

Writ of Continuing Mandamus in matters of PILs: A Step towards Development of Environmental Jurisprudence:

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ABSTRACT: This paper analyzes the necessity of how a novel approach was imperative on the part of the Judiciary to deviate from the ongoing trend of judicial approach and role of Public Interest Litigation as an instrument for environmental protection in India. Based on cases filed by NGOs and Social spirited persons, for the sake of effective legislations and their proper implementation which was sine qua non for individuals' fundamental right to healthy environment, the Supreme Court of India has made an unprecedented contribution to the evolution of new principles in the realm of environmental jurisprudence. It is observed that not interfering with administrative policy of the government concerning certain infrastructure development projects for the welfare of the country; the judiciary has now been actively involved by laying down guidelines, in gap areas, keeping public interest in mind. Guidelines by the judiciary are also laid down to see that the system of justice administration is not misused, in the name of public interest litigation, to restrain people from making approach to courts on grounds of personal nature and camouflaged under public interest litigation.

Keywords:- *Mandamus, Public Interest Litigation, Jurisprudence, Judiciary.*

I. INTRODUCTION

In view of Montesque's separation of power, the three wings i.e. the Legislature, The Executive and the Judiciary are assigned with their powers to act within their respective areas and are expected not to transgress into the area of other so that the power vested in them may not be misused. However these three wings are not independently independent rather are interdependently independent with the notion that the objective behind the principle may not be vitiated. In fact, experience shows that the Executive and the Legislative are not always as sincere as the Judiciary is in matter of discharging their legal duty with a sense of responsibility which at times requires the Judiciary to act under the guise of judicial creativity, activism and adventurism that are but similar in form but different in degree so far the nature of interference in the domain of other wings are concerned. If the Legislature and the Executive act apathetically, the Judiciary also won't mind to have a continuous monitoring over them to see their acting energetically by whatever name it may be called. Such steps by the Judiciary are taken mostly in cases where public interest is involved.

DEFINITIONS OF PUBLIC INTEREST LITIGATION

Public Interest Litigation has been defined as "Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government...."

The meaning of the expression 'PIL' is also given as "a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected."

EVOLUTION OF THE PUBLIC INTEREST LITIGATION IN INDIA

The beginning and growth of Public Interest Litigation in India emanated from realization of constitutional obligation by the Judiciary towards the vast sections of the society - the poor and the marginalized sections of the society. This jurisdiction has been created and carved out by the judicial creativity and craftsmanship. In *M. C. Mehta & Another v. Union of India & Others* AIR 1987 SC 1086, the Supreme Court observed that Article 32 does not merely confer power on the Supreme Court to issue direction, order or writ for the enforcement of fundamental rights. Instead, it also lays a constitutional obligation on it to protect the fundamental rights of the people. The court asserted that, in realization of this constitutional obligation, "it has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights". The Court realized that because of extreme poverty, a large number of sections of society cannot approach the court. The fundamental rights have no meaning for them and in order

to preserve and protect the fundamental rights of the marginalized section of society by judicial innovation, the courts by judicial innovation and creativity started giving necessary directions and passing orders in the public interest.

With the passage of time the development of public interest litigation has been extremely significant in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970's loosened the requirements of strict locus standi to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions or bodies. The higher Courts exercised wide powers conferred on them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the courts have also given guidelines and directions. The courts have monitored implementation of legislation and even formulated guidelines in absence of legislation. If the cases of the decades of 70s and 80s are analyzed, most of the public interest litigation cases which were entertained by the courts are pertaining to enforcement of fundamental rights of marginalized and underprivileged sections of the society.

PIL TO PRESERVE AND PROTECT ECOLOGY AND ENVIRONMENT

Public interest litigation started sometime in the 1980's and it related to the courts' innovation and creativity, where directions were given to protect ecology and environment.

There is a plethora of cases where the court tried to protect forest cover, ecology and environment and orders have been passed in that respect. As a matter of fact, the Supreme Court has a regular Forest Bench (Green Bench) and regularly passes orders and directions regarding various forest cover, illegal mining, destruction of marine life and wild life etc. Reference of some cases is given just for illustration.

The Supreme Court under Article 32 and the High Court under Article 226 of the Constitution passed a number of orders and directions in this respect.

The recent example is the conversion of all public transport in the Metropolitan City of Delhi from diesel engine to CNG engine on the basis of the order of the High Court of Delhi to ensure that the pollution level is curtailed and this is being completely observed for the last several years. Only CNG vehicles are permitted to ply on Delhi roads for public transport.

