they allow challenges to enviro-legal violations beyond the Fundamental Rights based approach. They legitimise the effort made by an aware citizen and provides legal basis for such an effort. As per the Rio Declaration of 1992, environmental issues are dealt better with people's participation. When public participation is inculcated in legislation, it imposes an obligation on the government to bring information related to the environment and relevant statistics to public knowledge. It may include a variety of information—from basic afforestation policies to information on hazardous materials. It does not stop only at information sharing, which is also an obligation from the public heath point of view; it encourages the participation of people in policy making as well. A prime example of this could be the call for comments on the revised draft Environmental Impact Assessment policy, which has been heavily criticised by the people all over the country.[8] Another such instance is of creation of Railway Yard in the Aarey forest in Mumbai at the cost of deforestation, which, after a lot of protest, was shifted to another area.[9]

Epistolary Jurisdiction of the Courts

Before the introduction of PILs, the Supreme Court of India often considered letters addressed to the Chief Justice or Court as the petitions, and took cognizance under the exercise of its epistolary jurisdiction. Judiciary has taken the initiative of looking into the matter when people have reached the Court. One such instance is the *RLEK, Dehradun* v. *State of Uttar Pradesh*,[10] where a group of persons wrote to Supreme Court of India against incessant mining in Mussoorie, which caused denudation and fastened the process of soil erosion, which led to frequent landslides and blockage of water. The Court considered it as a writ petition under

[7] Report of United Nations Conference on Environment and Development, Rio de Janeiro, June 3–14, 1992, *Rio Declaration on Environment and Development,* U.N. Doc. A/CONF.151/26/Rev.l (vol. I-III), (June 14, 1992).
[8] Shibani Ghosh, "Draft EIA Notification Dilutes Environmental Protections is in Denial of Ecological Crises", *The Indian Express*, Aug. 11, 2020, *available at*: https://indianexpress.com/article/opinion/columns/environmental-impact-assessment-environment-ministry-ecology-6549352/ (last visited on May. 12, 2021).
[9] Alok Deshpande, "Metro Car Shed in Mumbai to move from Aarey to Kanjurmarg", *The Hindu*, Oct. 11, 2020, *available at*: https://www.thehindu.com/news/cities/mumbai/aarey-metro-car-shed-to-be-relocated-uddhav/article32826394.ece (last visited on May 15, 2021).
[10] 1985 SCR (3) 169.

Article 32 of the Constitution of India, and provided appropriate relief to the petitioners.[11] Often, the courts treat letters as writ petitions in order to hear the plea of underprivileged; it also imposes heavy costs on malicious petitions, as in *Subhash Kumar* v. *State of Bihar and Ors*.[12] Justice Bhagwati gave liberal dimensions to letter petitions in the *M.C. Mehta case no. 3*. Along with the development of PIL, letter petitions also came through.[13] Between 1980 and 2000, many a time epistolary jurisdiction was invoked in various cases, and Justice Bhagwati has been a champion of letter petitions.[14] Under entry 9 of the notification issued by the Supreme Court regarding letter petitions, it has been provided that "*Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance*" will be considered as PILs under this kind of jurisdiction.[15] Hence, epistolary jurisdiction is another means for the citizens to reach the doors of court effectively.

Position of Citizen Suits under Indian Statutory Law

Citizen suits as of now are present under three Indian environmental law statutes i.e., Environment Protection Act, Water Act, and Air Act.

- **Under Environment Protection Act, 1986**

Under the EPA, section 19 provides for the citizen suits. According to Section 19:

> "19. Cognizance of offences: No court shall take cognizance of any offence under this Act except on a complaint made by:
>
> (a) the Central Government or any authority or officer authorised in this behalf by that Government; or
>
> (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid."[16]

Section 19 provides for the citizen suits for the first time in Indian environmental law. This section provides that any person can file a complaint against a polluter. Complaint can be filed to a lower court, i.e., Judicial Magistrate's court.

[11] *Infra* note 10 at 2.
[12] AIR 1991 SC 420.
[13] *Supra* note 9.
[14] C. M. Zariwala, "Direction of Environmental Justice in India Critical Appraisal of 1987 Case Law", 35 *J.I.L.I.* 92 (1993).
[15] Supreme Court of India, *"Compilation of Guidelines to Be Followed for Entertaining Letters/Petitions Received"*, available at: https://main.sci.gov.in/pdf/Guidelines/pilguidelines.pdf (last visited on May 19, 2021).
[16] The Environment Protection Act, 1986 (Act 29 of 1986), s. 19.

Initially, the position was that only the government could file a case against a polluter. This position was problematic due to three reasons: first, the government had to turn into a vigilante for such cases, as only those cases which were in express knowledge of the government could be taken further. Secondly, the situations where the government is the polluter, there wouldn't be any statutory remedy to hold the government accountable. Section 17 provides for the situations where a government department has done a wrong, but it only fixes liability on the head of the department, thirdly, this would prevent the people from reaching out directly even if such environmental infraction was causing serious harm.

The 1987 Amendment in Act changed this position and introduced citizen suits. Under the current status, a public-spirited person can knock on the doors of the court in form of a complaint. This provision is subject to notifying the relevant Pollution Control Board with a 60 days' notice, after completion of which the complainant can move to the court. It also makes Pollution Control Board accountable towards the complaint.[17] The Board is required to disclose reports and other relevant documents related to proceedings to the complainant or to the Court, whenever asked for.[18]

- **Under Water (Prevention and Control of Pollution) Act, 1974**

Under the Water Act, 1974, the citizen suit provision in enlisted under section 49. This section provides that:

> "49. Cognizance of offences.
>
> (1) No court shall take cognizance of any offence under this Act except on a complaint made by:
>
> (a) a Board or any officer authorised in this behalf by it; or
>
> (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
>
> (2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession

[17] *M.C. Mehta* v. *Union of India*, (2000) 10 SCC 551.
[18] *Ibid*.

to that person: Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

(3) Notwithstanding anything contained in section 4, it shall be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act."[19]

The procedure to make a complaint under the Water Act, one has to notify the Pollution Control Board about the polluter with a notice of 60 days regarding the intention to file the complaint. The Board may look into the issue, and may provide the relevant reports to the complainant if he or she asks for it. The Board may refuse to provide the report on the ground of public interest; however, nowhere the Act defines what would amount to public interest for the purpose of this section.[20] Clause (3) of section 49 further provides the punishment, which is missing in the citizen suit provision of the other two acts. However, the punishment is two years imprisonment, and a two thousand rupees fine, which is meagre considering the long-term impact on the environment of such polluting acts. Contaminating the water is a serious crime, and it must beconsidered that way only.

