Chapter-IV

ENVIRONMENTAL TORT AND JUDICIAL RESPONSE

4.1 Introduction

The present legal system in India is formed, for all practical purposes on the basis of the English common law brought into India by the British. From the eighteenth century, the British colonial rulers, who were eager to have a legal system that would maintain law and order and secure property rights, gradually imposed on India a general system of law. The foundation of this Anglo-Indian judicial system was laid by the Judicial Plan of 1772 adopted by Warren Hastings on which later administrations built a superstructure.131 In the second half of the nineteenth century the Indian legal system was virtually revolutionized. With a spate of over-legislation, this was influenced by a desire to introduce English law and to shape that system from an English lawyer’s viewpoint.132 The structure and powers of the court, the roles of judges and lawyers, the adversarial system of trial, the reliance on judicial precedent and the shared funds of concepts and techniques, brought the Indian legal system into the mainstream of the common law systems. It is said that the common law in India, in the widest meaning of the expression, would include not only what in England is known strictly as the common law but also its traditions and some of the principles underlying English statute law. The equitable principles developed in England in order to mitigate the rigours of the common law and even the attitudes and methods pervading the English system of administration of justice133.

The early charters, which established the courts in India under the British rule, required the judges to act according to "Justice, Equity and Good Conscience in deciding civil disputes if no source of law was identifiable".134 In the historical development of civil laws in India by English judges and lawyers, the notion of justice, equity and good con-science, as understood and applied by the then Indian courts, was basic-ally in line with the development of English common law. The English-made law used to dominate all major

132 Banerjee, A. C., English Law in India (1984), p. 189
133 Setalvad, M. C., Common Law in India (1960), p.3.
134 See, Derrett, J. D. M., Essays in Classical and Modern Hindu Law (1976), Vol.3)
areas of civil laws in India, which mostly took the form of a codified legal order. The law of
torts in India, which remained uncodified, followed the English law in almost all aspects in
its field. It is notable that common law, originally introduced into India by the British,
continues to apply here by virtue of Art. 372 (1) of the Indian Constitution unless it has
been modified or changed by legislation in India. The law was modified and departed from
the English law only when the peculiar conditions that prevailed in India required this.

The remedies of modern environmental torts have their roots in these common law
principles of nuisance, negligence, strict liability and trespass and other remedies for tort.

Tort is a civil wrong. It is concerned with the liability of persons for torts or breach of their
own duties towards others… it relates to the recognition of interests that the civil law
recognizes in the absence of contractual relations between the wrongdoer and the injured
person. While today the Indian courts still follow the English law of torts, this ideological
foundation has permitted to some extent innovation and development that are necessary to
meet new challenges particularly in the field of environment protection. The principles of
torts have been applied by Indian judiciary in various cases of environmental damage
violating people’s right to clean and healthy environment. The present chapter tries to
analyze the application of torts’ principles by Indian Courts in various cases of
environmental harm. It also makes critical study of the judicial response in the development
of the principle of absolute liability and wide interpretation of tortuous remedy by checking
the potential of tort in controlling environmental pollution in India.

4.2 Potential of Tort in Controlling Environmental Pollution

Majority of environment pollution cases of tort in India fall under four major categories –
Nuisance, Negligence, Strict liability and trespass.

135 Art. 372 (1) of the Constitution of India states: "Notwithstanding the repeal of this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

4.2.1 Environmental Torts and Remedies

Nuisance

It is using or authorizing the use of one’s property, or of anything under one’s control, so as to injuriously affect an owner or occupier of property physically injuring his property or by interfering materially with his health, comfort or convenience. A private nuisance affects some particular individuals as distinguished from the public at large.

The law of nuisance covers various kinds of activities which pollute the environment. It is unlawful interference with the use and enjoyment of land or property, or some right over or in connection with it. The nuisance may be caused through escape of water, smoke, fumes, gas, noise, heat, vibrations, electricity, disease, germs, trees etc. the focal point of law of nuisance is the material interference with the ordinary comfort of human existence. The following factors are material in deciding whether the discomfort is substantial as to make it actionable.

a) A degree of intensity,
b) Duration
c) Locality
d) The mode of using property

Negligence

This specific tort also helps in controlling environmental pollution. It is a failure to exercise that care which the circumstances demand in any given situation. Where there is duty to take care, reasonable care must be taken which can be foreseen to be likely to cause physical injury to person or property. The degree of care varies from case to case. Generally causal relationship must be shown by the plaintiff between the negligence of the defendant and the injury to the plaintiff. But as decided in Greherend Corporation v. Blackely causal relationship between the negligent act and the injury suffered is not necessary to be proved.

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137 Winfield And Joawicz, Tort, ed. 12th, p.380
138 Shastri, S.C., Environmental Law, Ed. 3rd, Eastern Book Company, p. 70
139 Donoghue v. Stevenson (1932) AC 562 per Lord Atkin
140 (1958) 262 F2nd 401
by the plaintiff when a deadly pollution like carbon monoxide is discharged in the air admittedly under the defendant’s exclusive control.

**Strict liability**

The rule in *Raylands v. Fletcher*[^141] is known as a tort of strict liability. According to the rule of strict liability, “the person who for his own purpose brings on his land and collect and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prima facie answerable for all the damage, which is the natural consequence of its escape.”[^142]

The doctrine of strict liability is also known as rule of no fault liability as it considers liability without fault on the part of the defendant and particularly this aspect of the doctrine has significant relevance in the matters related to environmental pollution. It is related to variety of things like fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, poisonous vegetation etc. this rule is equally applies to the injuries caused to person and property.

**Trespass**

It is very closely related to nuisance. Occasionally it is invoked in environmental cases. Trespass requires an intentional invasion of the plaintiff’s interest in the exclusive possession of property. It is unlawful entry. This tort is against the possession of property. As it is actionable per se a plaintiff need not have to prove substantial injury.

