

Civil Remedies for Environmental Protection in India with Landmark Judgments

Dhriti Arorra

BBA LLB (H) Student, Amity Law School, Amity University, Noida
Email: [dhhritiarorra\[at\]gmail.com](mailto:dhhritiarorra[at]gmail.com)

Abstract: *Civil remedies in India are legal mechanisms available to individuals and organizations for environmental protection which are designed to hold polluters accountable for environmental harm and to provide relief for those affected. This paper aims to explore the various civil remedies available under Indian law for environmental protection, including compensation, injunctions, and public interest litigation. It will also examine shaped the development of environmental law and civil remedies. For example, the Oleum Gas Leakcase of 1987 established the principle of absolute liability for hazardous activities holding that industries are strictly liable for any harm caused, regardless of fault. Another significant case is the Vellore Citizens Welfare Forum case of 1996, which recognized the "polluter pays" principle holding those who cause pollution should bear the cost of cleaning it up. The paper will analyze the challenges and limitations of [1] civil remedies for environmental protection in India, such as delays in the legal system and difficulties in enforcement. It will also explore the potential solutions to these challenges, including reforms to the legal framework and improvements in enforcement mechanisms. [2] Civil remedies for environmental protection are an important tool in holding polluters accountable and ensuring access to justice for those affected by environmental harm in India. However, there is a need for continued efforts to improve the legal framework and address challenges to its effectiveness. The research paper aims to contribute to the understanding of the role of civil remedies and landmark judgments in protecting the environment in India and to highlight the need for continued efforts to strengthen and improve the legal framework for environmental protection.*

Keywords: civil remedies, environmental protection, compensation, injunction, public interest litigation, challenges

1. Introduction

Environmental protection is a pressing concern in India due to the high levels of pollution and degradation of natural resources.

While there are various laws and regulations in place to protect the environment, the effective enforcement of these laws has been a challenge. One of the ways to ensure environmental protection is through civil remedies, which enable citizens to seek redressal for environmental harm caused by individuals or corporations.

This paper explores the civil remedies available for environmental protection in India, with a focus on landmark judgments. India has developed a comprehensive legal framework for environmental protection, which includes a range of civil remedies that can be used to address environmental harm.

What is Indian Environmental law?

Indian environmental law is a set of legal principles, policies, and regulations that aim to protect and preserve the environment in India. The legal framework for environmental protection in India is based on the Constitution of India, which recognizes the fundamental right to a clean environment as a part of the right to life under Article 21.

The major environmental laws in India include the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention [3] and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the National Green Tribunal Act, 2010, and the Forest (Conservation) Act, 1980.

These laws regulate a wide range of environmental issues, including air and water pollution, solid waste management, hazardous waste management, and conservation of biodiversity and forests. [4] They establish regulatory bodies such as the Central Pollution Control Board and State Pollution Control Boards to monitor and enforce environmental regulations.

Indian environmental law also recognizes the principle of sustainable development, which seeks to balance economic development with environmental protection. This principle is reflected in various policies and programs, such as the National Action Plan on Climate Change and the Swachh Bharat Abhiyan (Clean India Mission).

Overall, Indian environmental law is an important component of the country's efforts to promote sustainable development and protect the environment for present and future generations.

What are civil remedies?

Civil remedies refer to legal actions or procedures that are available to an individual or entity to seek redress or compensation for harm caused by another party's wrongful conduct. Civil remedies are typically pursued in civil courts, and they are distinct from criminal remedies, which involve the prosecution of criminal offenses by the state.

Civil remedies can take many forms, including monetary damages, injunctive relief, and declaratory relief. For example, a person who has been injured in a car accident caused by another driver's negligence may seek monetary damages to cover their medical expenses, lost wages, and pain and suffering. In environmental cases, civil remedies may be sought to require a polluting company to clean up a contaminated site, to stop an activity that is causing

environmental harm, or to pay compensation to affected parties.

Some common civil remedies for environmental protection include the "polluter pays" principle, which requires polluting parties to bear the costs of cleaning up environmental damage they have caused, and the principle of strict liability, which holds parties responsible for harm caused by hazardous activities even if they were not directly at fault.

