CHAPTER - 5

JUDICIAL RESPONSE TO ENVIRONMENT PROBLEM:
CRITICAL STUDY OF SUPREME COURT / HIGH
COURTS DECISIONS ON WATER POLLUTION

5.1. Introduction
5.2. Judicial Response to Environment
5.3. Relaxation of the rule of Locus Standi – opening the flood gates the
   Public Interest Litigation
5.4. Judicial aggression on Pollution Control
5.5. Conclusion
5.1. Introduction

The present chapter devotes for active interpretation of the provisions of Water Acts and Sec. 133 of Cr. P. C. by the higher courts while using the instruments of Public Interest Litigation to maximum effect. The fundamental right to a pollution free environment is discussed here. These fundamental rights have drawn support from important jural principles and strategies laid down by the apex court. The polluter pay principle, precautionary principle, principle of intergenerational equity and that of absolute liability are all discussed in the context.

Protection of the environment raises difficult and complex issues. Therefore, the fundamental question before the world today is whether we can allow this destruction of environment to continue. Despite over exploitation of our environment by mankind, it is still possible to arrest the depletion by taking preventive measures. The philosophy of peaceful co-existence with nature found its way in our constitution also. Articles 48A and 51A relating to environmental issues were incorporated in the constitution.

The Supreme Court has evolved principles of great importance which provide guidance for deciding complex environmental issues. Parliament has enacted laws, needed for implementing decisions of the United Nations Conference on Human Environment for the states to take appropriate steps for the protection and improvement of the human environment.

The judiciary has done its best in ensuring environmental protection. The Apex Court took unpopular decisions which have proved beneficial in the long run. Judicial directions in matters like pollution of our holy rivers, the Ganges and the Yamuna, pollution of underground water, protection of national historical monuments like the Taj Mahal have rendered great service to humanity. However, our law enforcement has yet to catch up with these efforts.
Law cannot reach where enforcement cannot follow. Without proper enforcement of laws of court orders will not be able to achieve desired results.

Indian environmental law has seen considerable development in the last 2 decades. Most of the principles under which environmental law works in India today were assembled over the last 20 years with a predominant share from careful judicial thinking in the Supreme Court and High Courts of the States.

The Supreme Court, in its interpretation of Art 21, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence. There are numerous decisions wherein the right to a clean environment, drinking water, a pollution free atmosphere etc have been given the status of inalienable human rights. The court has successfully isolated specific environmental law principles upon the interpretation of Indian States and the constitution, combined with a liberal view towards ensuring social justice and the protection of human rights.

The principles of Indian Environmental Law lie in the judicial interpretation of laws and the constitution, valuable lessons will be learnt from international experiences as well as the direction shown by the judiciary. Important decisions of the Supreme Court and High Courts are discussed in detail and comments are also made on judgments.

5.2. Judicial Response to Environment

Judicial activism has been a recent phenomenon in Indian environmental jurisprudence. Environment is the outer physical and biological system in which man and other living objects survive The main identified components of the environment are soil, water and air. These components of the environment keep on interacting with each other to maintain a mutual balance called “ecological balance.” The system as a whole sustains mankind. It is God’s gift to the living beings to enable them to live on this planet and lead a healthy life. The
‘ecological balance’ is being upset by misuse, abuse and extra ordinary use of resources of the environment. This has a bearing on the existence of the environment. This has a bearing on the very existence of the human race. When we disturb nature thereby disturbing the ecological balance, the impact on human life is highly damaging. Conservation and preservation of the environment is the need of the day.¹

The philosophy of peaceful co-existence with nature found its way in our constitution also. The following articles: 48A and 51A relating to environmental issues were incorporated in the Constitution. 48A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. 51A (g): It shall be the duty of every citizen of India to protect and improve the natural environmental including forests, lakes, rivers and wildlife and to have compassion for living creatures.²

The Supreme Court has evolved principles of great importance which provide guidance for deciding complex environmental issues. Parliament has enacted laws, needed for implementing decisions of the UNITED NATION’s Conference on Human Environment which called upon the nations of the world to take appropriate steps for the protection and improvement of the human environment.³

The role of the judiciary in addressing the problem of water pollution in ensuring a wholesome environment has rendered a great service to the humanity. Seeds have been planted, path has been shown, direction has been given to provide desired results.⁴