The primary remedies for these environmental torts are claim for unliquidated damages and injunction or both. Damages are compensation payable for the commission of a tort. These damages may be nominal,[^143] substantial[^144] or exemplary[^145]. Where it is not an appropriate remedy and the prevention of tortuous act is essential, the remedy of injunction with or without damages may be granted. An injunction is a judicial process where a person who

[^141]: (1968) LR3HC 330
[^142]: the rule was propounded by Blackburn, J. in *Raylands v. Fletcher* (1868) LR 3 HC 330
[^143]: Where the purpose of action is merely to establish a right, no substantial harm or loss having been suffered, the damages awarded would be nominal damages
[^144]: Awarded when it is necessary to compensate the plaintiff fairly for the injury he has in fact sustained. It is fair measure of harm sustained by a plaintiff.
[^145]: Where the objective of awarding damages is not only to compensate the plaintiff but also to punish the wrongdoer and to deter him from similar conduct in future. It is usually awarded for oppressive, arbitrary or unconstitutional acts, acts intended to make undesirable profits or where it is expressly authorized by statute.
has infringed or is about to infringe the rights of another, is restrained from pursuing such acts. Injunctions are of two kinds, temporary\footnote{The objective of the temporary injunction is to maintain status quo at a given date until trial on merits. It is governed by Ss. 94, 95 as well as Order 39 of civil Procedure Code, 1908} or perpetual.\footnote{A perpetual injunction is not restricted as to a point of time. This forms part of the judgment or order made at the trial or hearing of the action. S. 37 of the Specific relief Act, 1963 says:"a perpetual injunction can only be granted by the decree made at the hearing upon the a merit of the suit, the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff"}

### 4.2.2 Bilateral Nature of Tort Law and Environment Protection

Tort law deals with remedy for invasion of private rights. It talks about compensating a person for violation of his private right. A question arises about potential of tort law in controlling pollution as it focuses on remedy for violation of private right. According to Stephan Shavell “tort law should be assessed in terms of the contribution it can make to the control of environmental and other risks. The reason is that compensation can be achieved independently of tort law by other and he implies, equally good and better) means.\footnote{See, Shavell, Stephan., economic Analysis of Accidental Law (1987). See also, Steward Richard B., Regulatory compliance preclusion of tort liability: Limiting the Dual Track System, 88 GEO L.J. 2167, 2183-83(2000).} Compensation goals can be pursued independently of tort law, as can risk control goals, but in tort law these two goals are harnessed together. Tort liability for harm rests on risk-creators. It is in the link between compensation and risk-control that the distinctiveness of tort law resides. Tort law is two sided, “looking both to harm and to the compensation of harm.”\footnote{See, Peter cane, The Anatomy of Tort Law (1997)} Because of its bilateral structure the tort law is best suited in the environmental law context. It is responsibility based mechanism for repairing harm. It’s potential as a risk control is limited by its focus on harm. Actually the close study of the characteristics of tort law reveals its true potential in protecting the environment.

a) Tort law come onto the scene when something has gone wrong. So in cases of environment, the tort law will play role when there is environmental damage.

b) It is much more concerned with cure rather than prevention.

c) It is concerned primarily with reparation and not punishment.

d) Tort law focuses on bad outcomes affecting persons (both human beings and corporations) and property. The term ‘property’ does not refer to the things, but to things that are subject to legal regime. The earth’s atmosphere for instance, is not subject to any legal property regime and so is not within the scope of tort law. In this...
way, tort law can be seen exclusively concerned with persons because only persons can have property.

e) The rights protected from interference by tort law are property rights and dignitary rights such as reputation and personal freedoms. The archetypal harms recognized by tort law are injury to the human body and mind, damage to tangible property and financial loss. More marginal are tangible harms to the person such as grief, fear and insult. Significantly for present purposes aesthetic harms resulting from bio-diversity damage, for instance, are not as such recognized by tort law.

f) It is said that tort law focuses on harms not risks. It is not absolutely true. For instance, an important component of negligence calculus is the probability of the harm. The core idea of foreseeability is also related to risk.

g) In cases where an injunction may be awarded to prevent harm occurring in future, an injunction will be issued only if the court is satisfied that harm is imminent or very likely and not merely on the basis that the defendant is involved in a risky activity. Here it differs from precautionary principle, which considers risk involved in the activity and proposes prevention rather than cure. So the precautionary principle is increasingly finding favour as an approach to environment protection.

h) Tort liability is predominantly fault based liability and in tort fault typically means negligence. The pre-condition of foreseeability of harm is pre-condition of liability under the principle of Rylands v. Fletcher151. The polluter pays principle is usually assumed to dictate strict liability.

i) Private law remedies in tort may require payment to individuals for environmental damage if that environmental harm constitutes harm to certain individual interests. There is absence of any liability to the environment, and absence of any doctrine compensating the environment for the harm caused to it. It is yet to be developed.

j) In some of the cases it is difficult to prove any causal links between the emission of a pollutants and increased incidence of disease. In some of the cases the victims are passive victims in such cases it is difficult to prove the causes of harm. It is simply impossible in many cases to distinguish the pollution effects and the general background of disease, that is between the individually tortuously injured as distinct

150 Rights in land, chattels, intellectual property, such as trade mark, patent etc.
151 Supra 142
from individuals with same disease brought about by background factors. In addition multiple sources of pollution together with non environmental factors can combine to create complex links to the extent that it may not even be meaningful to ask what causes an ailment. As well as creating difficulties for individual claimants, any deterrent effects of tort will be lessened by the reduced likelihood of a successful claim.

But thanks to the judiciary, today a shift has been seen in tort law from reparation for damaged private interest to the cleaning up and restoration of the environment per se as community protection.

In evaluating the potential of tort law in matters related to environment protection as a compensation and risk control mechanism, we need to attend not only to the rules and principles according to which tort liability is imposed, but also to the institutional structure through which these rules and regulations are given practical effects. In other words, we need to assess tort law in action i.e. the interpretation of the tortuous liability rules by the judiciary in cases related to environment protection.

4.3 Judicial Skill in Shaping Tortious Liability in Environment Protection

The Indian judiciary has played a remarkable role in implementing principles of tort law in environmental issues. The credit goes to the Supreme Court in interpreting the same old principles of tort with wider meaning to encompass the new challenges of the environmental damage. Wherever and whenever necessary, the Supreme Court has evolved new principles of tort and given a new shape to tortuous liability in environment protection.