Overall, civil remedies play an important role in ensuring that individuals and entities are held accountable for their actions and that victims of harm are compensated and protected.

What are the civil remedies on the issue?

[5] There are several civil remedies available for the protection of the environment in India. These remedies allow citizens to seek redressal for environmental harm caused by individuals or corporations. Here are some of the civil remedies available for environmental protection in India:

Public Interest Litigation (PIL):

[6] Public Interest Litigation is a mechanism that allows citizens to approach the court on behalf of the public interest. PILs can be filed to address environmental issues, such as pollution or the degradation of natural resources. This remedy enables citizens to challenge the government or corporations when they fail to fulfill their responsibilities toward environmental protection.

PILs have been instrumental in bringing attention to environmental issues and pushing for action to be taken. The landmark judgment in the case of *MC Mehta v. Union of India*, popularly known as the *Taj Trapezium case*, is an example of a PIL that led to significant environmental protection measures. In this case, the Supreme Court ordered the closure of polluting industries in the *Taj Trapezium area*, which had been causing environmental degradation.

Environmental Damage Compensation:

In cases where environmental damage has been caused by an individual or corporation, compensation can be sought through civil suits. The National Green Tribunal Act, 2010, provides for the establishment of a specialized tribunal to deal with environmental disputes. The tribunal has the power to award compensation for environmental damage. The tribunal has the jurisdiction to deal with civil cases relating to environmental disputes such as compensation claims, claims for restitution of property, injunctions, or any other relief related to the enforcement of any legal right. The tribunal also has the power to order the restoration of damaged property, cessation or prohibition of any activity, or payment of compensation or restitution of property.

Injunction:

[7] An injunction is a court order that prohibits a person or corporation from engaging in a particular activity. In environmental cases, injunctions can be sought to prevent activities that are causing harm to the environment. Injunctions are particularly useful in situations where harm

to the environment is imminent or ongoing, and immediate action is needed.

[8] The landmark judgment in the case of *M. C. Mehta v. Kamal Nath* led to the imposition of an injunction on the construction of a road in the *Ridge area of Delhi*. The court recognized the ecological sensitivity of the *Ridge area* and ordered that no construction activities should take place in the area. This decision prevented the destruction of the ecologically sensitive *Ridge area*.

Damages for Environmental Negligence:

Damages can be awarded in cases where environmental harm has been caused by the negligent actions of individuals or corporations. The damages can be awarded for loss or injury suffered as a result of the harm caused by the negligence. The amount of damages awarded depends on the extent of harm caused by the negligent action.

Polluter Pays Principle:

[9] The Polluter Pays Principle (PPP) is a fundamental principle of environmental law that requires polluting parties to bear the costs of the pollution they generate. This principle shifts the responsibility for pollution control from the government to the polluter. The PPP can be invoked in cases where environmental harm has occurred due to the actions of individuals or corporations.

In India, the PPP has been incorporated into various environmental laws and regulations, such as the *Water (Prevention and Control of Pollution) Act, 1974*, the *Air (Prevention and Control of Pollution) Act, 1981*, and the *Environmental Protection Act, 1986*.

For instance, in the case of the *Indian Council for Enviro - Legal Action v. Union of India*, the Supreme Court directed that the polluter pays principle should be applied in cases where there is environmental damage caused by industries.

Strict Liability:

Strict liability is a legal principle that holds individuals or corporations responsible for harm caused by their actions, regardless of whether they were negligent or intentional. This principle can be invoked in cases where harm has occurred due to hazardous activities, such as industrial or mining activities.

[10] In India, the principle of strict liability has been applied in various cases, such as the [11] *M. C. Mehta v. Union of India* case, where the Supreme Court held that the principle of strict liability applied to hazardous industries. [12] The court held that the industries were strictly liable for any harm caused by their activities, regardless of whether they were negligent or not.

