Political Struggle Through Law

The Public Interest Litigation (PIL) route to environmental security in India with special reference to the environment movement in Goa.

By Adv. Norma Alvares

Introduction

I once heard a bureaucrat comment that the march of progress in Goa was being hampered by the laws governing development in the coastal areas and in forest lands. Blessed with a 104 km coastline which runs along the length of the State and a parallel range of hills in the hinterland comprising the Western Ghats, one cannot but appreciate this frank bureaucratic assessment of the law, even if one did not agree with his ideas of progress and development.

Ironically, it is these two ecological endowments – the coastal stretch and the forests of the Western Ghats, which altogether occupy nearly two thirds of the State – that have given Goa its beauty and its character and made this land so irresistible to visitors both from within India and abroad. And it is precisely in these two ecosensitive zones that some of the fiercest battles have raged during the past three decades with environment activists and paryavaran andolans on the one side and the State Govt along with the builders' and miners' lobbies ranged on the other.

This article attempts to present the various environment conflicts that have found their ways to the courts of law in the form of Public Interest Litigations (PILs) filed mostly by citizens' groups – either registered NGOs or loosely formed Nagrik Samitis – that have now sprouted in practically every village in the State. Some PILs have been filed sometimes by individuals as well. Through this narrative, I hope to highlight:

a) The type of concerns that citizens have brought to the court and the manner in which these have led to expansion of environmental consciousness in the State of Goa;

b) The response of the court and the kinds of reliefs it has been able to give citizens;

c) The impact of judicial activism in the area of environment protection.

I also hope that the discussion will lead to an understanding of when and why courts interfere in environment matters (and when they do not), the extent of work and commitment that citizens must be willing to expend if they want their PIL to have a wide impact on society and the consequences that citizens must be prepared for once they decide to enter the portals of the court via a PIL. I hope to also draw some conclusions about whether such PILs do lead to effective protection of Goa's ecological endowments.

The environment movement in Goa goes back to the early seventies, commencing almost around the same time as global awareness emerged of the urgent need to protect the earth's resources. At the famous Stockholm Environment Conference of 1972, heads of State assembled for the first time with a single point agenda: to affirm their commitment to protection of the environment in the interests of life on earth.

In Goa, during the same period, environment concerns initially manifested themselves in the form of protests and agitations. Agitations were always preceded by citizens' attempts to convey their grievances to the authorities through the accepted, conventional channels of dissent: discussions, letters, signature campaigns and lobbying through their elected representatives. When such modes of protest failed, the protestors took their battles to the street via *dharnas*, *bandhs*, demonstrations, *rasta rokho, morchas,* etc. Such strategies involving mass mobilization were very effective and are very much in use even today.

One can still recall the successful *ramponkar* (traditional fisherfolk) agitation in the late 1970s against the chemical pollution unleashed by Zuari Agro Chemicals (today Zuari Industries) or the Nylon 6,6 agitation which dominated the 1990s when the villagers of Kerim successfully brought America's largest chemical multinational (Du Pont) to its knees by their steadfast refusal to allow the company to set up a factory in the pristine environment of Ponda taluka.

A vital ingredient for the success of any agitation is the availability of large numbers of protestors who are prepared to give time and energy to persevering with the agitation for unknown lengths of time. The course of an agitation is always difficult to predict and much depends on the skill of the campaign leaders and the response of the administration. It remains a monumental effort for citizens – already burdened with the demands of conducting their ordinary

lives – to have to resort to street agitations every time they want their grievances redressed.

Moreover, as development moved into the fast lane, people found that they had to fight simultaneously on several fronts: huge tracts of forest were mowed down as mining leases expanded their operations; sand dunes on beaches were bulldozed and levelled to make room for luxury resorts; wells in villages ran dry as ground water was relentlessly pumped out for construction activity; newly commissioned factories spewed toxic fumes into the air and untreated effluents into the streams and rivers … the list goes on and on.

Citizens were thus forced to look for alternative fora for quick and effective redressal of their grievances. It is in these circumstances that some environment NGOs began to turn to the judiciary, notably the High Court for relief. To their good fortune the NGOs found in the judiciary a powerful ally in their struggle for the enforcement of laws aimed at protecting the environment.

The court invariably showed clear displeasure when it found that environment laws were being violated. Often, it was willing to go a step further and appoint expert committees or commissioners to assess the situation, if it felt that this would help the court appreciate the petitioner's grievance better. For the public who had grown accustomed to apathetic, sometimes harsh and callous treatment from the bureaucracy, such courtesies brought unprecedented relief. PILs at once raised the hopes of people who had begun to despair of finding a way to save their natural heritage.

I will now highlight some of the important issues that people living in Goa have taken to the court in the form of PILs. Many of these issues should be viewed in the context of more than half of Goa being located within the Western Ghat areas. Activities like mining that are affecting the Western Ghats have serious implications for those areas, including estuaries, outside the Western Ghat region.

I. COASTAL ECOLOGY AND ITS ASSETS

It is entirely natural – Goa having a prominent and beautiful coastline – that among the first environmental issues that would reach the judiciary would be the protection of the beaches and the coastal stretches of Goa. Prominent among these natural assets are the sand dunes.

Any person dwelling along the coast knows that sand dunes are vital to the stability of the coastal region. These ancient, monumental edifices of sand are buffers created by nature to protect the hinterland from the invasions and ravages of the sea. Destroy the dunes and the beach is vulnerable to inundation, fresh water aquifers disappear and the sea gets a golden opportunity to expand landwards. Hence sand dunes are described as nature's first line of defence for the coastal region.

In Goa, for a long while, sand mining or the removal of sand from the beaches was a small-scale, part-time trade, carried out in the dry season and the sand utilised for building local houses. However, in the sixties, the Goa government granted 16 leases to individuals enabling them to mine silica-sand from the beaches. As a result, sand began to be removed on an unprecedented scale. Naturally, such large-scale extraction led to erosion of the beach front, besides depleting a valuable ecological asset. A south Goa based citizens' committee protested the grant of these leases. As a result of the protests, the government finally took a policy decision to cancel the leases in the mid-80s. Some of the lessees challenged the cancellation order in the High Court.