4.3.1 Tortious Liability of Hazardous Industries

The Bhopal Catastrophe has been proved eye-opening for the environmentalist, social workers and government institutions as well as general public. It brought new awareness in India. The government and the judiciary started thinking about new ways and means of preventing similar tragedies in future. Compensation to the victims of Bhopal disaster raised an enigma in Indian torts law. There was paucity of litigation in the field of torts. The proverbial delay, exorbitant court fee, complicated procedure and recording evidence, lack of public awareness, the technical approach of the bench and the bar and absence of
specialization among lawyers are stated to be reasons for such a condition. It is also argued that the alleged paucity is myth and not reality, as thousands of cases are settled out of court through negotiations and compromises and unreported decisions of subordinate courts. It is not disputed that Indian courts do not award punitive damages in civil cases to deter the wrongful conduct. But it does not mean that tort law has not played any effective role in the environment protection. The judicial pronouncements clearly show the recent trends in the Indian torts law as an instrument of protection against environmental hazards.

The judicial vigil is seen in the interpretation of principles of tort law in the age of science and technology. Absolute liability for harm caused by industry engaged in hazardous and inherently dangerous activities is a newly formulated doctrine free from exceptions to the strict liability in England. The Indian rule was evolved in *M. C. Mehta v. Union of India*, which was popularly known as the oleum gas leakage case. It was public interest litigation under Article 32 of the Indian Constitution filed by a public-spirited lawyer seeking the closure of a factory engaged in manufacturing hazardous products. There was a leakage of Oleum gas from one of the units of Shriram Food and Fertilizer Industry on December 4, 1985. As a result of this an advocate died due to inhalation of oleum gas and several people were taken ill. The industry was held liable on the principle of absolute liability. The Supreme Court could have avoided a decision on the applications by asking parties to approach the appropriate forum i.e. subordinate court by filing suits for compensation. Instead, the Court proceeded to formulate the general principle of liability of industries engaged in hazardous and inherently dangerous activity. Chief Justice Bhagwati declared in unambiguous terms,

‘We have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the

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152 Gandhi, B.M. law of torts (1987) pp 63-69
155 P.Ledakrishnan, Environmental Law in India, 1999, p 126
156 AIR 1987 SC 1086
matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.\textsuperscript{157}

Evolving the principle of absolute liability the Court observed:

‘Where and enterprise is engaged in a hazardous and inherently dangerous activity and harm results to any one on account of an accident in the operation of such hazardous and inherently dangerous activity, for example, in escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operatesvis-a-vis the tortuous principle of strict liability in \textit{Rylands v. Fletcher}\textsuperscript{158}

The Court also declared:

The rule in \textit{Rylands v. Fletcher}\textsuperscript{159} as evolved in 1866 is not applicable to present day circumstances. This rule evolved in 19\textsuperscript{th} century at time when all these developments of science and technology had not taken place, cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and needs of the present day economic and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast of the economic developments taking place in the country. Law cannot afford to remain static.\textsuperscript{160}

The Court has recognized the need of new principles to deal with new principles. It shows the adaptability of the Indian judiciary to respond to the issues of the changing needs of the growing and fast changing society.

Explaining the measure of liability the Court proceeded a step further and held that the measure of compensation must be correlated to the magnitude and capacity of the enterprise. Chief Justice Bhagwati said:

\begin{flushright}
\textit{Ibid}, p.1089
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\textit{Ibid}
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\textit{Supra} 142
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\textit{Supra} 157
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The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by the enterprise.\textsuperscript{161}

The positive approach of the judiciary in Mehta case was criticized by jurists outside India as imposing a liability regardless of general principles, which would undermine the credibility of Indian courts and lead to accusation of bias by foreign investors.\textsuperscript{162} According to an Indian jurist Jayaprakash Sen the Mehta dictum suffers from a misconception of the role of industry as exploiter and ignores its role as contributor to the economy. The court saw only thorns and forgot roses.\textsuperscript{163} It was also criticized that the Supreme Court was influence by the Mehta case while deciding the case of \textit{Union Carbide Corporation v. Union of India}.\textsuperscript{164}

Rejecting the contention the Supreme Court made this remark:

‘The criticism of the Mehta principle perhaps ignores the emerging postulates of tortuous liability whose principal focus is the social limits on economic adventurism. There are certain things that a civilized society simply cannot permit to be done to its members, even if they are compensated for their resulting losses’.\textsuperscript{165}

The Bhopal incident occurred two years before the Mehta judgment with absolute liability principle. But the Bhopal case was decided after Mehta case. The reason was it was not possible for a court to make a quick decisions relating to compensation to victims in Bhopal tragedy. It is the worst ever industrial tragedy that took place just after midnight on December 3, 1984. Nearly 40 tons of methyl isocyanate (MIC) gas which has been manufactured and stored in the union Carbide’s Chemical Plant in Bhopal escaped into the atmosphere and caused death of 3,500 people who lived in the dispersing chemicals pathway and injured nearly 200,000 some seriously and permanently. The Plant is a subsidiary of Union Carbide Corporation incorporated under the laws of the State of New York with its headquarters at the State of Connecticut.

\textsuperscript{161} Supra 156, p.1199
\textsuperscript{162} Muchlinski, PT, the right to development and industrialization of less developed countries: The case of compensation of major industrial accidents involving foreign-owned corporations (1989) Human Rights Unit Occasional Paper, Commonwealth Secretariat
\textsuperscript{164} AIR 1990 SC 273
\textsuperscript{165} Ibid p. 283
The incident posed a question before the Indian legal system to compensate large number of victims of the incident. There were chances of multiplicity of litigations. Again the intensity of damage and suffering varies from one victim to another.