In 1980s, this court paid special attention to the problem of air pollution, water pollution and environmental degradation and passed a number of directions and orders to ensure that environment ecology, wildlife should be saved, preserved and protected. According to court, the scale of injustice occurring on the Indian soil is catastrophic. Each day hundreds of thousands of factories are functioning without pollution control devices. Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Everyday millions of liters of untreated raw effluents are dumped into our rivers and millions of tons of hazardous waste are simply dumped on the earth. The environment has become so degraded that instead of nurturing us it is poisoning us. In this scenario, in a large number of cases, the Supreme Court intervened in the matter and issued innumerable directions.

One of the earliest cases brought before the Supreme Court related to Oleum gas leakage in Delhi. In order to prevent the damage being done to environment and the life and the health of the people, the court passed number of orders. This is well-known as *M.C. Mehta & Another v. Union of India & Others* AIR 1987 SC 1086. The court in this case has clearly laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no such harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The court directed that the enterprise must adopt highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

In *Rural Litigation and Entitlement Kendra, Dehradun & Others v. State of U.P. & Others* AIR 1985 SC 652 the Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology. While commenting on the closure of the lime-stone quarries, the court stated that this would undoubtedly cause hardship to owners of the lime-stone quarries, but it is the price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment.

Environmental PIL has emerged because of the court's interpretation of Article 21 of the Constitution. The court in *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Others* AIR 1990 SC 2060 observed that every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to take recourse to Article 32 of the Constitution.

The Supreme Court in *Subhash Kumar v. State of Bihar & Others* AIR 1991 SC 420 observed that under Article 21 of the Constitution people have 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 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.

The case of *M.C. Mehta v. Union of India & Others* (1988) 1 SCC 471, relates to pollution caused by the trade effluents discharged by tanneries into Ganga river in Kanpur. The court called for the report of the Committee of experts and gave directions to save the environment and ecology. It was held that "in Common Law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river. But in the present case the petitioner is not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is wider spread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case, the petitioner is entitled to move the Supreme Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974".

In *Vellore Citizens Welfare Forum v. Union of India & Others* AIR 1996 SC 2715, the Supreme Court ruled that precautionary principle and the polluter pays principle are part of the environmental law of the country. This court declared Articles 47, 48A and 51A(g) to be part of the constitutional mandate to protect and improve the environment.

In *M.C. Mehta v. Union of India & Others* AIR 1997 SC 734, the Supreme Court observed that in order to preserve and protect the ancient monument Taj Mahal from sulphur dioxide emission by industries near Taj Mahal, the court ordered 299 industries to ban the use of coke/coal. The court further directed them to shift-over to Compressed Natural Gas (CNG) or re-locate them.

In *A. P. Pollution Control Board v. Prof. M. V. Nayadu (Retd.) & Others* (1999) 2 SCC 718, the Supreme Court quoted A. Fritsch, "Environmental Ethics: Choices for Concerned Citizens". The same is reproduced as under: "The basic insight of ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system is web like; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem". [Science Action Coalition by A. Fritsch, *Environmental Ethics: Choices for Concerned Citizens* 3-4 (1980)] : (1988) Vol. 12 *Harv. Env. L. Rev.* at 313."

The court in this case gave emphasis that the directions of the court should meet the requirements of public interest, environmental protection, elimination of pollution and sustainable development. While ensuring sustainable development, it must be kept in view that there is no danger to the environment or to the ecology. In *Essar Oil Ltd. v. Halar Utkarsh Samiti & Others* AIR 2004 SC 1834, while maintaining the balance between economic development and environmental protection, the court observed as under:

"Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the 4th principle says "man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors.

Nature conservation including wild life must, therefore, receive importance in planning for economic developments". These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life"."

On sustainable development, one of us (Bhandari, J.) in Karnataka Industrial Areas Development Board v. Sri C. Kenchappa & Others AIR 2006 SC 2038, observed that there has to be balance between sustainable development and environment. This Court observed that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment; State Industrial Areas Development Board to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.

In another important decision of the Supreme Court in the case of M.C. Mehta v. Kamal Nath & Others (2000) 6 SCC 213, the Court was of the opinion that Articles 48A and 51-A(g) have to be considered in the light of Article 21 of the Constitution. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21. In the matter of enforcement of rights under Article 21, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to Fundamental Rights under Articles 14 and 21 and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect the "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21.

The court also laid emphasis on the principle of *Polluter-pays*. According to the court, pollution is a civil wrong. It is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages or compensation for restoration of the environment and ecology.