Courts have their own limitations. They can normally respond through cases that come before them. They cannot effect systematic changes in environmental conditions. Public Interest Litigation by individual enthusiasts and the NGOs has helped in protection of the environment. However, this effort
is not sufficient to check the deteriorating environmental conditions. Awakening the public towards their right to live in a pollution free environment is more essential. Public awareness alone can achieve desired results. Solutions to environmental problems lies in our hands. No amount of effort on the part of the state or other agencies will be able to tackle the problems. Citizens have to rise to the occasion.\(^5\)

We need to generate among the citizens of feeling of responsibility for preserving and creating a livable environment. Public participation in implementation of environment protection programmes is to be encouraged. Environment as a subject should be made compulsory at all levels in teaching right from primary level upto University level. Education and awareness campaigns have to be conducted through the media. We cannot continue to be complacent. Unless drastic efforts are made, planet earth will be rendered uninhabitable.\(^6\)

5.3. Relaxation of the rule of Locus Standi – opening the flood gates the Public Interest Litigation

There is near-complete academic agreement that the concerted involvement of the higher judiciary in India with the environment began with the relocation of the rule of Locus Standi, and the departure from the “proof of injury” approach,\(^7\) as can be seen, for example in the decision in Bangalore Medical Trust Vs. B.S. Muddappa.\(^8\) The relaxation of the rule led to some important consequences, which were particularly pertinent to environmental matters. First, since it was possible that there could be several petitioners for the same set of facts dealing with an environmental hazard or disaster, the Court was able to look at the matter from the point of view of an environmental problem to be solved rather than a dispute between two parties. Second, the rule took care of many interests that went unrepresented for Ex; that of the common people who normally had no access to the higher judiciary. However, the taking up of interest by so called third parties who were interested but not injured in the
earlier strict sense also had its share of controversy. Some critics have claimed that Public Interest Litigation has been misused by parties who were secretly interested in issues allied to environmental matter, which were sometimes commercial in nature, thereby using the exalted platform explicitly created for the solution of environmental matters alone. The relaxation of *locus standi*, in effect, created a new form of legal action, variously termed as Public Interest Litigation or Social Action Litigation. This form is usually more efficient in dealing with environmental cases, for the reason that these cases are concerned with the rights of the community rather than the individual.\(^9\)

**Comment:** The Supreme Court in recent years has been adopting a holistic approach towards environmental matters. This is usually done through detailed orders that are issued from time to time, while committees appointed by the Court monitor the ground situation.

What the history of environmental law has shown is that it has fallen frequently to the judiciary to protect environmental interests, due to sketchy input from the legislature and laxity on the part of the administration. The higher judiciary plays a rather stalwart role owing to its unique position and power. The principles of Indian environmental law are found in the judicial interpretation of laws and the constitution, and encompass several internationally recognized principles, thereby providing some semblance of consistency between domestic and global environmental standards. It is hoped that valuable lessons will be learnt from international experiences as well as the direction shown by the judiciary, and that environmental law will emerge as a major concern for Indian governance.\(^{10}\)

The clear constitutional and statutory provisions have been further strengthened and supplemented by active judicial interpretation in enforcing law relating to protection of environment and prevention of pollution. In doing so, the higher courts have evolved new principles and forged new strategies that
have contributed significantly to the growth of jurisprudence on environmental law in India. Thus, in one of earlier cases where conflicting considerations of development and environment protection were sought to be balanced while regulating mining activities in the Doon Valley, the Court held that the hardship caused to the lessee is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance to ecological balance.

In the cases filed by the Lawyer M.C. Mehta relating to pollution of river Ganges, the Court passed comprehensive directions to the Central Government, the UP Pollution Control boards, district administration and even the polluting tanning industries in a petition under Art 32 of the constitution despite remedial mechanism available under the Water Act. However, it was various High Courts which came up with direct and specific pronouncements on citizens fundamental right to environment. Thus, Andhra Pradesh, Karnataka & Kerala High Courts ruled that Art 21 of the constitution embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Art 21 of the Constitution.11

Two clear stands emerge when the role of higher judiciary is closely scrutinized. The domain of public Interest Litigation in the field of environment has seen an emerging pattern in judicial activism. On the one hand, pollution issues have found favours with the appellate courts within their writ jurisdiction, whereas on the other there appears to be a conscious restraint on development and infrastructure projects.12

The judicial approach should be based on civil liability for environmental damage which would deter environmentally harmful actions and compensate the victims of environmental damage. Conceptually, the principle of legal liability may be viewed as an embodiment of legal doctrine of the ‘polluter pays’
approach, itself deriving from the principle of economic efficiency. It is preferable to prevent environmental damage from occurring in the first place, rather than attempting to restore degraded environmental resources after the fact.

