

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 7 | Issue 1

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2024

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# Case Study on “Subhash Kumar v. State of Bihar and Others”, AIR 1991 SC 420

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## ABSTRACT

*Article 32 of the Indian Constitution gives power to the apex court to protect the rights of the individual, and this provision has been broadly interpreted from time to time. The other magnificent provision of the Indian Constitution is Article 21, which protects the life and liberty of individuals, which is also the basic right of the individual and cannot be taken back by the state. The Public Interest Litigation (PIL) is nowhere defined under the Indian Constitution, but this the mechanism is evolved by the Indian Judiciary.*

**Keywords:** *Fundamental Rights, Human Rights, Environment, Pollution, PIL.*

## I. INTRODUCTION

### (A) Historical Relevancy

Article 32<sup>3</sup> of the Indian Constitution gives power to the apex court to protect the rights of the individual, and this provision has been broadly interpreted from time to time. The other magnificent provision of the Indian Constitution is Article 21<sup>4</sup> which protects the life and liberty of individuals which is also the basic right of the individual and cannot be taken back by the state. For this a citizen is given a remedy under Indian Constitution, which can be used by a citizen when there is a violation of his fundamental rights.

The Public Interest Litigation (PIL) is nowhere defined under Indian Constitution, but this the mechanism that is evolved by the Indian Judiciary that can be defined as ‘Litigation for the protection of Public Interest’ and in another words PIL is the tool by which individuals can

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<sup>3</sup> Remedies for the enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcing the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have 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 any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.

<sup>4</sup> Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to the procedure established by law.

directly approach the highest court of the land.

## **II. FACTS OF THE CASE**

- Subhash Kumar, the petitioner, filed a public interest litigation before the Apex court by way of a writ petition stating his contention that the Respondents, West Bokaro collieries and Tata iron and steel company (TISCO) polluting the river Bokaro by discharging surplus waste in the form of slurry and sludge by their action water of the Bokaro degrading its quality and becoming unfit for irrigational and drinking purposes.
- Furthermore, Petitioner seeks an Injunction against respondents' actions to prevent purity of the river and to protect the environment from pollution.
- The Bihar state pollution board issued guidelines and directions to take measures to prevent the quality and efficiency of the river. With the due permission of the Board, the company has been granted permission to discharge the waste from their outlets without damaging the river.

## **III. ISSUE RAISED**

- Whether the PIL filed by the petitioner is in the public interest or for personal matters?
- Whether the river is being polluted by the discharge of slurry from the respondents' mining plant?

## **IV. ARGUMENTS OF THE PLAINTIFF**

### **Issue 1**

The PIL in the given case is filed by the petitioner for the benefit of the public interest. As per Article 32 of the Indian constitution, it gives the right to file a PIL before the Honble SC and gives right to any person or person who is affected by such Cause of Action, i.e., violation of their fundamental and legal rights.

As the petitioner approached the State Pollution Control Board for alleged against the factories for discharging the polluted water and dumping factory waste in the nearby Bokaro River, he claimed that the board should take effective measures for preventing this pollution.

The Indian constitution under Article 21<sup>5</sup> gives the right to every individual to live in a pollution-free environment, enjoying a decent standard of living as regards to being taken as

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<sup>5</sup> Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

inherent or basic part of life.

In the preview of the Indian constitution, it has broad interpretation to maintain the natural resources that are owned by the citizens of India and the government is the trustee of those resources (In public interest).

There is a fundamental rule of interpretation and amendment that are majority handled by the three pillars of law: the judiciary (interprets the law), parliament (makes the Law) & legislative (implements the law). So hereby, initially no law has been given under the constitution for protecting the environment.

Because of the keen interest or the increasing awareness of the environment among the citizens, the Indian government enacted the 42<sup>nd</sup> amendment in the Indian constitution in 1976 and introduced a direct provision for the protection of the environment under Article 48A<sup>6</sup> of DPSP (Directive principle of State Policy).

The Constitution of India contains specific provisions on environmental protection under the Directive Principles of State Policy and Fundamental Duties chapters.

Article 48-A - The Article says: "The State tries to protect and improve the environment and to protect the forests and nature of the State."

The said amendment imposed a responsibility on every citizen in the form of a fundamental duty.

Article 51-A, Clause (g): which deals with fundamental duties of the citizens:

"It is the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

Thus, protection and improvement of the natural environment is the duty of the State (Article 48-A) and every citizen (Article 51-A (g)).

In *Ratlam Municipality v Vardhichand*, where the problem of pollution was caused by private polluters and haphazard urban planning, the Supreme Court held that a clean environment is an essential part of every individual to enjoy the right to life under Article 21.