- **Under Air (Prevention and Control of Pollution) Act, 1981**

Under the Air Act, 1981, the citizen suit provision is enshrined in Section 43. It was placed in its current form in 1987. As per Section 43:

"43. Cognizance of offences.—(1) No court shall take cognizance of any offence under this Act except on a complaint made by— (a) a Board or any officer authorised in this behalf by it; or (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession

[19] The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), s. 49.
[20] *Id*., s. 49(2).

> to that person: Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest."[21]

The provision of citizen suit under the Air Act, 1981 is similar to that under the Environment Protection Act, 1986. Under the Air Act, 1981, the person first has to show its intent of making a complaint to the appropriate Board under section 43(1)(b) with a notice of minimum sixty days. Again, no court inferior to that of a Judicial Magistrate of First Class (JMFC) can try an offence under the Air Act. The provision under the Air Act is more elaborate as compared to that under Environment Protection Act, 1986 and Water Act, 1974. The person making the complaint has a right to ask about the progress on the complaint. Further, the person can demand the relevant reports by the Board to be made available to him. However, such right of demanding is qualified, and the Board can refuse to provide the reports if it feels that it is against the public interest. This qualification is an important aspect of the citizen suits, because firstly, nowhere, either of the statutes mentioned above, define the public interest, and secondly, from a judicial development perspective, the public interest is an expansive term, and thus, can include anything and everything. This, in a way, is a blot on the idea of transparent working ofa public authority, and serves as a roadblock in the way of the citizen suit.

A Critical Approach to Citizen Suits

Citizen suits and Public Interest Litigation are some of the most used means for seeking accountability in cases of environmental law violations. PILs essentially contribute towards the formulation and evolution of environmental law and policy in India.[22] The central object of PIL is to ensure adherence to the Constitution of India and law which can be attained by allowing a person, who is acting *bona fide* and has certain interest in maintaining an action for correcting the public wrong by triggering the judicial machinery in motion like *"actio popularis"* of Roman Law, wherein any citizen can bring an action in respect of a public wrong.[23] Citizen suits, however, are different from PILs on three aspects. PIL is a constitutional remedy, provided under the relaxed rule of *locus standi* as a petitioner. There are certain conditions attached to triggering the PIL as remedy. Citizen suits, on the other hand, are statutory remedies, as they are provided under the relevant environmental statute, such as

[21] The Air (Prevention and Control of Pollution) Act, 1981(Act 14 of 1981), s. 43.
[22] Geetanjoy Sahu, "Public Interest Environmental Litigations in India: Contributions and Complications", 69 *IJLP* 745 (2008), *available at*: www.jstor.org/stable/41856466 (last visited May 11, 2021).
[23] *Gaurav Pandey* v. *Union of India*, WP No. 17704/2018 (PIL), Order dated 26-02-2020, Madhya Pradesh HC.

section 19 of the Environment Protection Act, 1986. Secondly, PILs require violation of one or more fundamental rights in order to be used, but only an environmental infraction as provided under the relevant statute is sufficient in order to invoke a citizen suit provision. Sometimes, even on tortious wrongs, citizen suits can be invoked. Thirdly, PILs are understoodas instruments of ensuring social justice and widely popular, but citizen suits exist specificallyto deal with environmental wrongs. Therefore, the need of public cause under the PILmechanism in India, or violation of a fundamental human right under the PIL mechanism in Nigeria, or requirement of a class action in USA, is not required in the case of citizen suits.[24]

Citizen suits can be against governments, persons, or corporations.[25] Citizen suits have two important benefits. Firstly, they provide a way for people's participation in the protection of the environment. One can approach the court regarding acts causing environmental damage which are recognised under the "offences" in the above-discussed legislations, without intervention of police or any other forces. It reduces the fear one usually has while reporting an offence, and can address the issue in a better manner. Secondly, these provisions do not simply handover the responsibility of bringing the polluter to justice to the state. It allows the complainant to have access to reports of the Pollution Control Board, which is imperative from the perspective of accountability of the government because there are instances where government is the polluter, for instance, discharge of waste (smoke) from government-controlled mills into the atmosphere. Therefore, it helps in directly questioning the polluter about its liability.

However, the current condition of citizen suits in India is more problematic than helping. It has several loopholes. Some of these loopholes are discussed below:

i. No criteria for checking the *bona fide*: In the present system of citizen suits, there is no mechanism to check whether a complaint made is *bona fide* or not before the proceedings in the Court start. The only way is when the Pollution Control Board investigates the notice given and probes into the matter, while it is not mentioned as a mandatory step anywhere in the provision. Hence, *bona fide* nature of the complaint can only be determined after the judge takes the cognizance of the complaint. In

[24] *Supra* note 4.
[25] Irene Villanueva Nemesio, "Strengthening Environmental Rule of Law: Enforcement, Combatting Corruption, and Encouraging Citizen Suits", 27 *Geo. Int'l Envtl. L. Rev*. 321 (2015).