In order to avoid the problem of multiplicity of parties, Parliament passed the Bhopal Gas Disaster (Processing of Claims ) Act 1985, known as Bhopal Act conferring power on Union of India to take legal action on behalf of the victims. Thus the union of India was empowered to sue under the doctrine of parens patriae. The doctrine of parens patriae relates to the rights of person, real or artificial, to sue and to be sued on behalf of another who is incapacitated to take up the case before a judicial forum as effectively as the former can.

The Union of India selected American District Court, wherein the headquarter of the parent company Union Carbide Corporation was situated as the proper forum to file the case. The reason for this decision was the Indian Government’s thinking that Indian courts have not reached its full maturity to protect the interests of victims suitably and to decide the issue of compensation in the best possible manner. Indian law of torts is in its infancy. Hence just and speedy decision was not possible. The argument of UCC was that the Indian Courts are best to try the cases and protect the interests of the victims. The Union of India opposed UCC's motion on the basis of the following arguments:

(1) UCC had failed to establish that justice would be served by granting dismissal on grounds of forum non conveniens.

(2) The courts in India were not an alternative forum in which the litigation might be resolved, for the following reasons:

(a) The delays inherent in the Indian court system would lead to an unconscionable delay in the resolution of the cases in India;

(b) India's court system lacked the procedural and practicable capability to handle the litigation;

166 Galanter Marc’s affidavit, Mass disasters and multinational liability: the Bhopal case, (1986) ILI pp 83-90(memorandum in opposition to UCC’s Motion) and pp 165-193
(c) A judgment rendered by an Indian court could not be enforced without resort to United States courts;

(d) UCC's *forum non conveniens* motion was nothing more than forum shopping.

(3) The private interests of the litigants favoured retention of jurisdiction by the court for the following reasons:

(a) Retention of jurisdiction by that court would lead to an efficient, expeditious and convenient resolution of the cases;

(b) The private-interest analysis involved more than a "head count" of witnesses as asserted by UCC;

(c) UCC had attempted to inflate the count of witnesses in India by proposing spurious issues.

(4) The public interest of both the United States and India favoured the retention of jurisdiction by the court.167

The American court accepted the argument of UCC and declared that the Indian court is the most appropriate court for this matter. Judge Keenan of the US District Court, Southern District of New York observed:

… to retain the litigation in this forum as plaintiffs request would be yet another example of imperialisms, another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation…. To deprive the Indian judiciary of this opportunity to stand tall before the world and to pass judgment on behalf of its own people would be to revive a history of subservience and subjugation from which India has emerged. India and its people can and must vindicate their claims before the independent and legitimate judiciary…168

The decision of Judge Keenan received mixed response. The Indian jurists were not satisfied by this decision of the American Court. The other view was the decision was

167 "Memorandum of Law in Opposition to Union Carbide Corporation's Motion to Dismiss These Actions on the Grounds of Forum Non-Conveniens", In Re: Union Carbide Corporation Gas Plant at Bhopal, India, December 1984, MDL Docket No.626, Misc. No.21–38 (JFK) 85 Civ. 2696 (JFK), all cases filed by the plaintiff's executive committee, Michael V. Ciresi, Stanley M. Chesley, F. Lee Bailey, 6 Dec. 1985.

168 Union of India v. Union Carbide Corporation (1986) 2 Comp LJ 169 (US) at 195, See, Supra 23, pp 35-69
appropriate as ‘the Indian victims can fairly and justly be compensated in their own country according to the cultural standards that ordinarily affect their everyday lives.’

Truly judge Keenan had lifted the Indian legal system to a pedestal.

The Indian legal system has proved its wisdom in compensating the Bhopal victims. After denial of the American court to decide the Bhopal case, the matter was reported to District court of Bhopal which made an order of interim relief for Rs. 3,500 million invoking the inherent power of courts under s. 151 of the Code of Civil Procedure. Judge Deo's award of 3,500 million rupees was criticized positively as well as negatively. This historic verdict was hailed as "Justice at Last", giving "Hope for Bhopal". Judge Deo's order was regarded as "bad in law" by some jurists for the reason that interim relief or compensation is not generally ordered under the Indian law of torts. Judge Seth's in the Madhaya Pradesh high Court order goes much further in judicial innovation in holding that the substantive law of torts provides such interim compensation. Although he did not accept the justification relied on by Judge Deo based on the inherent power of the court under section 151 of the Code, Judge Seth went in a different direction, resorting to the Rules of the Supreme Court in England to justify this. This was again an unprecedented and innovative approach for the purpose of rendering justice to the victims, which remains the unarticulated major premise of his judgment, as in the case of Judge Deo. The High Court reduced the interim relief granted by the District Court to Rs. 2,500 million. Although the order failed to cheer the local gas victims because of the reduced amount, it unambiguously held the transnational company absolutely liable. Aggrieved by the order of the high Court, UCC preferred an appeal to the Supreme Court.

The appeal was placed before a five judge bench of the Supreme Court which realized from the progress of the case that neither the Government of India nor the Union Carbide is sincere in its efforts to bring solace to the victims at the earliest. Ultimately on February 14, 1989 the Supreme Court induced the government of Indian and Union Carbide to accept its suggestions for an overall settlement of the claims of the victims. Under the settlement

169 (Supra 154, P166).
170 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
Carbide agreed to pay US $ 470 million to the Indian Government on behalf of all the victims in full and final settlement. The entire amount had to be and was paid by March 31, 1989. The Supreme Court by exercising its extraordinary jurisdiction terminated all proceedings, civil, criminal or contempt of court which has arisen out of the disaster and were pending in subordinate courts. The Supreme Court orders appear quite unusual in the sense that they seem to lack the expected judicial discourse and elaborate reasoning required in disposing of such an important case by the highest court. In other words, the Court justified them entirely on humanitarian considerations.  

From this settlement neither the Government of India nor the victims are satisfied, yet the Supreme Court has done a marvelous job by providing at least some solatium to the victims who had become void of any hope due to sluggish action of the government of India. The Court seems to have admitted that the exercise was not an exact quantification of the legally payable damages to the claimants either individually or by category. This is so because as the court said,

Considerations of excellence and niceties of legal principles were greatly overshadowed by the pressing problems of very survival for a large number of victims. The Court took this step to avoid unnecessary delay in awarding compensation to the victims with the hope that the settlement would do well to them.