In the case *Kendra v State of UP*<sup>7</sup>, also known as the Dehradun quarrying case, the Supreme Court of India has held that pollution caused by quarries adversely affects the health and safety

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<sup>6</sup>protection and improvement of the environment and safeguarding of forests and wild life: [After article 48 of the Constitution, the following article shall be inserted Constitution (Forty-Second Amendment) Act, 1976]  
The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

<sup>7</sup> AIR 1985 SC 652.

of people and hence, the same should be stopped as violating Article 21. In this case, the Supreme Court for the first time held that the right to a wholesome environment is a part of the right to life and personal liberty guaranteed under Article 21 of the Constitution.

## **Issue 2**

It is clearly stated that the petitioner filed public interest litigation before the honble SC to claim against the two iron and steel companies alleged to have created a harmful and risky environment for the public by dumping waste in the Bokaro River.

The petitioner approached the State Pollution Control Board to take the effective measures for controlling such hazardous actions; in lieu of this, the petitioner claimed that the board did not take effective measures to prevent such action.

Therefore, the petitioner argued before the Honble SC and claimed to the court to take the legal action against the factories as well as the board that controls such types of activities or actions that are harmful to the environment, including air, water, and land.

The respondent companies claimed that they had followed the given instructions of the board concerned with the prevention of pollution.

Even the Board reports were in the favor of the companies, stating that the ratio or the amount of pollution created by the companies should be as per the instructions of the board.

Here, under such circumstances, the court found that the board would take effective measures to prevent waste discharge from the factories into the river and found the factories guilty of violating the fundamental right given by the Indian constitution under article 21 (Right to Life).

In this case, the state of Bihar had failed to follow its duty to protect and improve the natural environment.

Fundamental right and human rights of every individual have been violated or hampered, which is inherent to them.

## **V. ARGUMENTS OF THE RESPONDENTS**

### **Issue 1**

The Respondent argued before the Honble SC in lieu of a PIL filed by the petitioner (Subash Kumar) that the factories should follow all the instructions, rules of Bokaro River. During the proceedings, the State Pollution Control Board founds that the factories followed all the instructions, and after the monitoring of all the facts, the report was generated and resulted in the noninvolvement of company in polluting the river.

They further argued that the fertility of the land across the river should not be affected because there is no sign of effluent water discharge in the river. They also mentioned the fact that the Bokaro River remains dry for 9 months and contains the most carboniferous material, which is more expensive and valuable with respect to the production of fuel.

As the importance of the river was under the preview of the company, it clearly seemed that the company would not let it go waste in the river and should follow up the necessary precautions so that no slurry escapes in the pond.

## **Issue 2**

The petitioner (Subash Kumar) under article 226 of the Indian constitution initiated several proceedings against the defendant in the High Court of Patna, Bihar. The petitioner was a coal trading businessman and possessed a license for it, the petitioner tried to put pressure on the respondents to supply more quantity of slurry, and in case of denial by the other party, the petitioner harassed them.

By considering all the material facts of both parties, the HC of Patna dismissed the petition and ordered the petitioner to pay the compensatory cost of 5000/- rupees to the Respondents.

Therefore, by the decision of the High Court, it seemed to be clear that the respondent should be innocent.

## **VI. JUDGMENT BY THE COURT**

The Court dismissed the petition of the petitioner and held that the Board had taken reasonable precautions to prevent the discharge of waste materials from the factories into the river. Furthermore, the court held that petitioner had 'Self-Interest' rather than for the 'Public Interest' and under Article 32 of the Indian constitution, PIL can be filed when the matter is for the benefit of public at large not in the personal interest.

As the petitioner was a businessman and had a license for coal trading, he forced the respondent to deliver slurry, and when the respondent denied the same, he started harassing him.

The petitioner under article 226 of the Indian constitution reached the Patna High Court and filed many petitions on the same matter. Based on the facts, the Apex court rejected the petition and directed the petitioner to pay a sum of 5000/- Rupees to the respondents.

## **VII. OVERVIEW OF THE ISSUE AND CONCLUSION**

By the glance of this case, we can infer that the Apex court evolved the principle of environment jurisprudence defied under article 21 of the Indian constitution, every citizen shall have the right

to pollution-free environment. On the other hand, Article 51-A, states that the protection of the environment is a fundamental duty of every citizen.

The court did not enter in details of the case because the prima facie petitioner filed the petition in personal interest rather than of the interest of the public at large.

In this case, we can interpret that a pollution-free environment is a part of Article 21 of the Indian constitution.

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