Environmentalists were concerned about the final outcome of this contest. Would correct facts be placed before the judges? Were the judges knowledgeable in the matter? Would the government defend its decision vigourously?

These considerations led a registered environment NGO – the Goa Foundation – to file an intervenor application in the matter. The court allowed the application and thus the NGO was able to canvass arguments in support of the government's decision and bring on record scientific studies and data to show that any reversal of the decision to cancel the leases would be disastrous for the coastal ecology.

The strategy worked. The High Court eventually upheld the Government's decision to cancel the leases altogether. The lessees' appeal to the Supreme Court also failed. The judgment was hailed as a significant environment victory, one that put a stamp of approval to the citizens' movement resisting the sand extraction leases.

But the sand dunes were not safe as yet. A fresh assault on them arose now from an entirely different quarter. The tourism boom of the eighties led to a plethora of approvals from the Ministry of Environment & Forests for locating 5-star

resorts along Goa's coastline. Sand dunes were the first casualty of the designer dreams of these resort owners: they were mercilessly to make way for the new artificial enclaves of wealth and luxury opening directly to the sea.

PILs were filed against the resorts, challenging the Ministry's approvals and the destruction of the dunes. Regretfully, the judiciary has sent out mixed signals on this subject. Some judges have unequivocally denounced the destruction of the dunes and have halted projects which have sought to destroy these magnificent natural edifices, but others have not been so inclined for a variety of reasons, but mostly because they are not entirely convinced that development must bow down to mere mounds of sand. Why is there this mixed response?

Firstly, not all judges are familiar with the details of coastal ecology. Not every judicial officer comes from a coastal area. Many have never seen dunes or perchance have noted them as mounds of sand carelessly distributed in large or small heaps along the coastline. The task of impressing upon the court the value of leaving the dunes untouched in situ, places an enormous burden on the litigant in the PIL, more so if the judges are unwilling to admit ignorance. In the case of the Ramada resort, the presiding judge dismissed the petitioner's effort with the curt remark – 'Everyone knows about dunes. We have all made sand castles when we visited the beach as children.'

But why blame judges alone? In the Dalmia Resort's case, the counsel for the hotel argued that the dunes would in fact be strengthened by the construction of buildings on them since cement and concrete are much stronger materials than mere sand. This laughable suggestion was actually seriously considered by the court. Thus, judicial response often depends on the wisdom and knowledge of the judges before whom the case is argued.

Even after the CRZ Notification came into force in 1991 and zoned sand dunes as CRZ-I (i.e., areas requiring absolute protection and therefore designated as 'No Development Zones') the courts have wavered when confronted with projects wrongly approved on dune territory.

In the Diksha Holdings case the Supreme Court itself permitted the 5-star resort to be constructed in dune area because a government department's report stated that while the area did comprise many dunes, these were small ones and that if development were prohibited in such areas, no constructions would be possible along the coast in the entire State. The petitioner's argument that the law protects all dunes – small and large, stabilized and shifting – and that the

department's opinion that small dunes could be sacrificed was not in consonance with the law cut no ice with the Apex Court which permitted the construction even as the same judgement affirms the country's commitment to protection of the environment.

The Diksha judgment became the basis for clearance of several other projects in sand dune areas. In the case of the Piva Resorts at Baga, Calangute, the Apex Court permitted the largest dune in the stretch – which occurs at a distance of around 300-400 mts from the HTL – to be completely encircled by the resort's buildings, naively assuming that dunes, although completely cut off by the proposed development from the sea which is their source of life and nourishment, will some how survive in such imprisoned conditions.

Of course, the major fault for this loss of the sand dunes lies with the State and Central governments for not ensuring that even 20 years after the CRZ notification has come into force, these ecological assets (sand dunes and mangroves) are identified and demarcated so that scope for conflict is removed and they are protected.

Despite the above, the Goa bench of the Bombay High Court has done much to enforce the 1991 CRZ Notification. It has ensured that the High Tide Line which is the pivot on which the notification hangs was demarcated on the ground. It struck down the Government's decision to erroneously demarcate a HTL 40 meters closer to the sea in order to benefit certain hotels. It responded swiftly to citizens' complaints of hotels cutting off their access to public beaches and prominent resorts like the Taj, the Leela, Cidade de Goa, Kenilworth, etc., were all forced to remove the obstructions they had placed on public pathways. The court has repeatedly stopped development work in mangrove and turtle nesting areas.

In a landmark judgement in 2006 – a decade and half after the CRZ Notification came into force – the court further interpreted the provisions of the CRZ Notification applicable to hotels and dwelling units in rural undeveloped areas, halted all further development in Goa's coastal villages till a survey is carried out of constructions made post-1991 and directed that all structures that are in violation of the CRZ regulation be demolished.

The court has painstakingly monitored the compliance of its orders in 26 coastal villages for the past four years, rightly recognising the merit of the view taken by the Apex Court in a landmark judgment on the enforcement of the CRZ

notification that ‘tolerating infringement of the law is worse than violating the law.’ Without a doubt, the judiciary has rendered yeoman’s service in protecting the coastal ecology and citizens who have approached it have been richly rewarded for their efforts.

II. PROTECTING FORESTS

The Forest Conservation Act, 1980 (FCA) is a remarkably simple piece of legislation to protect natural forests from indiscriminate destruction and its provisions are crystal clear even to a lay person having basic knowledge of legal terminology. In essence, it states that using forest land for a non-forest purpose requires prior permission of the Ministry of Environment and Forests. Perhaps it is the clear mandate of the law that makes it relatively easier for the courts to enforce. Further, the repeated, emphatic directions from the Apex Court that forests must be protected have undoubtedly also helped.

The catch in any PIL that is filed for protection of forests lies in proving that the land is forest land as not all forest lands are so notified in the land records. The Goa bench of the Bombay High Court has however passed some exceptional orders for the protection of forests in the State of Goa. In fact, much prior to the Supreme Court directives in the well known Godavarman case, the High Court at Goa in 1990 itself had already declared that the FCA is applicable to all forest lands irrespective of ownership and that a broad liberal definition of forests has to be applied, with due weightage to the expert opinion of forest officers, particularly since there was no statutory definition of the term ‘forest’.