Subhash Kumar v. *State of Bihar*, the Petitioner has alleged commission of Offences under the Water Act, 1974. In this case, only at the stage of culmination, it was revealed the petition was not public-spirited and filed for selfish interests.[26] There are times when complainants also skip the procedure established by law for filing a citizen suit, which again, is a blot on their purport genuineness.[27] Hence, a mechanism to assess the genuineness of a complaint at the preliminary stage would strengthen the impact of citizen suits.

ii. Lack of uniformity: Section 19 of the Environment Protection Act, 1986, Section 49 of the Water Act, 1974, and Section 43 of the Air Act, 1981 have been enacted with the common idea of providing a specific remedy for environmental infractions. However, all these provisions have different language and elements. Although the relevant provisions under the three statutes deal with the same subject matter i.e. cognizance and citizen suits, they do not have uniformity. For instance, two of the statutes talk about the power of JMFC for a citizen suit, access to reports of the Board and refusal of the Board on the ground of public interest. Further, only Water Act, 1974 under section 49 talks about the punishment and fine which may be imposed. Citizen suit provision pertain more to the procedure for reaching out to the authorities, and therefore, these provisions should be similarly worded, irrespective of the Act they are included into. While inserting and assessing such provisions, the choices like whether protection of air is more important than water cannot be made. Hence, these should be worded alike.

iii. 60 Days' Period: The 60 days' period of notice provided under section 19 of the Environment Protection Act, 1986 and Section 49 of the Water Act, 1974 practically defeats the purpose of having citizen suits. 60 days is a long period of time, and it gives more than sufficient opportunity to the polluter to clean up the mess and clear its tracks, even without making up to the damages it has caused to environment and the public. Therefore, this notice period should be reduced in order to deal with complaints more effectively.

iv. Ambiguous wording of the citizen suit provisions: The citizen suit provisions appear to be drafted in a callous manner, as reflected through lack of uniformity. They reflect lack of shared aims, and do not clearly indicate what they sought to achieve from such provisions. The provisions do not specify the role of Pollution Control Boards clearly,

[26] *Supra* note 10.
[27] *Vinod P. Mahajan* v. *State of Maharashtra*, 2017 SCC OnLine Bom 8684.

since there are different conditions for similarly intended and similarly conceptualised offences under the three statutes discussed in this paper, that provide for citizen suit as an option. For instance, the 60 days' notice period is present in 1986 and 1974 Acts, but it is missing in the 1981 Act. It also creates a vacuum as to what exactly the Board is required to do when a notice of intended complaint is received. Hence, careful drafting of these citizen suit provisions is required in order to ensure efficacy of the procedures provided hereunder.

v. Lack of incentive: In India, it is difficult to be a public-spirited person. Persons raising environmental concerns often face problems such as trolling, abuse and arrest by police. For instance, a 9-year-old girl and 12-year-old boy were arrested by Delhi police for raising awareness for air pollution and climate change in front of Presidential complex.[28] Citizen suit mechanism as of now bears no incentive for filing suits; in fact, it involves costs, exertion, and technicalities, which prevents a common person from going ahead with actions for environmental justice.

vi. Lack of serious fine and punishment: Currently, the fine and punishment are provided only under section 49 of the Water Act, 1974 which provides for two years of imprisonment and fine, and they also seem symbolic only when they are put against the current extent of pollution and financial standards. This encourages the polluters to pollute the environment without any fear. Hence, this level of penalty must be re-examined and increased.

Conclusion and Recommendations

Citizen suit is most certainly a fair-minded initiative, inspired from USA, but it fails to deliver in Indian context.[29] The main reasons for its failure are that it is ambiguous in its application, it lacks incentive and judicial process in India takes too long, and till the time the suit reaches some sort of conclusion, the polluter has either already caused damage to the environment, or has cleared its tracks and gone scot free. The idea behind citizen suits was to bring public participation and general awareness to combat offences against environment and ensure environmental justice. However, the current regime is incompetent to safeguard the

[28] Louise Boyle, Climate Activists, "Aged Nine and 12, Detained by Police in India for Protesting Over Air Pollution", *The Independent (UK),* Oct. 21, 2020, available at: https://www.independent.co.uk/environment/climate-change-india-children-protest-demonstrate-police-b1184668.html (last visited on May 17, 2021).

[29] Cassandra Stubbs, "Is the Environmental Citizen Suit Dead--An Examination of the Erosion of Standards of Justiciability for Environmental Citizen Suits", 26 *N.Y.U. REV. L. & Soc. CHANGE* 77 (2000).

environment, and needs a revamp. Citizen suits are often compared with PIL, and as far as the Indian context is concerned, PILs have resulted in better facilitation of environmental issues. They have recognised environment as an aspect of right to life,[30] have contributed to environmental law jurisprudence, and have secured relief in many cases. The series of PILs by Mr. M.C. Mehta is a prime example of the same.

In the present scenario, there are more loopholes than benefits in the citizen suit mechanism prevalent in India. Due to such loopholes, citizen suits are rather limiting the environmental justice mission than encouraging it. There are certain recommendations which may be included in the current regime to make it more efficient. Firstly, in the genuine citizen suits, there should be certain incentive for the person who is taking the initiative and carrying it forward. This would encourage the persons to avail these provisions wherever required. Secondly, the role of Pollution Control Board should be made clear, as to what exactly they are required to do and to what extent. Thirdly, when an accused can be concluded as a polluter on the prima facie basis, then the condonation of delay should only be an exceptional relief for them and not a general rule. Fourthly, the 60 days period should be reduced at least by half in order to ensure expedient resolution of the issue and controlling the damage to the environment. Fifthly, the amount of fine should be increased as per the current financial standards, and must vary with the degree of damage and violations. Lastly, there should be redrafting of these provisions with a saving clause for previous and pending proceedings in order to bring uniformity in the current regime.

[30] *Charan Lal Sahu* v. *Union of India,* AIR 1990 SC 1480.

A FRENCH 'RIGHTS OF NATURE' REVOLUTION

Dr. Manjeri Subin Sunder Raj*

The Rights of Nature movement is an emerging trend that has captured the imagination of many a country and has been able to bring about a revolutionary change in the way in which environmental law is perceived – by bringing about a shift from an anthropocentric approach to a more inclusive eco-centric approach. Protecting the environment, for its own sake – by providing its rights, is a concept that is still in its initial stages, though there have been many instances of such rights being provided. A wholesome application of these principles, would, undoubtedly, usher in a new era of environmental jurisprudence.