The efforts of the Supreme Court are appreciable in this case but in avoiding delay in awarding compensation to victims, it deliberately missed the opportunity to develop new principles of liability of multinational companies. The multinational companies operating with inherently dangerous technologies overlook the safety of people and hazards to environment. They take undue advantage of the economic needs of the development of the developing countries. There are various dimensions to the problem of liability such as protection of the environment, permissibility of ultra-hazardous technology, fixation of standards for disaster liability of multinationals operating in developing countries and examination of legal and constitutional safeguards against exploitation of cheap labour and captive markets. It was held that an inquiry into these aspects would delay the matter.

174 Ibid p.349
175 Union Carbide Corporation v. Union of India AIR 1990 SC 273 at pp 280, 281
According to the Court, the need for immediate relief to the victims of the tragedy could not wait till these questions were elaborately examined and decided.\textsuperscript{176}

One of the issues raised in the case by advocate Mr. Nariman on behalf of UCC is noteworthy. He argued “that scientific and statistical evidence for estimates of damages in toxic tort actions is permissible only in fairness hearings and such evidence would not be so admissible in the proceedings of adjudication, where personal injury must be proved by each individual plaintiff. That would, indeed, be a struggle with infinity as it would involve individual adjudication of tens of thousands of claims for purposes of quantification of damages.”\textsuperscript{177}

The Attorney General appearing on side of Union of India argued that in tort actions of this kind the true rule is the one stated in \textit{Story Parchment Company v. Paterson Parchment Paper Co}\textsuperscript{178}:

“The rule which precludes the recovery of uncertain damages applies to such as are not the certain result of the wrong, not to those damages which are definitely attributable to the wrong and only uncertain in respect of their amount.”

He also stated that in \textit{Taylor v. Bradley},\textsuperscript{179} it was held:

“It is sometimes said that speculative damages cannot be recovered, because the amount is uncertain; but such remarks will generally be found applicable to such damages as it is uncertain whether sustained at all from the breach. Sometimes the claim is rejected as being too remote. This is another mode of saying that it is uncertain whether such damages resulted necessarily and immediately from the breach complained of.

The general rule is, that all damages resulting necessarily and immediately and directly from the breach are recoverable, and not those that are contingent and uncertain. The later description embraces, as I think, such only as are not the certain result of the breach, and does not embrace such as are the certain result, but uncertain in amount.”

\textsuperscript{176} \textit{Ibid} p. 284
\textsuperscript{177} \textit{Ibid}
\textsuperscript{178} 282 US 555
He further sited the judgment in *Frederick Thomas Kingsley v. The Secretary of State for India*¹⁸⁰ said:

Shall the injured party be allowed to recover no damages (or merely nominal) because he cannot show the exact amount of the certainty, though he is ready to show, to the satisfaction of the Jury, that he has suffered large damages by the injury? Certainty, it is true, would be thus attained, but it would be the certainty of injustice. Juries are allowed to act upon probable and inferential, as well as direct and positive proof. And when, from the nature of the case, the amount of damages cannot be estimated with certainty, or only a part of them can be so estimated, we can see no objection to placing before the Jury all the facts and circumstances of the case, having any tendency to show damages, or their probable amount, so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit.”

The risk of the uncertainty, says learned Attorney-General, should, in such cases, be thrown upon the wrongdoer instead of upon the injured party. Learned Attorney General also urged that, on first principle, in cases where thousands have been injured, it is far simpler to prove the amount of damages to the members of the class by establishing their total damages than by collecting and aggregating individual claims as a sum to be assessed against the defendants. He said statistical methods are commonly accepted and used as admissible evidence in a variety of contexts including quantification of damages in such mass tort actions. He said that these principles are essential principles of justice and the Bhopal disaster is an ideal setting for an innovative application of these salutary principles.

Taking note of these arguments and the complexities of the issues in the case the Court concluded thus:

“After a careful thought, it appears to us that while it may not be wise or proper to deprive the victims of the benefit of the settlement, it is, however, necessary to ensure that in the-perhaps unlikely-event of the settlement-fund being found inadequate to meet the compensation determined in respect of all the present claimants, those persons who may have their claims determined after the fund is exhausted are not left to fend themselves. But,

¹⁸⁰ AIR 1923 Cal 49
such a contingency may not arise having regard to the size of the settlement-fund. If it should arise, the reasonable way to protect the interests of the victims is to hold that the Union of India, as a welfare State and in the circumstances in which the settlement was made, should not be found wanting in making good the deficiency, if any.”

The court further clarified:

“The petitioners had urged that the principles of the liability and the standards of assessment of damages in a toxic mass tort arising out of a hazardous enterprise should be not only on the basis of absolute liability—not merely on *Rylands v. Fletcher* principle of strict liability—not admitting of any exceptions but also that the size of the award be proportional to the economic superiority of the offender, containing a deterrent and punitive element. Sustenance was sought from *M.C. Mehta v. Union of India*182. This argument in relation to a proceeding assailing a settlement is to be understood as imputing an infirmity to the settlement process as not being informed by the correct principle of assessment of damages. Respondents, however, raised several contentions as to the soundness of the Mehta principle and its applicability. It was also urged that Mehta principle, even to the extent it goes, does not solve the issues of liability of the UCC as distinct from that of UCIL as Mehta case only spoke of the liability of the offending enterprise and did not deal with principles guiding the determination of a holding-company for the torts of its subsidiaries.”