5.4. Judicial aggression on Pollution Control

On the decision relating to pollution control the Court asserted that the policy decisions and fact-finding tasks are fields appropriate for legislative enactments and executive action. Yet, in a sharp departure from this position, the last ten years have shown that in a large number of cases, and especially in those relating to the prevention of pollution, policy and technical constraints have not prevented the Court from taking remedial action. A sure testimony of this has been the plethora of committees and commissions appointed and relied upon the courts. In the famous case of Doon Valley i.e. Rural Litigation and Entitlement Kendra and others Vs. State of UP & others.13

The Supreme Court appointed several committees consisting of experts to examine whether indiscriminate mining in the Doon Valley had any adverse impact on the ecology. The issue before the Court was allegations of unauthorized and illegal mining in the Missourie and Dehradun belt which adversely affected the ecology of the area. By entertaining environmental complaints, the Supreme Court considered violations by pollution as a violation of Art 21’s right to life. The Court ordered the closure of mining operations in these areas while allowing mining in other cases reported by these committees as not dangerous. Further, the Court constituted a monitoring committee, aptly called the “Supreme Court Monitoring Committee” which continues to oversee the quarrying and mining operations in the valley even more than a decade after the final disposal of the case in 1988. Besides, in most of the cases filed by the well known environmental lawyer M.C. Mehta on Pollution prevention, the courts have repeatedly appointed committees to ascertain disputed facts, to suggest remedial measures and to oversee implementation at its orders. In this context, one should appreciate for several directions issued by the higher courts
to the government, pollution control agencies, and particularly the municipal authorities on not carrying out their statutory duties of collecting and disposing garbage and waste but also as to how precisely to go about doing that.\textsuperscript{14}

The approach of the judiciary should be fault-based liability. In a fault based liability regime a party is held liable if it breaches a pre-existing legal duty, for example, an environmental standard. Environmental standards must reflect the economic and social development situation in which they apply. The Supreme Court approach to impose liability on the polluter is based on the report submitted by experts. In most of the cases of environmental degradation, it has sought the help of National Environmental Engineering Research Institute for ordering the concerned to act in compliance with the provisions of the Water Act.

The high water mark series of cases on pollution control law is the judgment of the Supreme Court in \textit{Andhra Pradesh Pollution Control Board Vs. Prof. M.V. Nayudu}\textsuperscript{15}, the Supreme Court referred the dispute relating to the possibility of water pollution caused by an industry to National Environmental Appellate Authority (NEAA), The Court opined to say of Paramount importance in the establishment of environmental courts, authorities and tribunals is the need for providing adequate judicial and scientific input rather than leave complicated disputes regarding environmental pollution to officers drawn only from the executive. The approach of the Court of not leaving complicated disputes to officers drawn only from the executive is in sharp contrast to the court’s general stand of non-interference in infrastructure projects on the ground and that involve complex and intricate questions best left to the executive.

Environmental concerns arising in the court under Art 32 or under Art. 136 or under Art. 226 in the High Courts are of equal importance as Human Rights concerns. Both are to be traced to Art 21 which deals with fundamental
right to life and liberty. While environmental aspects concern ‘life,’ human rights aspects concern ‘liberty.’

The following issue set out by the court were examined:

a) Is the industry a hazardous one and what is its pollution potentiality, taking into account, the nature of the product, the effluents and its location?
b) Whether the operation of the industry is likely to affect the sensitive catchment area resulting in pollution of the Himayat Sagar and Osman Sagar lakes supplying drinking water to the twin cities of Hyderabad and Secunderabad?

It shall be open to the authority to inspect the premises of the factory, call for documents from the parties or any other body or authority or from the Govt. of Andhra Pradesh or Union Government and to examine witnesses, if need be. The Authority shall also have all powers for obtaining data or technical advice as it may deem necessary from any source. It shall give an opportunity to the parties or their counsel to file objections and lead such oral evidence or produce such documentary evidence as they may deem fit and shall also give a hearing to the appellant or its counsel to make submissions.