In Managing Director, A.P.S.R.T.C. v. S. P. Satyanarayana AIR 1998 SC 2962, this Court referred to the White Paper published by the Government of India that the vehicular pollution contributes 70% of the air pollution as compared to 20% in 1970. This Court gave comprehensive directions to reduce the air pollution on the recommendation of an Expert Committee of Bhure Lal appointed by this Court.

In Re. Noise Pollution AIR 2005 SC 3136, this Court was dealing with the issue of noise pollution. This Court was of the opinion that there is need for creating general awareness towards the hazardous effects of noise pollution. Particularly, in our country the people generally lack consciousness of the ill effects which noise pollution creates and how the society including they themselves stand to benefit by preventing generation and emission of noise pollution.

In Indian Council for Enviro-Legal Action v. Union of India & Others (1996) 5 SCC 281 the main grievance in the petition is that a notification dated 19.2.1991 declaring coastal stretches as Coastal Regulation Zones which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. The court observed that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

In S. Jagannath v. Union of India & Others (1997) 2 SCC 87, this Court dealt with a public interest petition filed by the Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker section of society, wherein the petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.2.1991 and stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas.

The courts because of vast destruction of environment, ecology, forests, marine life, wildlife etc. gave directions in a large number of cases in the larger public interest. The courts made a serious endeavour to protect and preserve ecology, environment, forests, hills, rivers, marine life, wildlife etc. This can be called the second phase of the public interest litigation in India

The Writ of Mandamus

Article 32 of the Constitution gives the Supreme Court the power to issue directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of the rights conferred by part III. At the same time the High Court may issue the same writs under Article 226 of the Constitution.

A *mandamus* is a writ that can be issued by the Supreme Court which can literally be construed as "we command". It is a command issued by a court commanding a public authority to perform a public duty belonging to its office. It is generally issued to various authorities such as to a person; a corporation or an

inferior tribunal requiring him or them to do a particular thing which pertains to his or their office in the nature of a public duty. There are certain conditions under which a writ of *mandamus* may be issued to an authority. These would be:

1. The applicant must have a legal right;
2. The opposite party must have a legal duty;
3. The application should be made in good faith;
4. The applicant should not have any other legal remedy;
5. The opposite party must have refused relief.

At the same time, *mandamus* is an effective residuary remedy in public law as it lies against several authorities. It lies against the legislature, as the Constitution is supreme, against all organs of government, against a subordinate court, or even against the government or its officers directly asking them to discharge the duties imposed on them by statute if they fail to comply with them or to restrain them from exercising powers which have not been conferred on. However, it cannot be issued to the government on the following grounds such as:-

- if there is no legal duty
- if the action is taken only on the basis of administrative instructions
- if it is done in the exercise of discretion
- if it is done on the policy basis
- if it is political in nature
- if it is to make the government enact, implement or bring into force some legislation.

The court can thus issue a *mandamus* to all the above as well as to universities, corporations, and public officials among others. The most important feature of a writ of *mandamus* is that there need not be an actual fundamental right violation for it to be issued, but a sufficient threat to the said right is also a valid ground for using it.

At the same time, the Courts in India are not bound by only the traditional usage of the writs as in England. The scope of writ jurisdiction in India is greater than that of the prerogative writs in England because Article 32 allows the Courts to issue “*writs in the nature of*” showing that the writs in India are not identical with those in England, but only draws a semblance from that country’s writs. This would allow our Courts to mould and change the writs to suit the prevailing situation and peculiar requirements of India.

In fact, in the case of *State of Kerala v. TP Roshana*, Justice Krishna Iyer observed that there was great need to innovate new means and to widen the base of the relief it gave so that the court actualized social justice and inhibited injustice.

It may be stated here that such writs are more a matter of essence than a form. In other words, passing of such writs was necessary only when there was indifference on the part of other wings towards their legal duties. What should be the course of action by the Courts if despite passing of such writs, the apathy continues? In answer to the foregoing question the Courts are allowed to slowly innovate and ensure that the scope and nature of the writ changed and increased with the need of the time and thus evolve the concept of *continuing mandamus*.

Genesis of Continuing Mandamus and Interpretation by the Courts

Continuing mandamus in the United States:

In American law, the proper function of the writ of *mandamus* is to compel the doing of a specific act and is not an appropriate remedy for the enforcement of duties generally, or to control and regulate a general course of official conduct for a long series of continuous acts to be performed under varying conditions. This is because it would render the court a supervising and managerial body as regards the action to which the writ pertains as it would entail keeping the case open for an indefinite time to supervise the continuous performance of duties by the respondent.