France is one country that has been in the news, in the recent past, for taking steps to this effect – especially as regards its legislative intent to treat ecocide a crime. This work will delve into the evolution of environmental law concepts, in France, which had been instrumental in bringing forth an eco-centric approach that is present currently. The Constitution of France, 1958[1] in its preamble states that it is supplemented by the Declaration of the Rights of Man, 1789, the Preamble to the Constitution of 1946 and the Environmental Charter of 2004. Preservation of the environment is to be laid down by statutes, as has been prescribed by Article 34 of the Constitution. An Economic, Social and Environmental Council[2] "*may be consulted by the Government or the Parliament on any economic, social or environmental issue"*[3] and "*any plan or Programming Bill of an economic, social or environmental nature shall be submitted to it for its opinion"*[4].

Following the efforts of President Jacques Chirac, who during his presidential campaign mooted the idea[5], the Charter for the Environment was included in the Constitution in 2005[6], having passed by an overwhelming majority 531 votes against 23. Natural resources and its

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[1] The Constitution of France, 1958.

[2] The Constitution of France, 1958, art. 69.

[3] The Constitution of France, 1958, art. 70.

[4] *Ibid*.

[5] The Environmental Charter, 2005, *available at:* https://www.elysee.fr/en/french-presidency/the-charter-for-the-environment (last visited on May 27, 2021).

[6] Christian Dadomo, "The 'Constitutionalisation' of French Environmental Law Under the 2004 Environmental Charter", in E. Daly, L. Kotze, *et. al.* (eds.), *New Frontiers in Environmental Constitutionalism* 146-159 (UNEP, 2004).

relationship with humankind is stressed. It also mentions that there needs to be an additional attention and attentiveness while making use of all resources that are available to us.

The Charter specifies ten principles which highlight various aspects of how we are to go about environmental conservation and allied activities. By providing everyone a right to live in a balanced environment, respecting health[7], Charter imposes duties on everyone to participate in the protecting the environment[8]. Actions are to be such that damages are to be limited[9] and if damages are caused, those responsible are placed with a duty to make good the loss as well[10]. Responsibilities are also cast on public authorities, who taking into consideration principles of environmental governance, are to conduct risk assessments and come up with measures to counter the damage[11]. Sustainable development is to be writ large in public policies[12], everyone has a right to information in environmental matters and take part in public decision-making processes[13]. All these heralded a new system which gave ample environmental rights, one would say.

However, things changed considerably, while the concept of Rights of Nature was brought about in New Caledonia, a French territorial collectivity. The North and South provinces had Environmental Codes, brought about in 2008 and 2009, respectively. But, in the Loyalty Islands, steps were initiated in 2013, with the indigenous Kanak people, who were well known for their amicable and constructive relation with nature, playing an important role. The Environmental Code, in its initial phase, laid down that certain elements of nature may be recognized to have rights on their own. Cultural practises and traditions of the Kanak people and the local rules that existed were given due recognition in this Code. The idea was that such indigenous practises did augur well for the environment and giving it legal status would ensure better environment protection – more importantly signal a shift towards an eco-centric approach[14]. By treating these as inseparable, the Code was able to bring in the connection between the two, specify the management methods which were practised by the local communities and how it could, possibly, be integrated into law. Special mention was afforded

[7] The Environmental Charter, 2005, art. 1.
[8] The Environmental Charter, 2005, art. 2.
[9] The Environmental Charter, 2005, art. 3.
[10] The Environmental Charter, 2005, art. 4.
[11] The Environmental Charter, 2005, art. 5.
[12] The Environmental Charter, 2005, art. 6.
[13] The Environmental Charter, 2005, art. 7.
[14] The Environmental Code of Loyalty Islands Province, art. 110-1.

to tackle the problems attached to climate change and mitigate its after effects, thereby ensuring that humans adapt properly[15]. The right to live in a healthy environment and the corresponding duty to protect it is laid down as well[16]. This also does specifically highlight that the '*the rhythm and harmony of nature'*[17] need to be considered. The tenets of the Kanak tribe are resplendent when it is laid down that their symbiotic relationship need be read into the law and certain elements of nature should be afforded legal personality and rights[18]. It also speaks about the rights of future generations, which need be protected[19]. A mixture of formal and customary principles[20] are also laid down and this acts as a catalyst towards a better environmental legal regime[21].

Steps were initiated in 2018, when Édouard Philippe, the French PM, wanted to toe the line with President Macron's vision. A number of amendments including *the rights of the living, animal welfare, global commons, crime of ecocide and the principle of non-environmental regression* have been tabled[22], which aims to ensure that the concerns that need to be addressed if one were to follow an eco-centric approach, were met. These amendments aim to read into the law, and ensure that the very basis of formulating a new look *environment jurisprudence* imbibes the true spirit of what can be termed as 'Earth Justice' – a purely eco-centric approach.

Meanwhile, law students came out with the Toulon Declaration[23], on 29/03/2019 which called for the legal recognition of non-human animals and their rights[24], and provided a much-needed response to the Cambridge Declaration of Consciousness, 2012[25]. In furtherance of a trilogy of conferences that discussed the scope and ambit of providing legal rights and legal personality

[15] *Ibid.*
[16] The Environmental Code of Loyalty Islands Province, art. 110-2.
[17] *Ibid.*
[18] The Environmental Code of Loyalty Islands Province, art. 110-3.
[19] The Environmental Code of Loyalty Islands Province, art. 110-4.
[20] The Environmental Code of Loyalty Islands Province, art. 110-11.
[21] Victor David and Carine David, *Beyond Legal Pluralism, the Hybridization of the Norm: The case of the Loyalty Islands Province (New Caledonia) Environmental Code*, Codification and Creation of Community and Customary Laws in the South Pacific and Beyond, Held Canberra, Australia on 26-27 July 2018, *available at* https://hal.archives-ouvertes.fr/hal-02116975/document (last visited on May 27, 2021).
[22] Rights of Nature Law and Policy, *available at: http://www.harmonywithnatureun.org/rightsOfNature/* (last visited on May 27, 2021).
[23] The Toulon Declaration, 2019, *available at:* https://www.univ-tln.fr/Declaration-de-Toulon.html (last visited on May 27, 2021).
[24] Press Release: Toulon Declaration: "Animals must be considered as non-human natural persons", *available at: https://ethosandempathy.org/en/2019/05/17/press-release-toulon-declaration-animals-must-be-considered-as-non-human-natural-persons/* (last visited on May 27, 2021).
[25] The Cambridge Declaration on Consciousness, 2012, *available at:* https://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf (last visited on May 27, 2021).