It further stated that:

It is not necessary to go into this controversy. The settlement was arrived at and is left undisturbed on an over-all view. The settlement cannot be assailed as violative of Mehta principle which might have arisen for consideration in a strict adjudication. In the matter of determination of compensation also under the Bhopal Gas Leak Disaster (P.C) Act, 1985, and the Scheme framed thereunder, there is no scope for applying the Mehta principle inasmuch as the tort-feasor, in terms of the settlement - for all practical purposes-stands notionally substituted by the settlement-fund which now represents and exhausts the liability of the alleged hazardous entrepreneurs viz., UCC and UCIL. We must also add that the

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181 Supra 175  
182 [1987]1SCR819  
183 Supra 181
Mehta principle can have no application against Union of India inasmuch as requiring it to make good the deficiency, if any, we do not impute to it the position of a joint tort-feasor but only of a welfare State. There is, therefore, no substance in the point that Mehta principle should guide the quantification of compensation to the victim-claimants. 184

The Supreme Court’s role is noteworthy in developing tortuous liability in environmental cases in India still we fill that there is a great paucity of tort litigation in India, which makes the ideological credibility of Indian tort law a debatable issue. Several reasons could be given for the scanty litigation in India in this field:

1) The institutional character of the legal system fails to encourage the pursuit of remedies of a civil nature for reducing inter-personal tensions in the community;

2) The very technical approach adopted by judges and lawyers without taking into account the growing needs of Indian society;

3) The tendency, noticed in most eastern societies in general, to prefer the process of mediation to that of the judicial process;

4) The prohibitive cost of a lawsuit, the time, labour and money expended at every stage of litigation;

5) The delays attendant on litigation;

6) The unsatisfactory condition of the substantive law on certain topics, for example the liability of the State for torts of its servants;

7) The anomalies created in the minds of litigants by the coexistence of several statutory provisions;

8) The low level of legal awareness among the general public;

9) The difficulty of gaining access to law, since a large portion of the tort law remains uncodified;

184 Ibid
(10) The bureaucratic attitude of government officers dissuading legitimate claims of citizens even though they are legally enforceable.

In the light of such hurdles, which obstruct the natural growth of tort law in India, the recent development in combining tort law with the constitutional right to personal liberty and its remedy through compensation has only to be welcomed. The present state of the law of torts in India is characterized by rapid recent developments within the public law domain that have also perceptibly created a new legal framework for environmental protection in India.

4.3.2 Constitutional Tort and Judicial Trends

The Supreme Court was approached in 1985 to decide directly on environmental and ecological issues in *R. L. & E. Kendra v. State of Uttar Pradesh*\(^ {185}\). In this case two writ petitions, brought before the Supreme Court under Article 32\(^ {186}\) of the Constitution of India as public interest litigation, sought to abate pollution caused by limestone quarries in the Doon Valley in the Mussoorie Hills of the Himalayas. The Court appointed several inspecting committees and on the basis of their reports ordered the closing down of several mines. In its reasoning, reported separately, the Court observed that:\(^ {187}\)

“Preservation of the environment and to keep the ecological balance unaffected is a task not only governments but every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51 A(g) of the Constitution. This judicial attitude towards promoting a clean environment gained momentum throughout the country over the past few years.”

Thus, in *Janki v. Sardar Nagar Municipality*\(^ {188}\) the High Court of Gujarat entertained a writ petition under Article 226 of the Constitution in a public interest case.\(^ {189}\) The Court in its recently developed participatory role was able to persuade the municipality and the State government to provide sewerage and drainage systems for the residents of that area, who had petitioned the Court.

\(^{185}\) (1985) 2 SCC 431.

\(^{186}\) Art.32 of the Constitution of India confers the right to move the Supreme Court for enforcement of the fundamental rights and it also empowers the Supreme Court to grant appropriate remedies for the same.

\(^{187}\) AIR 1987, SC 354, 359.

\(^{188}\) Janki v. Sardarnagar Municipality AIR 1986, Guj. 49.

\(^{189}\) Art.226 of the Constitution of India confers on the High Courts the power to grant appropriate remedies for the enforcement of the fundamental rights conferred by the Constitution.
In *T. Damodhar Rao v. S. O. Municipal Corporation Hyderabad*\(^{190}\), the Andhra Pradesh High Court allowed a petition forbidding the construction of houses for government organizations on land allocated for a recreational park. Judge Choudary gave an emphatic human rights approach to his exposition of the law of ecology and environment. According to him, the law on environmental protection gains priority as a right to life and personal liberty over and above the common law theory of ownership of land. "Under the powerful impact of the nascent but vigorously growing law of environment, the unbridled right of the owner to enjoy his piece of land granted under the common law doctrine of ownership is substantially curtailed".\(^{191}\) He resorted to the constitutional mandates under Articles 48 A and 51 A (g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution.\(^{192}\)

The decisions in the M. C. Mehta cases are of great significance in the development of environmental law in India. In the *Shriram Food and Fertilizer case*\(^{193}\) the Court expressed concern for developing the law to control corporations employing hazardous technology and producing toxic or dangerous substances. The Court also raised the question as to the extent of liability of such corporations and remedies that can be devised for enforcing such liability with a view to securing payment of damages to the persons affected by such leakage of liquid or gas. The application for compensation for persons who had suffered harm on account of the escape of oleum gas raised significant questions in both the tort law as well as in constitutional law. These applications were filed under Article 32 of the Constitution as if they were for enforcement of the fundamental right to life enshrined under Article 21 of the Constitution. Such a procedure is now possible following the rule established in earlier public interest law cases.

In *Bandhua Mukti Morcha v. Union of India*\(^{194}\) the Court had endorsed the true scope and ambit of Article 32 of the Constitution and had held:

it may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for the enforcement of the fundamental rights but it

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\(^{190}\) *AIR* 1987, A.P. 171  
\(^{191}\) Idem, p.180  
\(^{192}\) Idem, p.181.  
\(^{193}\) *M. C. Mehta v. Union of India* ((1987) 1 SCC 395  
\(^{194}\) (1984) 3 SCC 161
also lays a constitutional obligation on the Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights.

In Bandhua Mukti Morcha the Court went further in adding that the power of the courts to give remedial relief may include the power to grant compensation in appropriate cases. Although ordinarily a petition under Article 32 was not used as a substitute for enforcement of the right through the ordinary process of a civil court, compensation was awarded in exceptional cases in petitions under Article 32. In two earlier cases, *Rudul Shah v. State of Bihar*\(^{195}\) and *Bhim Singh v. State of Jammu and Kashmir*,\(^{196}\) the Supreme Court had found it permissible to award compensatory relief under this constitutional provision.