However, a few courts are of the view that *mandamus* is an available remedy to compel the performance of continuing duties, and in that case the writ might be directed to future actions regarding the same matter as well. This is generally because the *mandamus* need not always be a single action, but may be a series of actions and may be of such nature that the courts may be able to supervise the performance of the duty and the execution of the mandate. Hence American jurisprudence has already recognized the novel concept, what is called in India, *Continuing Mandamus*.

Evolution in Indian Law:

Under the ambit of its judicial activism, the Indian Courts have evolved a new sort of litigation called Public Interest Litigation, where the requirements for *locus standi* were dispensed with in the interest of the public and the downtrodden and underprivileged who could not avail of the rights guaranteed to them under the Constitution. The Courts have taken the advantage of the open wording of Article 32 and 226 of the

Constitution. These articles allow the Courts the freedom to mould the remedies and even invent new ones for the enforcement of rights. Traditionally writ jurisdiction was only meant for the stopping or preventing mischief, but now it has expanded its scope to include relief for mischief already done and any other remedy to protect the fundamental rights of people. Articles 32 and 226 of the Constitution of India thus give the courts the power to issue 'directions, orders or writs' to achieve the objective of the article.

Under a PIL, the scope of the writ of *mandamus* has greatly increased, because it is issued to compel the government to do what is within its discretion not to do. It thus allowed for an infringement into policy matters to certain extent. An example of this would be when the court allows a petition to ensure that the state provides education for the children of prostitutes or when it allows a petition impugning a provision in the jail manual for allowing a person to be left hanging for half an hour after death stating that this was against the basic human dignity. The Court has thus been increasingly allowing PILs to increase its scope and allows it to usurp the power of the executive and the legislature in certain cases where it believes that the other wings of governance are not functioning to the level that they are legally required to do.

This is perceived in the case of *Vineet Narain v. Union of India*, where continuing mandamus is defined for the first time in India. Verma CJ held that in certain cases it was more advantageous to not hear the matter through and issue a simple *mandamus*, leaving it to the authorities to comply with it, but instead, to keep the matter pending while investigations were being carried on and ensuring that this was done by monitoring them from time to time and issuing orders in this behalf. It was held that in certain cases the issuing of a writ of *mandamus* to the agencies would be futile and, therefore it was decided to issue directions from time to time and keep the matter pending, requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. This act was thus termed as *continuing mandamus*.

In this case the reach of the writ of *mandamus* was extended, and monitoring was taken over only because the superiors to whom the investigating authorities were supposed to report to were themselves involved or suspected to be involved in the crimes that were to be investigated. In order for the court to make use of the remedy of a *continuing mandamus*, the same judges, or at least one of the judges would have to sit on the bench to monitor the case. This would normally be done by holding the case as part-heard, but this was not always necessary as the court could pass the matter on to another authority to deal with too. At the same time, although the term has been evolved only in the case of *Vineet Narain*, the Court has extended its own functions through the writ of *mandamus* in a similar manner in several cases before and after this case.

Environmental Cases and Continuing Mandamus:

The first case, where such a principle evolved was in the *Bandhua Mukti Morcha* case, where a writ petition was filed to improve the conditions of several workers who were working in inhumane conditions in certain mines in Faridabad. The Judge held that this was against the worker's right to life and directed the state to ensure the welfare of the workers. The Court then continued to monitor the actions taken by the state. This was the first instance where the Court exercised its powers to issue a continuing mandamus against the state although it wasn't called so.

In the case of *Indian Council for Enviro-Legal Action*, a writ was filed in the Court to prevent the flouting of the acts passed by the government to prevent water bodies from getting polluted. This was because the authorities were not taking any action against the offenders. The Court held that the agencies should enforce the law and report to it for further clarifications. It passed several directions especially to the states asking them to submit management plans to control the pollution to both, the Central Government as well as the courts. The Court would go through the plans and the enforcement of the plans in another hearing which was set up. This was a clear case of *continuing mandamus* and the remedy seemed effective as it delegated any further cases to the respective High Courts and agreed to reconvene to ensure that all its other directions were complied with. The judges also discussed the merits of the judiciary performing an executive function, but finally held that this was not the case here and that the court was not usurping the function of the executive, but only discharging its judicial functions in ensuring that it rectified errors of the judiciary.