Environmental Impact Assessment (EIA):

Environmental Impact Assessment is a process of evaluating the potential environmental impacts of a proposed project or activity. It can be used to identify and assess the potential environmental impacts of a project and to develop appropriate mitigation measures.

In India, the EIA is governed by the Environmental Impact Assessment Notification, 2006. The EIA can be used as a tool for environmental protection by ensuring that proposed projects or activities are environmentally sustainable and that appropriate mitigation measures are taken.

Precautionary Principle:

The precautionary principle is a fundamental principle of environmental law that emphasizes the need to take precautionary measures to prevent harm to the environment, even in situations where there is scientific uncertainty about potential harm. It is a proactive approach to environmental management that aims to avoid or minimize harm to the environment, human health, and biodiversity.

In India, the precautionary principle has been incorporated into various environmental laws and regulations, such as the Environmental Protection Act, 1986 and the National Biodiversity Act, 2002. The principle has been applied in various cases, such as the Vellore Citizens Welfare Forum v. Union of India case, where the Supreme Court held that the precautionary principle required the prevention of environmental harm, even in situations of scientific uncertainty.

Environmental protection is a critical issue facing India, given the increasing pressure on natural resources and the negative impacts of human activities on the environment. India has developed a comprehensive legal framework for environmental protection, which includes various civil remedies that can be used to address environmental harm. The civil remedies discussed in this paper include the Polluter Pays Principle, Strict Liability, Injunctions, Public Interest Litigation, Environmental Impact Assessment, etc. These civil remedies have been applied in several landmark environmental cases in India, highlighting the importance of a strong legal framework for environmental protection.

Some Landmark Judgments

Landmark judgments related to civil remedies for environmental protection in India are as follows:

Vellore Citizens Welfare Forum v. Union of India (1996):

[13] This case was a landmark judgment by the Supreme Court of India that recognized the [14] Polluter Pays Principle as a fundamental principle of Indian environmental law. The court held that the costs of preventing and controlling environmental degradation should be borne by the polluters, and not by the public. The court also held that the State had a duty to ensure that environmental laws were enforced and that polluters were held accountable.

M. C. Mehta v. Union of India (1986):

This case was a landmark judgment by the Supreme Court of India that addressed the issue of air pollution in Delhi. The court issued several orders to address the problem, including the conversion of all public transport vehicles to Compressed Natural Gas (CNG), the relocation of polluting industries outside of Delhi, and the establishment of a pollution control board. The court also held that the right to a clean and healthy environment was a fundamental right under the Indian Constitution.

Indian Council for Enviro - Legal Action v. Union of India (1996):

This case was a landmark judgment by the Supreme Court of India that recognized the [15] Precautionary Principle as a fundamental principle of Indian environmental law. The court held that in cases where there was scientific uncertainty about the environmental impacts of an activity, the burden of proof should be on the person or entity proposing the activity to demonstrate that it would not cause harm to the environment.

Subhash Kumar v. State of Bihar (1991):

This case was a landmark judgment by the Supreme Court of India that addressed the issue of illegal mining in the state of Bihar. The court used Public Interest Litigation (PIL) to hold the state government accountable for allowing illegal mining to take place. The court issued orders to stop the practice and to recover damages from those responsible.

M. C. Mehta v. Kamal Nath (1997):

This case was a landmark judgment by the Supreme Court of India that addressed the issue of deforestation in the state of Himachal Pradesh. The court issued an order to stop all tree-felling activities in the state and to require the state government to take measures to protect the forests. The court also held that forests were an essential part of the environment and that the State had a duty to protect them.

Sterlite Industries v. Union of India (2013):

This case was a landmark judgment by the Supreme Court of India that addressed the issue of environmental clearance for development projects. The court revoked the environmental clearance given to Sterlite Industries, a copper smelting plant, due to environmental concerns. The court held that the company had violated environmental laws and had caused harm to the environment, and therefore could not be allowed to continue operating.

These landmark judgments illustrate the importance of civil remedies for environmental protection in India and how they have been used to hold polluters accountable and protect the environment.

What are the loopholes in this system?