The 1990 case in point is the *Tree Officer v/s Salgaoncar & others*. It was not a PIL. An industrialist had sought to clear-fell a patch of forest under private ownership in order to put it under a cash crop. The government record of rights classified the land as ‘bharad’ (barren land). However, the forest department on inspection affirmed that there was good forest on the land. The court ruled that since the purpose of enacting the FCA was to prevent large-scale cutting of trees and denudation of forest land, the Act should be construed liberally. It went on to apply the dictionary meaning of forest and further held that a wrong classification in the land records could not bar the land from being categorised as forest when, on inspection, it was found to be forest. Pursuant to the judgment, the forest department framed criteria for the identification of private forests in the State.

Six years later, on 12.12.1996, the Supreme Court passed its well known order in in the Godavarman case which has become the basis of a country-wide effort to protect the country's natural forests. It will be useful here to examine how the Apex Court order has been enforced in Goa. The order broadly gave two directions which are of relevance to the State:

First, it directed that all ongoing activities within any forest not having the approval of the central government must cease forthwith.

Second, it directed every state government to constitute an Expert Committee to:

1. Identify forest areas which are forest irrespective of whether they are notified, recognized or classified under any law and irrespective of ownership of the land of such forest

2. Identify areas which were earlier forest but stand degraded, denuded.

3. Identify areas covered by plantation trees belonging to the government and those belonging to private persons.

With regard to the first direction, the Goa state government did precious little. The principal culprits in the destruction of forests are the mining companies, most of which have their leases located in the Western Ghats. These leases comprise huge tracts of forest lands. (As mining is dealt with in the next section of this paper, no more will be said here on this aspect).

With regard to the second direction, the State Government set up an Expert Committee and assigned to it the task conveyed in the Apex Court's order. The Expert Committee took a year and a half to identify some 47 sq km of private forest land. This was a miniscule quantum for Goa, whose previous records showed that there were around 200 sq km of such forests. Nonetheless, the government was not pleased with the report. So it appointed another expert committee ostensibly to continue the exercise, but basically to review the work of the first committee. A PIL moved in the Apex Court by the Goa Foundation stalled this move. So the second committee was compelled to restrict its task to identifying new forest areas only and it identified an additional 20 km of private forests. A total of 67 sq km of forests on privately owned land was thus identified by the two committees.

However, the identification remained only on paper and the report was under wraps as the State government debated whether or not to have both the reports scrapped. In the meanwhile development was taking place on these identified forest lands. So a PIL was moved before the High Court in 2003 seeking absolute protection of these forested lands and demarcation of the forest in the survey maps and on the ground. The High Court acceded to this request and further directed that the reports be made public so that the people were made aware of the status of their lands.

But what of the balance private forest lands? The two reports had barely identified a quarter of the private forests in Goa. So another PIL was filed and this has forced the government to agree that it will take steps to complete the exercise. Two forest committees have recently been notified – one for north Goa, the other for south Goa – and the government has assured the court that the exercise will be completed within two years.

Till date, both the committees appointed have ignored the Supreme Court's mandate to also identify degraded forest lands. A PIL which draws this lacuna to the court's attention has been admitted for hearing and is pending disposal. The government is hemming and hawing on this aspect.

In the meanwhile, another PIL has been filed challenging the validity of one of the criteria adopted by the Forest Department – namely, minimum canopy density of 0.4 or 40% – for identifying private forests. The other two criteria require that the land with trees to be identified as forest must be minimum 5 hectares or, if smaller, must be contiguous to government forest. Also, 75% of the trees must be forestry species. These three criteria were never even formally approved by the State Government. But successive committees and forest department have used these criteria for well nigh over two decades to identify natural forests on privately owned lands.

In March 2008, the Apex Court accepted the recommendations of the Central Empowered Committee (CEC) that forest lands with canopy density of 10% to 40% fall in the category of 'open forests', and hence those wishing to divert such lands would be required to pay Net Present Value (costs) for diversion of such lands to non forest use in addition to costs for compensatory afforestation. The PIL has been admitted for hearing by the High Court. In the meanwhile, in another PIL, the court has already stayed development on a plot of land

identified as being open forest, i.e., having a canopy density of less than 40% on the aforestated grounds.

The court has also entertained PILs which have questioned the wisdom of excluding the plateaus (sadas) in Goa – many of which are part of the Western Ghats – from the purview of the FCA on the ground that they have sparse tree cover. Petitioners have drawn to the attention of the court that these plateaus have a high biodiversity index comprising native endemic species some not found anywhere else in the country. At any rate, to simply equate forests solely with existence of trees is not just ecologically unsound but also not in consonance with the definition of forest as accepted by the court. It may be recalled here that the definition of forest includes 'a wild, uncultivated waste, wilderness.' Hence, open stretches within forest enclaves must also be categorised as forest land, as is done for wildlife sanctuaries, national parks, reserved and protected forests, all of which have intermittent blank areas or grasslands where ruminants graze and predators can give chase.

Last but not the least is the impact that development on plateaus or grasslands in forested areas will have on water supply. It is well documented that these plateaus are the catchment areas for rain water and a whole community of living organisms, including humans, animals and vegetation are dependent for their survival on the springs, wells and ground water aquifers that are created as a consequence. (This issue is dealt with comprehensively in the section dealing with the judiciary's efforts to protection the hills in the State). Suffice it to say here that it is not in the interests of preservation of biodiversity, flora and fauna to permit development on the rocky or grassy open spaces in the midst of the tree covered forest areas and thereby compromise the integrity of a compact forest system.

It is important to note that the High Court has admitted such PILs which not only question the wisdom of specific government decisions but raise wider issues so that remedial action can be taken on a much larger scale than the specific instance brought to the court.

III. MINING DEVASTATION

Mining is a major industry in Goa and has single handedly been responsible for the most devastating effects of environment degradation that citizens, especially in the rural hinterland, are facing. Vast tracts of forest have been razed to the

ground, partly with approval of the Ministry of Environment, but mostly illegally since, even where consent for diversion of forest to non forest use has been obtained, the mining activities invariably destroy far more forest than may be legally permitted in the specific case.