In the case of *Vellore Citizen's Welfare Forum v. Union of India*, a writ petition was filed against the tanneries in the State of Tamil Nadu since their untreated effluents were polluting all the ground water. The Supreme Court held that the Central Government should create an authority to deal with the above matter and that instead of the Supreme Court further monitoring the situation, the Chief Justice of the Madras High Court was directed to set up a *Green Bench* to deal with the case and to monitor the functioning of the committee and the tanneries in Tamil Nadu. Thus the Supreme Court asked for a special bench to be set up to continuously hear all matters pertaining to this case and other environmental cases within the state in another show of *continuing mandamus* although it wasn't called so at that time.

In the case of *D.K. Joshi v. Chief Secretary, State of U.P.*, a writ was filed before the court stating that in spite of several orders filed before these courts, the concerned authorities in Agra had been extremely apathetic and had been extremely slow in enforcing the various directions given by the court to ensure better living of the citizens in Agra. The Court thus held that since the case had been going on since 1992, there should be a special monitoring body set up which the authorities would be responsible to. This is a case where the remedy of *continuing mandamus* has not been very successful since even after several years of directions, the Court has been able to achieve a very limited level of cooperation from the authorities.

In the case of *M.C. Mehta v. Union of India*, a writ was filed due to the vehicular pollution in Delhi. The Supreme Court had passed directions for the phasing out of diesel buses and for the conversion to CNG. The directions were not complied with and the state pleaded that this was because there was shortage in supply of CNG. This is a case where, in spite of several directions by the Supreme Court, the government had been extremely slow in responding to the order. This was hence an extremely difficult case to implement although the pollution levels have gone down to an extent.

In the case of *T.N. Godavarman v. Union of India*, a writ was filed in the court to protect certain national forests since the government was still allowing mining and felling of trees to take place there. The court gave several directions and monitored the actions of the various state governments to ensure that they complied with the orders and made them report back to the court as to the action taken by them and the reasons for which they allowed certain actions to be taken. The court thus monitored the executive to ensure that they took care of the national forests. This could technically be called the executive's role as it is up to them to implement legislation, but the court took over its function due to its inefficiency and made the governments report back to the court periodically.

This can be seen in the case of *Murli Deora v. Union of India*, where the Supreme Court banned smoking in public places and held that the various authorities should report to it in 6 weeks time to give a report of their progress.

In this case, the ban on public smoking does not seem to be very efficient and there is a great problem in the implementation. The Supreme Court also realized that there was poor response to the ban and tried to make the prevention more effective, but this has still not worked and the order is, although not completely futile, could not be properly implemented.

Continuing Mandamus: A new facet of Environmental Jurisprudence

In the case of *Manohar Lal Sharma vs The principal Secretary & Ors* on 17 December, 2013 the Supreme Court has held, "The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions."

In *Mahendra Lodha vs State of Rajasthan* on February, 2007 the Supreme Court expressed its concern regarding the need for *continuous mandamus* in the following words:-

We have given our thoughtful consideration to the prayer to continue the process of *continuous mandamus*. A writ of *mandamus* is an order in the form of a command directed to an administrative authority or other authority required to perform a specific duty fixed by law or associated with the public office. It is obvious that it is primarily for the Executive to advise suitable measures and to provide the machinery for rigid enforcement all those measures to deal with the problems as raised in the instant petition. However, a doubt has been expressed about the extent of powers of the concerned authorities, to take adequate and suitable measures for the speedy enforcement of the existing provisions which if properly enforced, would take care of the problems raised. Thus, there is a need of judicial intervention. The Courts have been making judicial intervention concerning violation of human rights, environmental problems etc. as an ongoing judicial process.

Efficacy of Continuous Mandamus

The doctrine of continuing mandamus serves several functions especially in a case where the executive does not carry out its functions effectively and either does not implement a statutory function or duty, or does not exercise its discretion wisely. The judiciary has been seen as an effective tool by the citizens to enforce the law and uphold justice when the executive has not done that.

The remedy is often considered useful especially in the case of children's rights where the executive has continuously failed to implement. Thus the only remedy left for the rights of children is the PIL. Although there is a lot of legislation in place, very little has been done to implement it. Thus the court can use its powers under *continuing mandamus* to address this issue. This is a situation where the Court should actually make use of the remedy.

However, although it is useful in setting wrongs right, the court should still exercise extreme caution in making use of it because this may set a dangerous precedent and allow the court to arbitrarily take over the function of the other organs of governance without any fetters binding its authority.