to animals, the Toulon Declaration went a step ahead of the Cambridge Declaration, and lamented the lost opportunity of extending legal rights and legal personality to animals. It categorically stated that animals were to be treated as people and not things, and a legal recognition and perspective needs to be provided. This, it was opined, will bring in a coherence of legal systems, and provide satisfactory and favourable solutions to many a legal problem.

A major fillip came when regional partners Ciclic Center-Val de Loire, the Mission Val de Loire, the Etablissement Public Loire, under the leadership of the POLAU-arts & town planning centre and Camille de Toledo, a writer and lawyer[26], took steps to set up the first parliament for a non-human entity, while discussing whether legal personhood and similar rights need be afforded to the Loire River. De Toledo also specifies that a better balance need be achieved between humans and other elements of nature and that law should be a tool to foster such a balance.[27] She also mentions that imposing obligations on non-humans defeats the purpose.[28]

Meanwhile, a draft Rights of Nature motion, too was prepared by French lawyers who support the French Committee of the IUCN.[29] The major shift in coming up with a truly eco-centric law, highlighting the need and necessity to rewrite law, especially criminal law, was when in April 2019, President Macron announced a Citizens Convention for Climate will be formed. This can be said to be a direct result of the Yellow Vest protests, which rocked the nation. Treating ecocide as a crime was also a major issue that was discussed in this context. When Macron the leaders of the Convention Citoyenne pour le Climat (CCC), in 2020, he clearly endorsed[30] this revolutionary change as well – treat ecocide as a crime[31]. He did say that the idea is to make it international so that it can be tried by the International Criminal Court.

[26] The Loire Parliament Hearings – Negotiating in an Inter-Specific Context, *available at:* http://www.projetcoal.org/coal/en/2020/10/12/les-auditions-du-parlement-de-loire-%e2%80%93-n%c3%a9gocier-en-contexte-inter-sp%c3%a9cifique/ (last visited on May 23, 2021).
[27] Nicoloa de Toledo, "What if Nature became a Legal Person?", *World Economic Forum*, 19 May 2020, *available at:* https://www.weforum.org/agenda/2020/05/nature-legal-personhood (last visited on May 27, 2021).
[28] *Ibid.*
[29] UN General Assembly, *Supplement to SG Report on Harmony with Nature*, (A/75/266).
[30] President Macron "Shares Ambition" to Establish International Crime of Ecocide, *available at:* https://www.stopecocide.earth/press-releases-summary/president-macron-shares-ambition-to-establish-international-crime-of-ecocide (last visited on May 27, 2021).
[31] Legislate on the Crime of Ecocide, *available at:* https://propositions.conventioncitoyennepourleclimat.fr/objectif/legiferer-sur-le-crime-decocide (last visited on May 27, 2021).

However, the follow up steps, taken by Ecology Minister Barbara Pompili and Justice Minister Éric Dupond-Moretti[32] has been a point of contention. The proposal was approved by the French National Assembly on 17/04/2021, when the lower house passed it by 44 votes against 10. It lays down the sanctions include a prison term of 10 years and a 4.5 million Euro fine, A lesser degree offence- endangering the environment was also carved out which included a three-year prison term and a 30000 Euro fine. But the decision to treat it as an offence and not a crime, has been attacked from various quarters, alleging that it amounts to a reduction in the seriousness involved.

Later, on 04/05/2021, the Climate and Resilience Bill[33] was approved by a 332-77 margin[34]. The Bill will be taken up in the upper house Senate[35], and if approved, will go to the joint parliamentary commission for final approval and if it does not come through, the National Assembly will have the final word.[36]

Though these steps can be taken as important developments in ensuring a shift towards an eco-centric law, the dilution of the concept of ecocide is to be viewed with a pinch of salt. If we are to ensure a clear shift, ecocide needs to be treated as a crime- something that needs to be treated with utmost importance so that the idea doesn't get watered down. However, one cannot deny the fact that France has been able to bring about a welcome change- something which can, surely, be emulated by the rest of the world.

On a concluding note, the steps taken in France are quite praiseworthy and have been able to clear a new path which leads the way towards imbibing the very spirit of eco-centrism, which sadly is lacking in current day environmental law. The developments, if one may delve into it a bit deeper, can be found to be revolutionising existing concepts, both in the Constitution as

[32] Rosie Frost, "France is making ecocide illegal, but what does that mean?", *Euro News*, 23/11/2020, *available at:* https://www.euronews.com/green/2020/06/25/france-wants-to-make-hurting-the-planet-illegal-but-what-is-ecocide (last visited on May 23, 2021).
[33] The National Assembly Adopts the Climate and Resilience Bill, *available at:* https://www.gouvernement.fr/l-assemblee-nationale-adopte-le-projet-de-loi-climat-et-resilience, (last visited on May 27, 2021).
[34] France 24 with AFP and Reuters, "New Law Tackling Climate Change passes First Vote in French Parliament", *France24*, 04/05/2021, *available at:* https://www.france24.com/en/france/20210504-france-to-vote-through-new-law-aimed-at-tackling-climate-change, (last visited on May 23, 2021).
[35] News Wires and AFP, "France drafts 'ecocide' bill to punish acts of environmental damage", *France24*, 17/04/2021, *available at:* https://www.france24.com/en/france/20210417-france-drafts-ecocide-bill-to-punish-acts-of-environmental-damage, (last visited on May 27, 2021).
[36] Liz Alderman and Constant Méheut, "Going Green, or Greenwashing? A Proposed Climate Law Divides France", *New York Times*, 19/05/2021, *available at:* https://www.nytimes.com/2021/05/19/business/macron-france-climate-bill.html, (last visited on May 27, 2021).