In *M.C Mehta v. Kamal Nath and Ors.*,\(^{197}\) the Supreme Court held that:

Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner…The considerations for which "fine" can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded.”

In *M.C. Mehta v. Union of India*\(^{198}\), *Virender Gaur and Ors. V. State of Haryana and Ors*\(^{199}\), and *CERC v. Union of India*\(^{200}\), the Court invoked the provisions of Article 21 of the Constitution of India to declare that the citizens have a fundamental right to live decently unaffected by pollution.

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195 AIR 1983, SC 1086  
196 (1985) 4 SCC 677  
197 AIR 2002 SC 1515  
198 [1988]1 SCR 279  
199 (1995) 28CC 577  
200 (1995)IL LJ768SC
In *River Ganga Pollution Case*\(^{201}\) the Supreme Court declared that the nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect. Since this affects the community at large, one can move the court through Public Interest Litigation. In this case tanneries were discharging their untreated effluents into the river and nallah were also releasing the city waste into the river, thereby causing water pollution. The Court issued various detailed directions to the Municipal Corporation of Kanpur city to maintain the wholesomeness of the water of the river by taking necessary steps to stop the release of industrial effluents and municipal waste into the river Ganga.

In *Deepak Nitrite Ltd. v. State of Gujarat and Ors.*\(^{202}\) the Supreme Court gave direction to the High Court of Gujarat to re-examine the matter as to whether there was degradation of environment and as a result thereof any damage was caused to any victim and norms to be adopted for awarding compensation.

In this case appeals arise out of a series of orders made by the High Court of Gujarat. A petition was filed before the High Court in public interest alleging large scale pollution caused by industries located in the Gujarat Industrial Development Corporation (GIDC) Industrial Estate at Nandesari. It is alleged that effluents discharged by the said industries into the effluent treatment project had exceeded certain parameters fixed by the Gujarat Pollution Control Board (GPCB) thereby causing damage to the environment. Some of the industries have set up their own effluent treatment plants in their factory premises, while some of them have not. The High Court, by an order made on 17.4.1995, directed that the chemical industries in Nandesari should be made parties to the proceedings thereby 252 industrial units located in the Nandesari Industrial Estate, Baroda were made parties to the proceedings, apart from the State of Gujarat, Central Pollution Control Board, Gujarat Industrial Development Corporation and Nandesari Industries Association. The High Court also issued notices to the financial institutions or banks in respect of these proceedings.

On May 5, 1995 the High Court appointed a Committee under the Chairmanship of Dr. V.V. Modi to ascertain the position with regard to the extent of pollution in Nandesari Industrial

\(^{201}\) *M.C.Mehta v.Union of India* (1998) 1SCC 471
\(^{202}\) (2004) 6SCC 402
Estate. A Common Effluent Treatment Plant (CETP) was erected by the GIDC in Nandesari Industrial Estate on the contribution made by the industrial units in the Nandesari Industrial Estate to the extent of about Rs. 300 lakhs. In as much as CETP was not achieving the required parameters laid down by the GPCB, the High Court, by an order made on 7th August 1996, appointed NEERI as a consultant to assess the treatment facilities and to provide suitable rectification measures for upgrading the CETP and effluent treatment plant facilities. Dr. Committee made a report on 7th September 1996. The High Court restrained several industries from removing their products from their plant without prior permission of the High Court and thereafter, by an order made on 13th September 1996, the High Court permitted them to dispatch materials by depositing a certain sum of money which was the value of the materials. NEERI submitted its report on 31st October 1996. The High Court, while granting permission to some of the industries to carry on their activities, called for turnover figures and profitability data. On 9th May 1997 the High Court passed an order directing the industries to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of environment within a stipulated time. It is against this order the appeal was filed in the Supreme Court.

The High Court took the view that 1% of the turnover would be a good measure of assessing damages for the pollution caused by the industrial units and that amount should be kept apart by the Ministry of Environment and should be utilized for the works of socio-economic uplift of the population of the aforesaid affected areas and for the betterment of educational, medical and veterinary facilities and the betterment of the agriculture and livestock in the said villages with certain additional directions in this regard.

The High Court in its impugned order followed a decision of the High Court of Gujarat in Pravinbhai Jashbhai Patel and Anr. v. State of Gujarat and Ors.\(^{203}\), wherein it was noticed that the industrial units though aware of the requirements of law had not complied with the same nor did they meet the GPCB parameters and they were irresponsible in not wanting or caring to set up effluent treatment plants but continued to manufacture and pollute the environment and the concern shown now in meeting with the pollution control norms is only because of the threatened court order; that pollution caused by these industrial units was

\[203\] (1995)2 GLR 1210
adversely affecting large number of citizens residing in the adjacent cities or villages; that in particular water and air pollution is not only continued to the immediate area in which the pollution is generated, but the same affects other areas as well wherever water or air went.

The Supreme Court directed the High Court of Gujarat to investigate the matter and asked to re-examine this aspect of the matter as to whether there is degradation of environment and as a result thereof any damage is caused to any victim, and what norms should be adopted in the matter of awarding compensation in that regard. In this process it is open to the High Court to consider whether 1% of the turnover itself would be an appropriate formula or not as applicable to the present cases.

In Subashkumar v. State of Bihar\textsuperscript{204} it was held:

...Right to live is a fundamental right under Article 21 of the Constitution of India and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has 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 High Courts have also shown dynamic approach in interpreting the principles of tortious liability to protect the environment. In Ram Raj Singh v. Babulal\textsuperscript{205} a brick powdering mill was held liable for causing private nuisance. In this case the plaintiff happened to be a medical practitioner. He has built a consulting chamber before the defendant set up the brick grinding machine. There was a distance of 40 feet between the two and a road intervened between the grinding machine and the consulting chamber. Due to working of the grinding machine, dust was generated in substantial quantity whereby atmosphere was polluted and it has become difficult for the doctor to carry on his profession. It was also contended that the machine was installed without permission or license from the relevant authority. The contention of the defendant was that these allegations were baseless and they are leveled only on account of enmity. The trial court accepted the contention of the plaintiff as to

\textsuperscript{204} AIR 1991 SC 420
\textsuperscript{205} AIR 1982 ALL 285
emanation of dust and illegal installation of machinery but it held that the plaintiff has not proved substantial or special damage either to himself or to his patients. Thus, in the opinion of the lower Court, the machine caused no actionable nuisance to the plaintiff. The conclusion arrived at by the lower court was reiterated by the lower Appellate Court. Then the matter came before the High Court in appeal.