There is practically no case of permanent reafforestation or rehabilitation of the land even though mining has commenced way back in the 1950s. Even the few companies that carried out some afforestation earlier are now reopening those planted portions of the lease as lower grades of ore and manganese are being accepted in the international markets.

Mining leases are chiefly located in or close to the Western Ghats which therefore bears the brunt of environment degradation in the form of destruction of forests, disruption of wildlife habitats, damage to flora, depletion of water sources and altering of the natural landscape. Those who live in villages in the Western Ghat region face reduction – or the drying up altogether – of their water sources (springs, wells), siltation of their agricultural fields from mining silt and therefore loss of livelihood, dust and noise pollution and insurmountable traffic problems as trucks ferrying the ore race up and down narrow village roads with scant respect for people's safety. Wildlife-human conflicts are also seeing an unprecedented spurt, indicating disturbance of wildlife habitats.

All the ore that is extracted is destined for export and all the profits from these earnings, barring a nominal fee paid to government, stay with the mine owner. The villagers are sometimes offered a 'dust and noise pollution allowance,' or some petty job in the mines. The mining companies also help build temples, bus stops and other charitable works, etc. Male folk who are thrown out of agricultural work take loans to purchase trucks and thus become bonded to the mining companies for the rest of their working lives.

It is this desperate scenario, heightened in recent times by the re-activation of several old and abandoned leases, that has resulted in a veritable flood of PILs in the High Court either as letter petitions signed by large numbers of villagers from the affected areas or through formal writ petitions. The court has begun to take notice of these complaints, though it is still circumspect about halting mining activity altogether, even when the devastating impact on the environment and the people living in the vicinity is clearly visible. Perhaps, it is the complicated nature of the mining laws – which are entirely tilted in favour of mining – that is the reason for the hesitation. Thus, mining continues without

the lessee having a lease deed, a renewal order, forest clearance or environment clearance on the specious grounds that applications for these clearances or renewals have been made and are pending with the respective authorities. PILs challenging this view are yet to be finally disposed of.

Nevertheless, encouraged by the hard questions that the court is asking both of the mining companies and of the authorities responsible for implementation of mining laws, citizens from mining areas are not just highlighting the destruction of the environment and of their livelihoods by mining activities but also demanding compensation, relief and better environment conditions.

Some of the issues regarding the applicability of the FCA and the Environment Impact Assessment Notification to mining leases have been filed directly in the Supreme Court as these aspects would be relevant not just to Goa but to mining all over the county. The orders passed by the Supreme Court are forcing the mining companies to comply with the laws for protection of the environment. But several other issues still await final disposal and in the interim the mining continues on its destructive path. One only hopes that these judgements will be delivered before the entire Western Ghats that traverses through Goa is destroyed.

The issues that have been challenged and canvassed in the Apex Court are the following:

i) De-notification of large areas of two recently notified wildlife sanctuaries (Madei and Netravalli): Attempts of the Goa government to demolish these sanctuaries for mining were successfully resisted. The Supreme Court dismissed all applications filed by the Goa government. Both these sanctuaries fall squarely within the Western Ghats.

ii) Exclusion of mining leases from Netravalli Wildlife Sanctuary: The Forest Settlement Officer of the Goa government passed orders excluding 55 mining leases from Netravalli Wildlife Sanctuary. These orders were challenged before the Central Empowered Committee, which filed a report before the Apex Court recommending cancellation of all the orders excluding the mines.

iii) Post-facto Environment Clearances: The grant of post-facto clearances issued to industrial projects and mining leases was halted after this PIL was filed in the Apex Court under Art.32 of the Constitution.

After the admission of the petition (No.460/2004), all mining leases and several thousand industrial units were forced to submit for environment clearance. Directions were issued to state governments to prosecute all those who had been operating without a valid environment clearance.

iv) During the proceedings connected with Writ Petition No.460/2004, the Court in 2006 ordered all mining projects within 10 km of wildlife sanctuaries and national parks to get an NOC from the Standing Committee of the National Board of Wildlife.

v) Mines operating with forests on their lease: An application filed in the Godarvarman case on this issue was referred to the CEC for an opinion. The CEC has since submitted its opinion, confirming that leases that have expired must submit for FCA clearance even if they are not working in the forest area of the lease.

Mining has impacted very severely on the water sources of Goa. Excepting those living in towns and cities, people in Goa have always depended on local sources of water to meet their daily needs, including for agriculture and horticulture. The culture of piped water flowing several hundred miles from a single source or reservoir is an entirely recent phenomenon. However, people in mining areas who once had abundant water are now facing problems of pollution of water, diversion of water courses and depletion / destruction of water sources, all as a consequence of mining.

Pollution occurs when the silt from the mines enters the springs and rivulets, especially during the monsoons, muddying the water and silting the rivulets till they can no longer flow as they have done for hundreds of years. Mining companies do not bother to de-silt these waterways unless compelled to do so and then too it is done so halfheartedly that the silt is soon back in the rivulets. The polluted water ends up in the agricultural fields and destroys agriculture.

Three writ petitions filed in the year 2001 by villagers from different parts of Goa on the environmental pollution due to mining dump sites located on the banks of the Advai and Sonshi Nullahs and the Kushavati river. These received the urgent attention of the High Court. Interim orders were passed restraining the continuance of the areas as dump sites. The Pollution Control Board was directed to inspect the sites and file its reports. The reports were revealing. They concluded that the mining activities were entirely detrimental to the people's main occupation – namely agriculture – and that the conflict between mining

and agriculture would make the latter unviable in the future whereas it is well known that mining is not expected to last beyond another couple of decades. The reports also observed that while in some areas the situation was already irreversible, other areas similarly affected could be saved if corrective action were taken urgently. The writ petitions themselves revealed that the people had alerted the authorities to this situation several times and had pleaded with them through numerous letters, complaints, delegations, etc., but none took note of the complaints.

The court issued appropriate directions based on the reports submitted, including strict enforcement of the ban on maintaining mining dumps within 50 metres of nallahs and riverbanks.

There are at least half a dozen PILs from villagers in south Goa alone praying for stoppage of mining activities as the mining silt from the dumps has entered into the streams or simply flows down the hillside and ends up as unwanted deposits in their fields resulting in huge tracts of fields left fallow, year after year. Since the main occupation in all these areas is agriculture, mining has deprived large numbers of ordinary folk of their main source of livelihood.