well as the Environmental Charter, by incorporating newer ideas and ideals, which is highly commendable. The incorporation of the concept of Rights of Nature, into both law and policy, albeit a bit limited, is a good sign of better things to come. These steps, supplemented by the various citizen initiatives will surely be noted and provide a much-needed blueprint for other countries to emulate. It is safe to assume that like the French Revolution of 1789 which provided the principles of Liberty, Equality and Fraternity, to the world, the current French 'Rights of Nature' Revolution will provide for the principles of Eco-centrism, Earth Jurisprudence and Environmental Ethics, for the world to emulate.

DEVELOPMENT OF ENVIRONMENTAL LAWS: INDIAN PERSPECTIVE

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Introduction

Nature is the common heritage of mankind. To preserve this nature, i.e., the environment, mankind must make constant efforts. When voluntary action of lawmakers fails, a necessary action must take over. By this process, environmental law came into force. Environmental pollution is existing since the time when the evolution of homo sapiens on the planet took place. Nowadays, development in different industries has brought an immediate rise in environmental pollution. These upset the nature laws, thereby shaking the balance between human life and environment with other innumerable problems that affected the environment. The discussion got in the minds of countries through Stockholm Declaration while discussing the serious problem of environmental pollution. This was the first time when all the countries of the world got together to discuss on an important issue of environmental preservation law and sustainable development.

Over the last century, due to the economic transformation of the world, renewable and non-renewable resources are decreasing at an increasing rate. This has resulted in irreversible environmental exploitation and caused serious adverse effects on the lifestyles of human beings, plants, animals, and other living organisms. An over-whelmed developmental plan possesses serious threats to human beings and the natural environment. Almost every developmental plan and programme, which is based on human needs and comforts, poses some threat to the environment and takes it on the verge of extinction.

Major International Conventions

The customary international law provides no specific rules for environmental conservation and protection. Therefore, in addition to the general beliefs of state responsibility, the most important international treaty obligation is to regulate the roles and duties of the State. The Trail Smelter case [1] is a landmark case in this regard. In the context of the international framework of law, the Trail Smelter Arbitration was set up between the United States of America and Canada to resolve the disputes over timber and crop damages caused by a smelter

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[1] *Trail Smelter Case (United States* v. *Canada)* 39 Am J Int' I Law 684 (1941).

on the Canadian border. The tribunal acknowledged that no State has the right to use or permit the use of its territory in order to cause smoke injury in the territory of another country where conclusive proof of serious injury has been done.

- **Stockholm Conference 1972**

  The UN Conference on Human Environment and Development held at Stockholm is famous for its name known as Magna Carta of Environment Protection and Sustainable Development. The conference resulted in the '*Stockholm Declaration on the Human Environment*'. Besides the Preamble, the Declaration consists of seven universal truths and twenty-six principles. It proclaimed that man is both the founder and the maker of his ecosystem, which gives him physical comfort and gives him an opportunity for intellectual, moral, mental and spiritual growth. Both facets of man's climate, natural and man-made, are important for his well-being and for the fulfilment of basic human rights and the right to life itself. The essential principles laid down therein conference included, (i) man has the elemental right to freedom, equality and adequate conditions of life, in an environment of a high quality that permitted a lifetime of dignity and well-being; and (ii) man bears a solemn responsibility to guard and improve the environment for present and future generations.[2]

- **Basel Convention 1989**

  In order to check the dumping of hazardous and toxic wastes and resultant damage to the environment, the United Nations General Assembly at its 43rd Session urged all member states to take legal and technical measures to halt and stop the international traffic in dumping and resultant accumulation of toxic and dangerous products and wastes. Consequently, an expert group was set up by the United Nations Environment Programme (UNEP) to prepare a global convention in this area, keeping the aforesaid resolution of the assembly in mind. In June 1987, based on a joint proposal by Switzerland and Hungary, the Governing Council of UNEP mandated the Executive Director to convene a working group and started the drafting process of the Global Treaty to control trade movement of hazardous wastes and their disposal. All export-import movements of hazardous wastes have to be covered by insurance, bond or other guarantee. Thus, the Basel Convention

[2] UN General Assembly, *Report of the United Nations Conference on the Human Environment*, Stockholm, 5-16 June 1972, UN Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

provides for timely notification, information, exchange, and consultation between state parties in relation to hazardous waste.

- **Earth Summit 1992**

  The United Nations Conference on Environment and Development (UNCED), popularly known as Earth Summit, was the most important and largest UN conference ever held and put the world on the path of sustainable development, which aims at meeting the needs of the present, without limiting the ability of future generations to meet their own needs. The Earth Summit made people rethink about how their lives affect the natural environment and their resources. Some major achievements of the Earth Summit are reproduced in the following documents: (i) The Rio Declaration of Environment and Development, which consists of a series of principles defining the right and liabilities of states regarding protection of the environment; (ii) Agenda 21 is a comprehensive blueprint for global actions to affect the transition to sustainable development; (iii) a set of principles to support the sustainable management of forests worldwide; (iv) the legally binding conventions, i.e., the Convention on Climate Change and Convention on Bio-diversity which are aimed at preventing global climate change and eradication of biologically diverse species.