There are several loopholes in the system when it comes to civil remedies available for environmental protection in India, which can limit their effectiveness. Some of the key issues include:

Lack of adequate enforcement: Despite having a comprehensive legal framework for environmental protection, enforcement remains a significant challenge in India. Regulatory bodies such as the [16] Central Pollution Control Board and State Pollution Control Boards are often understaffed and under-resourced, which can make it difficult to ensure compliance with environmental regulations.

Delayed justice: The judicial process in India can be slow and time-consuming, which can result in delayed justice for victims of environmental harm. [17] Cases can take years or even decades to resolve, which can make it difficult to hold

polluting parties accountable and provide timely relief to affected communities.

Limited access to justice: Many communities and individuals in India, particularly those living in poverty or marginalized communities, may not have the resources or legal knowledge to access civil remedies for environmental harm. This can create significant barriers to seeking redress and can perpetuate environmental injustices.

Inadequate penalties: The penalties for environmental violations in India are often inadequate and may not act as a sufficient deterrent to prevent future harm. For example, fines for pollution violations may be relatively low compared to the profits generated by the polluting activity, which can make it more profitable to continue polluting rather than investing in cleaner technologies.

Lack of coordination: There is often a lack of coordination between different regulatory bodies and government agencies responsible for environmental protection, which can result in fragmented and inconsistent enforcement efforts.

Addressing these loopholes will require a concerted effort from all stakeholders, including regulatory bodies, government agencies, civil society organizations, and the private sector, to ensure effective implementation and enforcement of environmental laws and regulations.

How can we improve this system?

There are several ways to improve the system of civil remedies for environmental protection in India:

Strengthening enforcement mechanisms: [18] To ensure the effective implementation of civil remedies, there is a need to strengthen the enforcement mechanisms, including regulatory bodies, judicial mechanisms, and the police force. This can be achieved by improving the capacity of regulatory bodies, providing better training to judicial officers, and increasing the number of specialized environmental courts.

Simplifying legal procedures: The legal procedures for seeking civil remedies can be complex and time-consuming, which can deter affected communities from seeking redress. Simplifying these procedures can make it easier for communities to access justice and hold polluting parties accountable.

Increasing public awareness: There is a need to increase public awareness of civil remedies available for environmental protection in India, including the "polluter pays" principle, public interest litigation, and strict liability. This can be achieved by disseminating information through public awareness campaigns, workshops, and other outreach activities.

Imposing adequate penalties: The penalties for environmental violations in India are often inadequate and do not serve as a deterrent. There is a need to impose adequate penalties, including fines, imprisonment, and cancellation of licenses, to discourage polluting activities.

Promoting sustainable development: To address the underlying causes of environmental harm, there is a need to promote sustainable development practices that prioritize environmental protection and social justice. This can be achieved by promoting renewable energy, sustainable agriculture, and waste management practices, among others.

[19] Addressing the challenges in the system of civil remedies for environmental protection in India will require a multi-stakeholder approach, including the government, regulatory bodies, civil society organizations, and the private sector. By working together, it is possible to create a more effective and sustainable system of environmental protection in India.

2. Conclusion

Civil remedies are an important tool for environmental protection in India, providing affected communities with a means to seek redress and hold polluting parties accountable. The legal framework for environmental protection in India is comprehensive, including various civil remedies such as the "polluter pays" principle, strict liability, and public interest litigation.

[20] However, there are several challenges in the effective implementation of these remedies, including inadequate enforcement, delayed justice, limited access to justice, inadequate penalties, and a lack of coordination between regulatory bodies and government agencies. Addressing these challenges will require a concerted effort from all stakeholders, including the government, regulatory bodies, civil society organizations, and the private sector.

In addition, there is a need to address the underlying causes of environmental harm in India, including unsustainable development practices, overexploitation of natural resources, and poor waste management. [21] This will require a shift towards more sustainable and inclusive development models that prioritize environmental protection and social justice.

Overall, the effective implementation of civil remedies for environmental protection in [22] India will be critical in ensuring a sustainable and equitable future for all.

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