The village of Rivona deserves special mention. There were 23 mining leases approved in this village by the Portuguese colonial regime. Most of them have not been operated for the past two decades, but all of them can be activated at any time should the mine-owners so desire. Each mine will make an independent application for environment clearance. The cumulative impact will never be assessed and perchance, should all 23 mines be permitted to operate, there will be no village left anymore as every bit of land is under one lease or another. Is such a scenario possible? Absolutely, as per mining law.

Diversion of nallahs is the way out for mine-owners when the water courses come in the way of ore deposits or because the mining company does not want to incur the expense of regularly de-silting streams running through the lease area. So the nallah is diverted to a settling pond or arrestor walls are constructed to block its original path. Agricultural fields that lie down stream are suddenly bereft of their source of water and thus cannot be cultivated post-monsoon. But diversion of streams also has other serious consequences, one of which is flooding of villages during the monsoons. After all, the diverted water must flow somewhere and with its regular path blocked it breaks barriers and flows

wildly during heavy rains. Several villages in mining areas are experiencing floods time and again during the monsoons.

Advalpal village in north Goa has filed PILs against two mining companies citing diversion of streams by the mining companies as the main reason for the repeated flooding of the village every monsoon and for the blockage of their water source for irrigating their fields. Recently, the court has directed the Mines and Water Resources departments to identify the course of the nallah which traverses these mining leases. The company now denies there was or is any nallah on the lease.

Illegal dumps of mining rejects carelessly heaped as large, new, barren hills is a common sight in mining areas, often created in total violation of the conditions laid down in the lease deed. Perhaps it is the first time that a mining company (Sesa / Vedanta) has been directed by a court order in January 2010 to remove the huge illegal dumps it has created alongside the nallah. The National Environment Engineering Research Institute (NEERI) has been appointed to oversee the removal which is expected to take at least one year.

The most dramatic case of depletion of water in the village due to mining is seen in Shirgao where three mining companies have together exhausted all the water sources of the village. All the 74 village wells are dry and even during the monsoons people in this village are unable to obtain water as the water level in their wells never rises beyond a meter and within a few days of the rain stopping it is back to zero. The reason for this unusual phenomenon is because mining has intersected the water table. With the mining pits now 30 to 40 meters below ground level, the flow of the ground water movement is reversed and all the aquifers now flow into the mining pits from where it is discarded by the mining companies.

Taking cognizance of a letter petition signed by the farmers the court appointed NEERI to investigate whether the mining companies were responsible for the depletion of water in the village and for the destruction of the agricultural fields. NEERI's report was a unequivocal yes on both counts. And yet all the three mining companies had been given environment clearances merely three years earlier.

Since 2005, i.e., for the past five years, there is absolutely no cultivation of 80 hectares of paddy fields, while on the remaining 80 hectares farmers make valiant efforts to raise at least a monsoon (paddy) crop, even though the returns

are much diminished. Pursuant to the NEERI report and notice of closure from the Pollution Control Board, the court has granted three months time to the three mining companies to undertake measures to restore the water in the wells and clean up the agricultural fields. The case is pending.

Transport of mineral ore through the villages and towns is another major problem that people living along village roads face. The excavated ore is mainly for export and so it is transported through villages and towns, along roads frequented by the general public to sites (stacking yards) along rivers, for onward reloading onto barges which take it to the port. Citizens complain of dust pollution, noise pollution, continuous truck movement and reckless driving leading to road accidents – in short, the peace and quiet of the village is shattered and the quality of life is lost.

In 1989, a PIL was filed on mining dust pollution in Curchorem and Sanvordem in Sanguem taluka. That the dust pollution was severe was affirmed by several reports, not the least a detailed study commissioned by the Goa Legislative Assembly itself. The High Court admitted the petition but refused to give any interim relief till all the transport companies and truck owners ferrying the ore were joined as respondents. Such action was clearly impossible for the petitioners to comply with as the respondents would run into hundreds and service on all parties would financially ruin the petitioner. So the petition just languished in the court records. Alas! If only the court had been kinder then.

Ten years later, in 1999, another set of petitioners from Curchorem approached the High Court praying for similar reliefs. This time the court swung into action. It directed that all trucks be covered with tarpaulin and the ore be made wet in the railway yard to keep down the dust particles. The court did not ask for the truck owners to be made parties. It was enough that the mining companies were respondents for obviously the transport of ore was at the behest of the mining companies. Trucks found to be violating the directions were seized under orders of the court and the owners faced contempt action.

But after a time the authorities relaxed their vigilance and the court directions amounted to little as there was no enforcement. For citizens, it was disheartening. How often could they keep complaining to the authorities? Worse, the volume of mining increased ten-fold and the number of trucks transporting ore are more than 2000, each plying 5-6 trips per day. For villagers living alongside these routes in these areas, life has become a living hell.

In 2010, the court entertained yet another PIL on truck transportation. Because of the anguish expressed by the court on hearing the petitioners' grievances that trucks ferried ore day and night making it unsafe for children and older people to cross roads, the government agreed to call a meeting of representatives of all sections – mining companies, truck operators, police, citizens, administration, etc., and decided on certain short term measures to halt this menace. The court approved the government's decision to restrict movement of mining trucks to fixed hours during daytime only and to fix speed limits when traversing through populated areas. The court also imposed restrictions on the quantum of ore that may be loaded in the trucks. This is a good example of proactive intervention by the court on behalf of the people. In a contempt petition recently filed for violation of these interim measures, the court has issued notice to the Director of Transport.

It is a sign of the times that recently the truck owners have started negotiating with the mining companies for better rates as they can no longer overload their trucks as they used to do in the past. They are also reported to have urged government to intervene as they are compelled to operate the trucks and make a living from the very activity which has destroyed their original means of livelihood. How ironic!