  The Rio Declaration,[3] in principle 13 calls upon the states to develop national laws regarding liability and compensation for victims of pollution and other environmental damages. This Declaration is of utmost importance to India. National Environment Tribunal Act is the direct outcome of this Convention. The 'Precautionary Principle' is incorporated in principle 15 according to which there are threats of serious and consistent damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to stop environmental degradation. Principle 16 of the Declaration reiterates the proposition that polluters must pay, known as the 'Polluter Pays Principle'. It also envisaged the 'Environmental Impact Assessment' as a national instrument in matters which adversely affect the environment.[4] It paves the way for legislation affecting mass disaster with emphasis on the right to know. These principles have found judicial recognition in landmark decisions of the Supreme Court of India.[5] Also, according to

[3] Report of United Nations Conference on Environment and Development, Rio de Janeiro, June 3–14, 1992, *Rio Declaration on Environment and Development,* UN Doc. A/CONF.151/26/Rev.1 (vol. I-III) (June 14, 1992).
[4] *Ibid.*
[5] *Indian Council for Enviro-Legal etc.* v. *Union of India* AIR 1996 SC 1466; *Vellore Citizens Welfare Forum* v. *Union of India* AIR 1996 SC 2715.

Section 20 of the National Green Tribunal Act, the tribunal can apply the polluter pays principles and precautionary principle while passing any order, award or decision for balanced development without harming the earth.[6]

Indian Constitutional Mandate

Environmental legislation has a special position in the Constitution of India. Even before the 42nd Amendment, Article 21 of the Constitution[7] enforced the protection and maintenance of the environment. Article 21 reads as follows: *'No citizen shall be deprived of his life or personal liberty except in compliance with the process laid down in the Constitution'*. It ensures to every person the fundamental right to life and personal liberty.[8]

Justice P.N. Bhagwati in *Francis Coralie* v. *Union Territory of Delhi* followed:
We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with a fellow human being.[9]

In *Subhash Kumar* v. *State of Bihar,*[10] the Court stated:
The right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be detrimental to the quality of life.

Furthermore, the Maneka Gandhi case[11] has added dimension to this concept where it was held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. A law affecting life and liberty of a person has to stand the scrutiny of Articles 14 and 19 of the Constitution and the procedure laid down must be reasonable, fair and just. This case has broadened the scope of the right to life, and therefore, it included many

[6] The National Green Tribunal Act, 2010 (Act 19 of 2010), s. 20.
[7] The Constitution of India, art. 21.
[8] *Maneka Gandhi* v. *Union of India*, AIR 1978 SC.
[9] *Francis Coralie* v. *Union Territory of Delhi*, AIR 1981 SC 746.
[10] AIR 1991 SC 420.
[11] *Supra* Note 8.

things which are essential for survival, for example, clean air, water and healthy environment. In the Oleum Gas Leak case[12], the Supreme Court once again impliedly treated the right to live in a pollution-free environment as part of the fundamental right to life under Article 21 of the Constitution. The directive principles of state policy also provide for prevention of health hazards. Article 47 of the Constitution declares that the State has a duty to prohibit hazardous activities and directs the State to remove unsanitary conditions. Writs have been admitted by the Supreme Court directly where pollution affected the public at large, e.g., pollution of the river Ganga,[13] ecological imbalance,[14] etc. The improvement of public health will also include the protection of the environment without which public health and livelihood cannot be assured. The Supreme Court has also affirmed this right in various decisions.[15] Similarly, the high courts have found it a paramount principle as primary duty of governance.[16]

Conclusion

Several regulatory steps and actions have recently been taken in India to conserve and develop the environment. In addition to the constitutional provisions, a survey of Indian legislation shows that there are numerous environmental laws passed by both the central and the state legislatures. Yet this variety of environmental legislations has not been able to regulate environmental pollution and economic imbalances. In the absence of clear and detailed environmental law policy, the courts of India have played a crucial role, and the judicial interpretation of the law has helped to create environmental jurisprudence, which attempts to strike a balance between environmental protection and enhancement. It is also to be noted that the Prevention and Control of Air Pollution Act 1981 is well formulated to deal with air pollution. It encompasses the scientific aspects of managing air pollution with the actions of State and Central bodies. However, pollution control measures need to be complemented by effective administrative restrictions. The Environment Protection Act is one such legislative initiative to make the legislation stronger before moving land for construction purposes which requires a number of assessments which surveys that may forecast environmental impacts. This Act is also known as Umbrella Act because it provides the framework to the central government in order to make the coordination between different states as well as the central authorities using different Acts like Water Act etc.

[12] *M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086.
[13] *M.C. Mehta* v. *Union of India*, AIR 1988 SC 1115.
[14] *Rural Litigation and Entitlement Kendra, Dehradun* v. *State of UP.*, AIR 1988 SC 2187.
[15] *Consumer Education and Research Centre* v. *Union of India*, AIR 1995 SC 922.
[16] *K.C. Malhotra* v. *State of M.P.*, AIR 1994 MP 48.

India has a significant environmental legislation framework. Its legislative contribution to the objectives of environmental policy is illustrated by a continuous amendment to the Constitution. In fact, some rulings of the Indian courts have provided for the protection of environmental protections, which is more stringent than in other nations, such as the acceptance of the right to the environment as an intrinsic part of the right to life under Article 21 of the Constitution. Although issues remain to be addressed concerning the suitability of the factual availability of legislation and the coordination between existing legislation and regulations, the main legal issue to be considered at this time is the strengthening and implementation of existing legislation. One such example is the efficient utilization of current resources. Especially within resources, the land is one field where stringent control is required to ensure effective land use management. The independent solution to related problems cannot be a valid replacement for growth. Regulatory measures under the Environmental Protection Act still need to be reinforced to some extent.

RURAL LITIGATION AND ENTITLEMENT KENDRA V. STATE OF UTTAR PRADESH[1], AIR 1988 SC 2187: CASE COMMENT

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Facts

The Doon valley, known for its lush forests and scenic beauty, had been under ecological threat since the 1950s due to excessive limestone quarrying. This issue originally began when several mining leases came for renewal in 1982; the State of Uttar Pradesh rejected them on the ground of ecological destruction as the mining had led to landslides, water shortage, destruction of crops and the natural habitat. The mining companies then went to the High Court of Allahabad, which allowed the mining. Aggrieved by this judgement and due to concern for the fragile state of the environment, a letter was sent by the Petitioners to the Supreme Court, who treated it as a writ under Article 32 of the Indian Constitution.