In large number of matters coming up before the court either under Art 32 or under Art. 136 and also before the High Courts under Art. 226, complex issues relating to environment and pollution, science and technology have been arising and in some cases, this Court has been finding difficulty in providing adequate solutions to meet the requirements of public interest, environmental protection, elimination of pollution and sustained development. In some cases the Court has been referring matters to professional or technical bodies. The monitoring of a case as it progresses before the professional body and the consideration of objections raised by affected parties to the opinion given by these professional technical bodies have again been creating complex problems.
The question is whether, in such a situation, involving grave public interest, the Court could seek the help of other statutory bodies which have an adequate combination of both judicial and technical expertise in environmental matters like the Appellate Authority under the National Environmental Appellate Authority Act 1997. A similar question arose in *Paramjit Kaur Vs. State of Punjab* (1998 (5) SCALE 219 (6) – JT338). Under Art 32 of the constitution alleging flagrant violations of human rights in the State of Punjab as disclosed by a CBI report submitted to the Court. The Court requested the National Human Rights Commission to examine the matter. The Commission was acting as Sui Juris, that its services could be utilized by the Supreme Court treating the commission as an instrumentality of the state or agency of the Supreme Court.

The Supreme Court considered the instant case also on similar line as environmental concern arising in the matter is of equal importance as Human Rights concerns. In fact, both are to be traced to art. 21 which deals with fundamental right to life and liberty. While environmental aspects concern ‘life,’ human rights aspects concern ‘liberty.’ In view of the court, in the context of emerging jurisprudence relating to environmental matters, as it is relating to human rights. It is the duty of the Court to render justice by taking all aspects into consideration. With a view to ensure that there is neither danger to environment nor to ecology and at the same time ensuring sustainable development, the Court can refer scientific and technical aspects for investigation and opinion to expert bodies such as the Appellate Authority under National Environmental Appellate Authority Act 1997. The said authority comprises of retired judge of the Supreme Court and Members having technical expertise in environmental matters whose investigation analysis of facts and opinion on objections raised by parties could give adequate help to the court and also the needed reassurance. Any opinions rendered by the said authority would of course be subject to the approval of the Court.
It shall be open to the authority to inspect the premises of the factory, call for documents from the parties or any other body, if need be. The authority shall also have all powers for obtaining data or technical advice as it may deem necessary from any source. A question has been raised by respondent industry that it may be permitted to make trial runs for at least three months so that the results of pollution could be monitored and analyzed. The Court left the matter to be divided by the authority because whether any such trial runs would affect the environment or cause pollution. On this aspect also, it shall be open to the authority to take a decision after hearing the parties.

On the problem faced by Environment courts / Tribunals due to complex science and technology, the court observed that the difficulty faced by environmental court in dealing with highly technological or scientific data appeared to be a global phenomenon. Lord Woolf’s Lecture reported in 1992 J. Environmental Law Vol. 4, No. 1, PI was quoted by the court. The courts ability to handle complex science rich cases has recently been called into question, with widespread allegations that the judicial system is increasingly unable to manage and adjudicate science and technology issue. Critics have objected that judges cannot make appropriate decisions because they lack technical training, that the jurors do not comprehend the complexity of the evidence they are supposed to analyze, and that the expert witnesses on whom the system relies are mercenaries whose biased testimony frequently produces erroneous and inconsistent determinations. If these claims go unanswered or are not dealt with, confidence in the judiciary will be undermined as public becomes convinced that the courts as now constituted are incapable of correctly resolving some of the more pressing legal issues of our day.

The Supreme Court while interpreting the provisions of the Water Act and constitutional mandate to provide healthy environment has relied on the opinion given by the expert’s body. The Court laid stress on the substantive interpretation of the provisions of the Water Act. It is most appropriate for the
Court to make a decision on a complex issue of pollution only on expert opinion. The methodology adopted by the Court is highly appreciable in view of the fact of court inability to pass a judgment without examining the implications of a complex technical factor. The remedies granted by the Court should be in tune with the extent of damage caused to the environment.

The decision of the Court in the instant case is significant in view of the fact that the copies of the judgment to be communicated to the Secretary, Environment and Forests (Govt. of India), New Delhi, to the Secretaries of Environment and Forests in all Statements government and Union Territories and the Central Pollution Control Board, New Delhi and the judgment directed the Central Pollution Control Board to communicate a copy to all State Pollution Control boards and other authorities dealing with environment, pollution, ecology, forest and wildlife. The present judgment has far reaching effect on the ground of social concern shown by the judiciary.