IV. ENVIRONMENT CLEARANCES

An environment clearance (EC) from the Ministry of Environment, mandatory as per the Environment Impact Assessment (EIA) Notification for industrial and mining operations, mega housing projects, etc., is the new certificate that industrialists and developers flaunt before the public to show that all is well with their project. But with ECs being issued to practically everyone who applies for it and with the reality often a far cry from what is projected in the EIA reports, the public has lost faith in such clearances and citizens are challenging them either before the National Appellate Tribunal or in PILs and compelling the authorities to take a re-look at the casual way in which they have been issued. At any rate, most of the 'conditions' of the EC are rarely complied with and there is no monitoring whatsoever, unless a court proceeding demands it. It must be mentioned here that monitoring of the environment clearance is the responsibility of the regional office located in Bangalore (having at present a staff of four senior officers) which has, besides Goa, three other large southern states to supervise.

However, even prior to the EIA Notification the Ministry used to issue environment clearances in the form of NOCs to various projects. In Goa, resort developers, for example, had to obtain such NOCs in order to construct along the beach front. It is important to note that even at that time, i.e., prior to the EC being a statutory requirement, the court, when approached by citizens for violation of the NOC or clearance took the issue seriously and often halted the development for breach of the conditions. It is difficult to contemplate identical swift action from the government. The court thus sent out a clear signal that the EC was not a mere formality but that restrictions on development in order to protect the environment were entirely justified and developers were bound to honour the terms of the EC.

The strategy that is generally adopted in such cases is:

(i) Deny the violation;

(ii) Deny the value of the environmental asset;

(iii) Lobby with the Ministry to modify the EC;

(iv) Argue that such restrictions are incompatible with the project.

To counter the first strategy petitioners produce photographic evidence. Defending the value of the environment asset is a more difficult task since it requires petitioners to produce studies, expert reports, etc., and much depends on the capacity or the inclination of the individual judges to appreciate environmental assets. Modification of the conditions imposed by the environment clearance letter is possible for those with powerful connections. For instance, Ramada hotels got the Ministry to alter the height restriction (the norm was 9 metres only, whereas Ramada had touched 24 metres) midway through the court proceedings.

It is however the fourth strategy that generally weighs most heavily with the judges: the classic ‘development v/s environment’ dilemma. Should the judiciary interfere to protect the environment if it means that development would be halted? Some judges, when faced with such situations, display remarkable anguish, perhaps not realizing that the environmental law itself is the result of a balance between the demands of environment and those of development. Why then should the courts be uncomfortable about strict enforcement?

The ECs that are issued today are lengthy, complex documents with sometimes 60-80 conditions, many of them highly technical. It is very difficult for citizens to investigate violations as access to properties is naturally denied to them. Monitoring by the authorities is negligible. However careful assembly of the reports of occasional site visits made by different authorities sometimes enables the PIL petitioner to make out a case before court.

V. PROTECTION OF HILLS

A sizeable portion of Goa falls within the Western Ghats. Even outside the Ghats, the land is generally undulating in most towns and villages and the landscape is one of hill ranges with valleys in between. Traditionally, settlements were always located in the valleys, the hillsides were reserved for horticulture and the plateau tops were open areas which served as water catchment areas to feed the orchards on the hill slopes and the numerous springs and wells below. Harmony between nature and human habitation was clearly at its best.

There is another reason why people did not construct their homes on the slopes and tops of hills. The soil is lateritic and brittle and indiscriminate hill-cutting can result in wide cracks or large portions can simply break away, resulting in land slides. Constructions therefore remain confined at the most to gentle slopes. The building regulations in Goa recognize the fragility of the hills and thus there has always been a ban on development/hill cutting on steep slopes, i.e., hills with a gradient of 25% and above. The ban on development on steep slopes had the additional advantage of protecting the endemic flora and fauna of the Ghats.

In 2000, while framing fresh development regulations, the ban on hill cutting was dropped altogether. Several NGOs rushed to the court fearing an onslaught of development projects in the hitherto untouched hilly areas. The court responded with alacrity. It stayed development of the handful of projects that had already been approved. Government responded by informing the court that it would take a fresh look at the regulations and that in the meantime no further permissions would be given for development on steep slopes.

Some years later, the government informed the court that the development restriction in areas having a gradient of 25% had been restored under the Draft Goa Land Development and Building Construction Regulations 2008.

When the Regional Plan 2021 was being framed special note was taken by the Committee to demarcate steep hill slope areas as 'no development zones'. To ensure accuracy and avoid ambiguity, the Task Force Committee headed by the Chief Minister decided to digitize and directly correlate all data pertaining to land survey records with topo sheets and survey maps and the reconciled drawings were thereafter cross checked with aerial and satellite photographs. Thus, the hilly areas of Goa have been protected by law, entirely as a consequence of legal action taken in time and the court's pro-active response to the PIL.

There still remains, however, the problem of illegal hill cutting which has become rampant in Goa because developers are in a hurry but more importantly because it is not possible to get development permission in areas with steep slopes. Once presented with a fait accompli, objections can be overcome. Illegal hill cutting is worse than legally cutting hills because this is done surreptitiously and no attention is paid to stabilisation of the slope.

The court took cognizance of the problem in 2007 when a letter petition was addressed to it about another instance of hill cutting. During the proceedings the court actually demonstrated how the authorities should act when cases of illegal hill cutting are brought to their notice. The court appointed two commissioners – an engineer and an architect – who advised on the remedial measures required to stabilize the cut. The court then compelled the developers to carry out the work within a time-bound period. This was in addition to the authorities prosecuting the offenders as per law.

But the court has not finished with the matter yet. It recently directed the government to examine the larger issue of how to prevent such occurrences, because hill cutting is not merely an illegal act but it comprises the safety of the public and the ecology of the area forever.

In 2009 the government informed the court that it has decided to frame a policy which will address this issue and that it has already set up an interdepartmental committee comprising officers from departments of land survey, town planning, mining, etc., for the purpose. It has also decided to add a clause in contracts issued by the government imposing penal provisions including cancellation of work in case contractors indulge in illegal cutting of hilly land.

In the interim, the government has constituted a Flying Squad (FS) which will work also on week days and holidays to respond immediately to complaints

from the public of illegal cutting of hill slopes. The court has directed that the squad will be provided with mobile numbers so that the public can contact its members at any time. The squad has been empowered by the court to issue stop work orders which will have the force of law till such time as a formal order is issued by the Town Planning department permitting resumption of the work. All these directions indicate the seriousness with which the court has viewed the problem and the manner in which the court has energised the government to be proactive in order to prevent degradation of the environment.