Issues

1) Is the Supreme Court's jurisdiction curtailed by the enactment of the Environment Protection Act, 1986 (hereafter referred to as EPA, 1986)?
2) Does the Supreme Court have a responsibility to balance ecological interests with economic development?
3) Can the renewal of leases be prohibited under the Forest Conservation Act, 1980 (hereafter referred to as FCA, 1980)?
4) Is the quarrying of limestone in the region in violation of the FCA, 1980?

Law

The laws referred by the court are as follows:

1) This case was filed by the petitioners under Article 32 of the Indian Constitution, which confers power on the Supreme Court to issue direction or order or writ.
2) The Court, in this case, emphasised that "Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake". The Court highlighted that it is the social duty of every citizen

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[1] *Rural Litigation and Entitlement Kendra* v. *State of Uttar Pradesh*, AIR 1988 SC 2187

under Article 51-A(g) of the Constitution to protect and improve the natural environment, including forests, lakes, rivers and wildlife.

3) The Court also looked into constitutional provisions to preserve the forests and the impact of such provisions on mining. The Court specifically looked into Article 48-A of the Constitution states that The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
4) The bench elaborated that Section 2 of the Forest Conservation Act, which provides for the restriction on the de-reservation of forests or use of forest land for non-forest purpose, can be applied to the present circumstances, and it was stated that "to allow mining in these areas even under the strictest control as a permanent feature would not only be violative of the provisions of Forest (Conservation) Act, but would be detrimental to restoration of the forest growth in a natural way in this area".
5) Lastly, the Court stated that both the Central Government and the State Government must take cognisance of the matter and better implementation of laws to protect forests as forests is a subject under Entry 17A of the concurrent list under Schedule VII.

Petitioner's Arguments

1) The first argument advanced by the petitioner was that the mining activity caused severe environmental degradation, which had an adverse impact on the perennial streams, agricultural lands and the ecology in the Doon valley. This was further evidenced by the scientific research conducted by the committees which showed that the mining had caused irreparable damage to the surrounding environment.
2) The petitioners also stated that the ongoing mining activity in the Doon valley was illegal as the leases for the same had ended and were not renewed.
3) It was averred that the State had a right to prohibit the renewal of leases under the Forest Conservation Act, 1980, in order to protect the already deteriorating forest area.
4) The counsel for the petitioner also contended that forests was an entry under the concurrent list and therefore, it was mandatory for the Central Government to give its approval for the mining.

Respondent's Arguments

1) The respondents averred that work was commenced only after necessary permits were sought from the State government and that the mining was being done per the provisions of the Mines Act, 1952

2) It was also argued that the Court did not have the jurisdiction to hear this case as it must be left to be heard by the authorities under the Environmental Protection Act, 1986
3) It was contended that stopping mining would have harmful effects on several industries, including foreign exchange because the limestone mined in the Doon area accounted for 3% of the country's production and stated that stopping such mining would lead to large scale unemployment of the mineworkers and owners.

Analysis

The Supreme Court, for the first time, in this case, took cognizance of the fact that there is a necessity to balance ecological and developmental interests. The court ordered the closure of all mines in the area, except three mines, after taking into account recommendations of several committees constituted by the Court as well as the State who reported that the mining had led to environmental degradation. The Doon valley was also declared as an ecologically fragile region under EPA, 1986 and the Court, not satisfied with the reforestation programme, ordered a monitoring committee to be set up to oversee the same. The Court also directed the State government to help the mine operators (lessees) by prioritizing them when granting leases in other regions. They also directed the workers who were unemployed due to this order to be included in the eco task force.

After independence, it was vital for India to develop rapidly to compete with the world market and stabilize the economy. The country, therefore, exploited the environment to build its industries. At that point, the opportunity cost of utilization of resources was significantly lesser. However, continued overexploitation of resources due to extensive mining has led to serious environmental damage in the Doon Valley, as illustrated in this case. Therefore, the Court has recognised that the environment cannot be traded off for economic benefit as the opportunity cost of doing so is very high and has acknowledged the need to balance these claims by closing all the mines that were harming the environment while making sure that the mine operators and workers were not left without alternate means of employment/income.

The environment is considered to be a public good; therefore, it is susceptible to be subject to the Tragedy of commons phenomenon, which states that when a common resource system is shared by self-interested individuals, leading to overexploitation of the resources would result in complete exhaustion of the system rendering it irretrievable. The Court in present recognized that limestone was a limited resource that was being mined extensively, the Court stated after

inspection that if the limestone was continued to be quarried at the same rate, it would get exhausted within 50 years. Several committees also brought to the court's notice the harmful effects the mining was having on the fragile ecosystem. The committees stated that the mining happening in this area was causing irreparable damage to the environment and if it were continued it would cause a complete imbalance in the surrounding ecology and also have an adverse impact on the local communities. The Committees further balanced economic interests with environmental interests providing a list of mines that could continue their operations and mines that must be shut down to prevent environmental damage. To solve the potential problem of the tragedy of the commons in the area, the Court ordered shutting down mines as they were not following the established procedures and were also mining in areas prohibited under the Forest Conservation Act. However, the Courts allowed three mines to function as they were following scientific methods of mining, and they showed no evidence of damaging the environment. Therefore, extraction of resources was not completely banned; it was only tothe extent of the mines which was injuring the natural terrain of Mussoorie. In addition to this,the court also prescribed that 25% of the profit of these mines would go into reforestation. By doing this the Court made sure that the mines themselves internalize the cost of damage to the environment.

The Court stressed the importance of sustainable development and used ancient scriptures to highlight the importance of protecting the environment. Historically, indigenous communities have always recognized the importance of nature and have lived in harmony with it. This case is considered a landmark judgement that furthered the cause of environmental justice in India. The Court, for the first time, expounded on the principle of sustainable development, which now forms the foundation for many environmental legislations and judicial precedents. The Judiciary by recognising the importance of this, gave way for expanding environmental rights such as including expanding the scope of Article 21 of the Constitution to include the right to a clean environment.

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