Thus the courts should exercise some discretion in allowing the filing of and giving remedies to public interest litigation. Judicial activism is an active interpretation of existing legislature by a judge, made with the view to enhance the utility of that legislation for social betterment. Although taking an activist position is extremely useful in several cases, the courts have tended towards abusing this power and sometimes taken an extreme stand and have thus attracted a fair amount of criticism.

“There is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the legislature or the executive government....In the process of correcting executive error the court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one.”

Former Chief Justice Dr. A.S. Anand, also commented on the dangers of judicial activism and remarked that judicial activism should not become judicial adventurism and to ensure this the courts should limit its role to its legitimate authority; although the courts had a duty to protect individual rights by implementing the constitutional safeguards, they could not subvert the Constitution itself to do so.

Besides this, with the Courts taking such an active role in taking over the functions of the executive as with the doctrine of *continuing mandamus*, the traditional litigation would suffer and take a back seat as the judiciary would be too busy taking over the role of the executive. Another criticism of judicial over activism would be that the judges are not democratically elected, either directly or indirectly, and as such should not thus take over the functions of the appropriate body and besides this, the judiciary would lack the expertise required to solve many of the problems it attempts to solve.

In the case of *continuing mandamus*, it might be argued that although the words ‘appropriate order’ or ‘direction’ in Article 32 of the Constitution have not been defined and have a wide amplitude, the court need not invent new remedies such as that of *continuing mandamus*, since it was totally unnecessary. Even though the motive was laudable, the court had pointlessly expanded the scheme of Constitutional remedies especially since the existing mechanism was sufficient to secure the objective. However, this would be refuted on the ground that the Supreme Court had been using the remedy in several cases, but under the writ of *mandamus* itself. This was a wrong use of the writ and the court had therefore not invented any new remedy, but simply given a ‘name’ to an action which had been wrongly classified under the traditional writ of *mandamus*.

At the same time though, the judicial policy making did not auger well for Constitutionalism as it would have been appropriate for the Supreme Court to leave these functions to the Executive, although with a caveat that the executive had to act in accordance with the principles of ‘rule of law’ and ‘fair play’.

II. CONCLUSION

Every beginning has an end. Sooner or later, a thing with a beginning comes to an end. The present generation has not only developed drastically but has also been developing swiftly by minutes. The over accentuation on or consciousness of mind has caused the conscience to remain either in a subconscious or unconscious state. In the words of Osho, “The ordinary man is living a very abnormal life, because his values are upside down, money is more important than meditation, logic is more important than love, mind is more important than heart, power over other is more important than power over one’s one being, mundane things are more important than finding some treasures which death cannot destroy.” Consequently, the present generation has already confronted with the biggest challenges like environmental pollution, drugs addiction, terrorism etc. amongst which climatic change, consequent upon environmental pollution, is the worst amongst all other factors. Greed of yesterday has taken the color of need today. The strong desire to quench the greed in the name of need has propelled mankind to go for innovations. All the inventions are the up springs of the so called necessities. It is a popular saying that Necessity knows no law. But Laws are made to harmonize the conflicting interests i.e. to protect the greater interest or necessity at the cost of the smaller one. At this juncture, unless mankind voluntarily comes forward with a different mindset, neither law nor judiciary can help save it from the ensuing definite oblivion.

III. SUGGESTIONS

1. Mankind in the 21st century is supposed to be aware of the nature and consequence of the act what he does. We should choose a course of conduct which is not detrimental to the society.
2. The fruits of natural resources made available to us were stored by our fore fathers. We should make use of the same as trustees so that the same be passed on to our future generation also.
3. Climatic change being the greatest threat to the very survival of mankind, we should join together not to be the contributors to environmental pollution in the name of development.

4. Implementation of law is more a challenge than its legislation. If a member of Pollution Control Board is corrupt, then such act spoils the system in entirety. Stringent rapid actions should be taken against such public officers.
5. Development is no doubt a law of nature and hence is a human right as well. But more important than that is sustainability but of which development is of no meaning.
6. The Judiciary doesn't take pleasure in interfering with the affairs of the other wings but it won't mind doing so if those other wings don't act up to their legal mandate.
7. The Judiciary is not to be blamed to have encroached in to the domain of the other wings through self acclaimed principles rather it is commendable for the sake of maintaining the check and balance as envisaged under the Constitution.

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IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Shreemanshu Kumar Dash. “Writ of Continuing Mandamus in matters of PILs: A Step towards Development of Environmental Jurisprudence.” *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* , vol. 22, no. 8, 2017, pp. 26–35.