VI. MONSOON FISHING BAN

While it is well recognized that PILs are an effective means of getting the laws enforced, citizens have also successfully managed to use the PIL route to persuade the courts to make law when it has been found to be necessary for safeguarding the right to life of the people at large. Such PILs are an effective manner of compelling government – constantly under pressure from vested interests – to act *pro publico bono* and in the pursuit of sustainable development. The case of the ban on fishing during the monsoon is one of the best such examples of proactive judicial action.

A letter petition was addressed to the High Court complaining that there was severe ecological damage because of the government's decision to reduce the ban on mechanized fishing from 90 days (1st June to 31st August) to a mere 54 days (ending 24th July). The petitioner informed the court that the monsoons were the breeding season for large number of fish species especially those consumed by the common man and that the decision to relax the ban period on monsoon fishing was taken at the behest of the mechanized fishing lobby which included several elected representatives who were holding the government to ransom. If this situation continued, it would mean depletion of fish resources in the immediate future, leading to fish famines. It would also ruin the livelihood of the vast communities of traditional fisherfolk.

The court directed the State Government to produce the data used to justify the reduction in the ban period and to inform the court how it monitored compliance of the ban by the fishing vessels. It further directed the National Institute of Oceanography to report on the breeding season of the fish found in Goa's coastal waters. It also called upon the Central Government to submit its views on the issue of uniform dates for a ban on mechanized fishing during monsoons along the entire west coast of India.

In its reply the State government admitted that the ban was reduced in view of representations received from the mechanised fishing operators. It also admitted that the Department of Fisheries had only one patrol boat and was unable to monitor fishing activities along the coastline, so enforcement of the ban was non-existent.

The NIO reported that June to August was indeed the breeding season for mackerel and sardine, the two fish which constitute 75% of the total catch along the west coast and which constitute the only available and desired source of protein for the people. The Central Government reported that while imposing a uniform ban period was most advisable, despite several years of discussions with representatives of the five west coast states, no dates had yet been agreed upon.

In the face of such overwhelming data supporting the desirability of a ban on mechanised fishing during the monsoons and also noting that there was total apathy on the part of both the State and Central Governments to prevent depletion of fish resources and to protect the livelihood of traditional fisherfolk who abound in the coastal stretches, the court found ample justification to make the law in this regard.

The court fixed the ban period in Goa from 10th June to 15th August or Nariyal Poornima, whichever is earlier (Nariyal Poornima is commonly celebrated by fisherfolk as the end of the monsoon period) and directed the Central Government to fix uniform dates for a monsoon ban for all states on the west coast before the onset of the next monsoon, i.e., May 2003.

The court also laid down the manner of enforcement of the ban, including seizure of stocks of fish, cancellation of licenses of those found violating the ban, sealing of fishing jetties, closure of petrol pumps supplying fuel to mechanized vessels; prohibition on insurance companies from entertaining claims for compensation due to mishaps arising out of fishing activity during the ban period and patrolling of the seas by the Coast Guard; patrolling of the beaches by monitoring committees to be set up by the government. Finally it directed the government to give wide publicity to its orders in the first week of June each year so that all are aware of the dates of the monsoon ban as well as of the stringent conditions imposed by the court. From that year onwards the ban was effectively implemented throughout the State.

The matter is presently in the Supreme Court for consideration of common dates for the uniform ban on fishing for all the five states along the west coast of India namely Gujarat, Maharashtra, Goa, Karnataka and Kerala.

VII. WATER SHORTAGE

For a state which receives 3000 mm of rainfall during four to five months of the year it is a crying shame that, come summer, there are water shortages experienced in several parts of Goa. Apart from the several rivers that flow through the State, there are numerous springs and streams in practically every nook and corner which are the local sources of water. Yet there are repeated water shortages especially in the hot summer months of February to May. Beleaguered citizens having no alternatives except to pay the exorbitant rates for supply of water by tankers have in desperation turned to the court for relief.

In 2005 the court took *suo moto* cognisance of some newspaper reports and initiated an extensive investigation into how the State government was dealing with the problem. The petition was taken up regularly for hearing across five years, from 2005-2010. During the course of the PIL the court was apprised not only of the steps taken or proposed to be taken by the government to supply adequate potable water in both urban and rural areas, but it also examined issues such as wastage of water due to pipe breakage, leaking public taps and overflowing tanks. The court sought to know how ground water was being protected in the state and ensured that a policy for siting the industries in the State was formulated, since effluents discharged by industries can pollute the rivers which are the main source of water supply in the State. In short, the court examined the steps taken by the government for proper management of water in the State.

During the five year period the Government repaired leaking pipes, installed new pipes, replaced defective water meters so that people are correctly billed for use of water, shut down public taps and instead provided free water connections to ‘below poverty line’ citizens. New *bhandaras* and additional water treatment plants were constructed. Areas in Goa were declared as scheduled, water scarcity areas or ‘over exploited’ as per the Goa Ground Water Regulation Act 2002 and a Groundwater Cell with two officers, one each from north and south Goa was constituted to implement the Ground Water Regulation Act. Two 24-hour help-lines were set up to receive complaints and provide immediate relief.

Last but not the least, the Environmental Atlas, Zoning Atlas and Industrial Siting Guidelines were approved by the State Pollution Control Board for the State of Goa. The Siting Guidelines prohibit a select list of highly polluting industries from being located anywhere in the state of Goa since the rivers and water bodies are the sources of water supply and irrigation and they must be protected. The State Government has accepted the Siting Guidelines and incorporated them in the Draft Regional Plan which was notified on 16 October 2008 and awaits final approval.

VIII. GARBAGE

The problem of the environmentally safe disposal of garbage is no longer confined to tourist and densely populated urban areas only. It has spilt over to the rural areas and remote countryside and waste plastic and other non-biodegradable garbage pollutes the pristine forests and hills of the Western Ghats too. Everyone is acutely aware of the garbage problem because it is so clearly visible along the highways and the by-lanes. However, due to lack of political will the problem just doesn't seem to go way despite three attempts of the court to force the authorities to find a solution to this modern age problem.