The High Court after looking at all the relevant facts made the following observation:

‘the conduct of a person (on his Property) becomes a private nuisance when the consequences of his acts no longer remained confined to his own property, but spill over in a substantial manner to the property belonging to another person. However, anything done by a person on his own property, repercussions of which are left on the neighbour’s land, may not always be a nuisance, i.e. when the consequences are of such a trivial nature that no reasonable person would object to the same.”206

It further observed:

“after the land had been built upon, the owner of the building cannot expect to have air of the same quality which existed before the building was erected. But, when something is done by the owner of a neighbouring land upon his own land which is not comfortable or is wholly uncomfortable with physical comfort and human existence, the person aggrieved gets a right to sue and the act of the neighbour will be an actionable nuisance. However, in order to judge this, the standard to be employed again is the standard of sober and reasonable man. Concepts of elegant and dainty living will be wholly out of place. Further the location of a property is also relevant circumstance. A person living in an industrial locality cannot claim to have as much fresh air as a person living in a non industrial area.”207

The Court further clarified that:

“All that law requires is that when an act amounts to public nuisance, an individual can sue in his own right only if he is able to prove ‘special damage’ to himself, i.e. damage which is

\[\text{Thesis submitted for the award of the degree of Doctor in Philosophy in law by Madhuri Parikh}\]
personal to him as opposed to the damage or inconvenience to the public at large or to a section of the public...”

It was also declared that:

“...every injury is considered to be substantial which a reasonable person considers to be so. In assessing the nature of substantial injury, the test to be applied is again the appraisement made of the injury by a reasonable person belonging o society. The expression does not take into account the susceptibilities of hypersensitive person or person attuned to the dainty mode of living.”

Therefore, the Court decided that entry of dust from the brick-grinding machine in the consulting chamber and a thin red coating visible on the clothes of the persons sitting there were sufficient evidence of special damage. As it was a public hazard and was bound to cause harm to the health of persons, it amounted to substantial injury. The appeal succeeded. An injunction was granted.

In *Ramlal v. Mustafabad Oil and Cotton Ginning Factory*210, after a review of numerous decisions, the Court has formulated a number of principles to determine whether an injury complained of amounts to actionable nuisance or not. Justice Tek Chand, in that case, has, himself observed that actionable nuisance does not admit of enumeration and any operation which causes injury to health, to property, to comfort, to business or to public moral would be deemed to be a nuisance.

In *Krishna Gopal v. State of M.P.*211 the court decided the issue of nuisance caused by noise and air pollution from the factory. A glucose factory was located close by, roughly about 8 feet from the house of the plaintiff in the district of Indore. The contention of the plaintiff was that smoke and ash from the boiler of the factory caused a great deal of atmospheric pollution resulting in a deleterious effect on the resident of the locality in general and the plaintiff in particular. It was also contended that a factory was being run round the clock and her husband, a heart-patient is unable to get eight hours of minimum sleep which is a must for him, due to booming sound of the boiler. It was a strange thing that

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208 Ibid
209 Ibid
210 AIR 1968 P& H 399
211 1986 Cr. C.J. 396 (M.P.)
the factory was installed in the residential area under the licence granted by the appropriate authority.

On these facts, the question before the Court was whether the alleged nuisance could be termed as a public nuisance and could an order be passed for its removal on the complaint of a single person. It was contended on behalf of the plaintiff, that in the circumstances of the case, it should be treated to be a private nuisance rather than a public nuisance and the plaintiff is entitled to seek remedy without having recourse to section 133 of the Code of Criminal Procedure.

The M.P. High Court held in Dhanna Lal v. Chittar Singh\(^{212}\) that the constant noise, if abnormal or unusual, can be actionable if it interferes with another’s physical comfort. The person causing nuisance may be restrained by injunction, although he may be conducting his business in a proper manner according to rules framed in this behalf either by the municipality or by the State.

The Karnataka High Court in Lakshmipathy v. State\(^{213}\) observed that air, water, land and noise nuisance were hazardous, and the industries cannot be permitted to operate while causing air and noise pollution affecting the quality of the environment.

Noise from mining operations has also been held as noise pollution in Ved Kaur Chandel(Smt) v. State of H.P.\(^{214}\) The Courts have also accepted Public Interest Litigation (PIL) even when there is likelihood of air and noise pollution or apprehended nuisance.\(^{215}\)

The Court had noticed in Bijayanand Patra v. Distt. Magistrate, Cuttack\(^{216}\), that noise pollution—a slow agent of death—simply connotes disagreeable/unwanted sound in the atmosphere. Therefore it requires special laws to deal with the noise pollution as it has already crossed the danger level. The use of loudspeakers and explosives must be regulated as they have proved to be big health hazards.

Thus the judiciary has innovated new methods to enforce tortious liability to protect the environment.

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\(^{212}\) AIR 1959 MP 240  
\(^{213}\) AIR 1992 Kant 57  
\(^{214}\) AIR 1999 HP 59  
\(^{216}\) AIR 1999 Ori 70
4.4 Conclusion

The Supreme Court and the High Courts have already laid and still they are in the process of broadly laying down the legal framework for environmental protection. A public law realm, based on the Constitution of India, has brought about great inroads into the civil and criminal laws of the country within the last decade or so. These new developments in India by the extraordinary exercise of judicial power have to be perceived as just one of the many ways to meet the social and political needs of the country. The new approach of the Judiciary in developing the concept of constitutional tort has proved really helpful in protecting the environment and the rights of people to clean and healthy environment.