*Indian Council for Enviro-legal Action Vs. Union of India*¹⁶

Facts: In the instant case the petition was filed requesting appropriate remedial measure against pollution caused by toxic effluents produced by certain industries in the course of production of ‘H’ acid. It was alleged that untreated toxic sludge was thrown in the open and around the complex of industries due to which the substances percolated into the soil polluting the aquifers and subterranean supply of water. As a consequence water in the wells and streams had become unfit for animal and human consumption and for irrigation and the soil had become unfit for cultivation.

The principle upon which the court draw its attention was for the establishment of environment courts. The court directed as under:

“The Central Government shall consider whether it would not be appropriate, in the light of the experience gained that chemical industries are the main culprits in the matter of polluting the environment and functioning more
rigorously. No distinction should be made in this behalf as between a large scale industry and small scale industry or for that matter between large sale industry and medium scale industry. All chemical industries, whether big or small should be allowed to be established only after taking into consideration of all environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment around them.”

Appreciation was expressed on the suggestion for the establishment of environment courts. The court observed the experience shows that the prosecutions launched in ordinary criminal courts under the provisions of the Water Act, Air Act and Environment Act never reach their conclusion either because of the work load in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders passed by authorities under the water and Air Acts and the Environment Act are immediately questioned by the industries in courts. Those proceedings take years and years to reach conclusion. Very often interim orders are granted meanwhile, which effectively disable the authorities from ensuring the implementation of their orders. All these points to the need for creating environment courts which alone should be empowered to deal with all matters, civil and criminal, relating to the environment. These courts should be manned by legally trained persons / judicial officers and should be allowed to adopt summary procedures. This issue, no doubt, requires to be studied and examined in depth from all angles before taking any action.

The Central government should consider the advisability of strengthening the environment protection machinery both at the centre and the states and provide them more teeth. The heads of several units and agencies should be made personally accountable for any lapse or negligence on the part of their units and agencies. The idea of an environmental audit by specialist bodies created on a permanent basis with the power to inspect, check and take necessary
action not only against erring industries but also erring officers may be considered.

The idea of an environment audit conducted periodically and certified annually, by specialists in the field, duly recognized, can also be considered. The ultimate idea is to integrate and balance the concern for the environment with the need for industrialization and technological progress.

The Court further held on the need to recognize the ambit of Art 21 of the constitution. The writ petition is not really for issuance of appropriate writ, order or directions against the respondents but is directed against the Union of India, Government of Rajasthan and Rajasthan Pollution Control Board to compel them to perform their statutory duties enjoined by the acts on the ground that their failure to carry out their statutory duties is a serious undermining of the right to life guaranteed by the Art 21 of the Constitution. Since the respondents were flouting the provisions of the law and the directions and orders issued by the lawful authorities, the Court can definitely make appropriate directions to ensure compliance with law and lawful directions made thereunder.

The Court ordered closure of plants/factories/units of respondents and issued detailed directions to the Union Government. It held that the respondents are absolutely liable to pay compensation for the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area. Besides the Court asked the affected person to institute a suit for damages in a civil court.

Comment: the firm stand of the Supreme Court has tried to shake off the slackness of enforcement agencies. This has been done by an activist interpretation of the legal provisions of polluter pays, making creative use of
some new principles and strategies. In cases where regulatory bodies have failed in their duty, the court has passed strictures against them.

In *S. Jagannath Vs. Union of India (Aquaculture case)* the Supreme Court considered the Sea Coast and beaches are a gift of nature to mankind. The aesthetic qualities and recreational utility of the said area has to be maintained. Any activity which has the effect of degrading environment cannot be permitted.

The Shrimp culture industry in India is taking roots in India. Since long fishermen in India have been following the traditional rice / shrimp rotating aquaculture system. In the last few years more than 80,000 hectares of land have been converted to shrimp farming. India’s marine export weighed in at 70,000 in 1993 and was projected to reach 2,00,000 tonnes by the year 2000. More and more areas are brought under semi intensive and intensive modes of shrimp farming. The environmental impact of shrimp culture essentially depends on the mode of culture adopted in the shrimp farming. The new trend of more intensified shrimp farming in a certain parts of the country without much control of feeds, seeds and other inputs and water management practices has brought to the fore a serious threat to the environment and ecology which has been highlighted before the court.