The first court attempt was in 1999, when it *suo moto* took up the issue of disposal of garbage all over Goa as a result of a newspaper article which reported that garbage dumpsites were filled to capacity but continued to be used, as a result of which garbage was overflowing all around. Poor folk were foraging therein for refuse that would earn them a meager living and stray dogs and cattle had made the dumpsites their permanent home.

The court directed every municipality and panchayat to file affidavits indicating the steps they were taking in the matter of disposal of waste in their jurisdictions. Four NGOs got themselves impleaded as intervenors in order to apprise the court of the existing laws on the subject and the steps required to be taken by the authorities. They were asked to scrutinize the thousand plus pages of affidavits and tabulate the data in the form of a ready reckoner for the perusal of the court.

The affidavits disclosed that barring a miniscule number of municipalities who had some scheme for disposal of waste, howsoever inadequate it may have been, the rest of the local authorities had not even begun to comprehend the problem let alone find a solution for it. And all complained that they had no

funds for garbage disposal. Finding a way out of this mess would certainly require enormous judicial activism and acumen.

The Government responded by constituting a committee headed by the Director of Municipal Administration and together with the Directorate of Science, Technology and Environment a detailed scheme was drawn up for tackling the problem of solid wastes. Major steps included a scheme for segregation of garbage at source, door-to-door collection and proper sites for depositing and treatment of garbage. The PIL however came to an abrupt end just a year later, when the court accepted the submission of the Advocate General that since the Municipal Solid Waste Rules 2000 were now notified the authorities were bound to comply with them, and there was no need to continue with the PIL.

Barely a few years later the garbage issue was back in court with two PILs citing non-compliance with the MSW Rules. This time the court passed an extensive and detailed judgement (in 2003) setting out a detailed programme of action to be complied with by the State government as well as the municipal councils in order to tackle the problem. Regretfully, the judgment was complied with only partially and large and major sections were not implemented at all, including identifying sites for garbage treatment plants and setting up units to deal with disposal of plastic waste. Most unfortunate, no contempt petition was filed and the judgement remains unimplemented till date.

PILs on non-implementation of the MSW Rules continued to be filed by citizens for local relief in different areas. The problem was clearly far from resolved and once again, in 2007, the court took upon itself the task of ensuring that a proper garbage management plan for the state of Goa was in place. The *suo moto* petition is still pending final disposal. All municipalities and coastal panchayats have been joined as respondents.

In this PIL the court has painstakingly perused every single local authority's scheme for garbage disposal as well its implementation. It has repeatedly directed the State Pollution Control Board to inspect the facilities. It has monitored the disbursement of government funds and issued directions to overcome hurdles. It has set out basic interim arrangements to be complied with and levied penalties and fines on errant local authorities and even issued show cause notices for contempt. Nothing has been left to chance. The court has actually administered and monitored the garbage arrangements in the State for the past three years, and counting. Never once did the government offer to

shoulder the responsibility and relieve the court of its self imposed burden. Instead, the government has repeatedly urged the court to continue with the *suo moto* petition as it appears that only the court's diktat will see the State through this issue.

CONCLUSION

This brief survey of some of the PILs that the citizens and NGOs in Goa have taken to the courts will undoubtedly show that the High Court, in no small measure, has assisted the environment movement in its efforts to protect the ecological assets of this state. By entertaining PILs on environment matters, courts have in fact legitimized environment concerns, given them judicial recognition, and also acknowledged environmental groups as legitimate interests and as an important component of the ecological endowment of the State.

PILs help civic society to focus on an issue in a manner that seminars and lectures can rarely aspire to match. Whether it is construction along the beach front or the setting up of an industry, the illegal cutting of a forest or the destruction of a hill, a PIL on the subject becomes newsworthy and gets projected into the limelight. Editorials are written, letters to the editor appear and suddenly the subject becomes a matter of common concern. Only public agitations can do the job better.

PILs also enable environmentalists themselves to focus on the subject in a disciplined manner. Rigours of law can be very demanding. In public speeches it is possible to be melodramatic and one need not be strict about facts. Public opinion can be swayed with oratory. In the court one has to be much more careful. It is necessary to study a matter thoroughly, to assemble all relevant facts and check them carefully, as errors can be the downfall of a PIL.

Some PILs are capable of having a far wider impact that the petitioners originally intended and petitioners must be willing to go the extra mile to make that happen. Several of the cases related above were expanded far beyond the scope of the original PIL by the court. For this to happen one needs to be ready to offer suggestions to the court as well as have an infrastructure for monitoring violations so that corrective action can be taken. Often, people who write letters to the court which are converted into writ petitions lack the capacity to follow up in subsequent proceedings and the PIL after a brief burst of energy subsequently quietly collapses. PILs thus require singular dedication to the

cause, plus immense patience and perseverance as resolving the issue may take time.

Careless work in a PIL can have far-reaching consequences. In a private litigation, one of two parties will lose at the expense of the other. But when a bona fide environment PIL is rejected, it is not the petitioner alone who loses – society as well as the environment loses. Even the court loses. The Constitution loses. Therefore every effort must be taken to ensure that the PIL will be properly pursued to the finish. If one's petition is dismissed even after persistence, dedication and hard work, that is a different matter.

As we have seen, this (failure of PILs) happens too. This is because courts are rarely willing to go to the root cause of the problem that has given rise to the petition. Even repeated evidence of wrongful permissions granted rarely provokes the court to punish guilty officials. And the judgement will conveniently ignore such issues altogether.

However, we do not live in a perfect world. If, by filing a PIL, it is possible for a citizen, who has exhausted all other remedies, to have one last opportunity to prevent the degradation and destruction of the environment, then this avenue, with all its limitations and pitfalls, must be grasped with both hands. This lesson has been amply learnt in Goa where there is an absence of governance. It is generally conceded that in Goa at least it is PILs that have protected CRZ, forests (both private and government), several wildlife sanctuaries in the Western Ghats, and hill slopes and plateaus, by no means a small achievement. Without the existence of the courts, however, none of this would be even remotely possible.

(An older version of this paper was first presented at the Goa University-TERI-KAS Seminar on Environmental Governance and Security: Perspectives from Above and Below, held on 7-8 December 2002. The present paper is a completely revised and updated version, with several new sections added.)