A petition was filed by S. Jagannathan, Chairman, Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker sections of the society. The petitioner sought the enforcement of Coastal Zone Regulation dated 19-02-1991 issued by the Government of India, stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas, prohibition from using the wastelands / wetlands for prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas.
Ministry of Environment and Forest under Rule 5(3)(a) of the Environment (Protection) Rules 1986 as Coastal Regulation zone imposed restrictions for the establishment of industries under CRZ notification. The public interest petition is directed against the setting up of prawn farms on the coastal areas of Andhra Pradesh, Tamilnadu and other coastal states. It was alleged that the coastal states are allowing big business houses to develop prawn farms on a large scale in the ecologically fragile coastal areas of the states concerned in violation of the Environment Protection Act 1986 and the rules framed thereunder.

It was also alleged that establishment of prawn farms on rural cultivable lands is creating serious environmental, social and economic problems for the rural people living along the coastal bed specially in the east coast. The court directed NEERI (National Environmental Engineering Research Institute) through its Director to appoint an investigating team to visit the coastal areas of the states of Andhra Pradesh and Tamilnadu and give its report to the court. Based on the report submitted by NEERI the court passed the following order.

1. No part of agricultural lands and salt farms be converted into commercial aquaculture farms hereafter.
2. No groundwater withdrawal be allowed for aquaculture purposes to any of the industries whether already existing or in the process of being set up.
3. No further shrimp farms or any aquaculture farms be permitted to be set up in the areas in dispute hereinafter.

Mr. Mehta contended that due to these farms occupying most of the coastal areas it has become difficult for the villagers to search for fresh water. The state Govt. was directed to examine this aspect and provide water by way of tankers wherever it is necessary. No water polluting industries should be allowed nearby and the domestic sewage and the industrial effluents entering any lake
through various drains be properly treated so that no pollutants enter the coastal waters.

Shrimps are basically marine. Shrimps are also called prawns. In commercial jargon, marine prawns are referred to as shrimps and fresh water ones are prawns. Prawns and shrimps are invertebrates and are decaped crustaceans. Sea is their home and they grow to adulthood and breed in the sea. The progeny start their life by drifting into estuaries and such other brackish water areas for feeding. In about 4-6 months the larvae grow into adolescence and go back to their real home of birth, the sea.

Incidence of conversion of agricultural land into coastal aquaculture units, which infringes the fundamental right to life and livelihood, could be noticed in States of Karnataka (Kumta Taluk), Maharashtra (Ratnagiri District & Palghar Taluk) and in Gujarat (Valsad District). Villages situated along the Sea Coast and backwater zones, specifically at Gunda, Kumta and Karwar (Karnataka), Palghar and Dahanu (Maharashtra) and Valsad (Gujarat) are under threat due to conversion of land into aquaculture farms.

It was observed through inspection in the State of Karnataka that an aqua farm established at Honnavar in Kumta Taluk is on the periphery of the village. The bunds constructed for making the ponds have obstructed the free flow of storm water and domestic waste water from the village to sea and this has created health, hazards for the villagers. Intrusion of saline water in the soil was also observed and reports on damage to coconut plantations in nearby areas were also received. Contamination of drinking water sources due to saline water intrusion was observed. Seepage of saline water from the bund and damage to coconut plants in nearby areas and practices of allowing the ponds to come up near residential and public utility places must be stopped immediately. This will avoid the flooding of the area with saline water, and will help in restoration of hygienic and sanitary conditions in the nearby residential areas.”
The National Environmental Engineering Research Institute [NEERI] report clearly indicate that due to commercial aquaculture farming there is considerable degradation of the mangrove ecosystems, depletion of casuarina plantations, pollution of potable waters, reduction in fish catch, and blockage of direct approach to the seashore. Agricultural lands and salt farms were converted into commercial aquaculture farms. The ground water got contaminated due to seepage of impounded water from the aquaculture farms. Highly polluted effluents were discharged by the shrimp farms into the sea and on the seacoast.

The villagers lost their access to potable water as the water tables became alkaline due to the seepage of seawater from the prawn farms. Dr. Vandana Shiva, after visiting some villages recorded that ‘shortage of drinking water and deterioration of its quality have resulted in the neighborhood of Shrimp forms: “Protection of ground water sources may be viewed as non-tradable capital, as once contaminated, they may prove impossible to rehabilitate.”

Water sample drawn from drinking water well had excessive quantities of Magnesium, Calcium, Sulphate and chloride content near coastal area. The proof of this fact made the District Collector to order for the supply of drinking water through tankers to the villages and it was also found that salt water from shrimp ponds seeped into drinking water sources.

**Based on the examination of the report of NEERI the Court ruled that;**

“Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any another person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.”
Consequently the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas.” The polluter pays principle as interpreted by the court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of ‘sustainable development’ as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Art 21 of the Constitution of India guarantees protection of life and personal liberty. The other constitutional mandate to preserve environment is enshrined under Art. 47, 48A and 51A (g). Apart from the constitutional mandate Water Act 1974 and Environment Protection Act 1986 confer more powers to the Central Pollution Control Board and State Pollution Control boards to command and control various forms of pollution.

The Water Act prohibits the use of stream and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment.

In view of the above mentioned constitutional and statutory provisions, the Court had no hesitation in holding that precautionary principle and polluter pays principle as part of the environmental law of the country. The court was of the view that before any shrimp industry or shrimp pond is permitted to be installed in the ecology fragile coastal area it must pass through a strict environmental test. There has to be a high powered “Authority” under the Act to
scrutinise each and every case from the environmental point of view. There must be an Environmental Impact Assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broad based primarily concerning environmental degradation linked with shrimp farming.

The assessment must also include the social impact on different population strata in the area. The quality of assessment must be analytically based on superior technology. It must also take into consideration the inter generational equity and the compensation for those who are affected and prejudiced.

The court also observed that there are other legislation like Fisheries Act, 1897, Wild Life Protection Act 1972, and Forest Conservation Act, 1980 which contain useful provisions for environment protection and pollution control. Unfortunately, the authorities responsible for the implementation of various statutory provisions are wholly remiss in the performance of their duties under the said provisions.

Under para 2 of the Coastal Regulation Zone notification, certain activities are declared as prohibited. Various State Governments have enacted coastal aquaculture legislation’s regulating the industries set up in the coastal areas. It was argued before the Court that certain provisions of the state legislations including that of the state of Tamilnadu are not in consonance with the CRZ Notification issued by the Government of India under Sec. 3(3) of the Act. Assuming that be so, the Court viewed that the act being a central legislation has the over riding effect. The Environment Protection Act 1986 was enacted under Entry 13 of List I Schedule VII of the constitution of India. The said entry is as under:
“Participation in International Conferences, assessment and other bodies and implementing of decisions made thereat.”

The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nation’s Conference on the Human Environment held at Stockholm in June 1972. Parliament enacted the law under Art 253 of the constitution. The CRZ Notification having been issued under the Act shall have over riding effect and shall prevail over the law made by the legislatures of the states.

The Court ordered for recovery of damage from the industrialists on the polluter pays principle and for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector / District Magistrate of the area concerned. The Collector shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons / families.

The Court further stated that any violation or non-compliance of the directions of the court shall attract the provisions of the contempt of Courts Act. The compensation amount recovered from the polluters shall be deposited under a separate head of account called “Environment Protection Fund” and shall be utilized for compensating the affected persons as identified by the Authority and also for restoring the damaged environment.

The Court also directed to have consultation with the expert bodies like NEERI [National Environmental Engineering research Institute] Central Pollution Control Board, respective State Pollution Control Boards to frame schemes for reversing the damage caused to the ecology and environment by
pollution in the coastal states. The schemes so framed shall be executed by the respective State Governments / Union Territory Governments under the supervision of the Central Govt. The expenditure shall be met from the “Environmental Protection Fund” and from other sources provided by the respective State Governments and Central Governments.

The Court also directed to consider the demand for payment of compensation for workmen who were retrenched consequent on the closure of the industries under sec. 25B of the Industrial Dispute Act, 1947. The writ petition was allowed with cost of Rs. 1.40 lakhs.

Comment: The decision given by the Supreme Court can be analyzed in different angle due to its multifarious effects in preservation of the ecology. The nature of remedy granted by the court is considered to be laudable. The court has considered the plight of the villagers in protecting their means of livelihood. The constitutional mandate of Art 21 was expanded and Pollution Control Boards have the legal authority to conduct periodic inspections to check whether they have the appropriate consent to operate. It is surprising to note through the analysis of the facts of the case that the State of Tamilnadu had permitted to establish shrimp farming in contravention of the CRZ notification. The Court has rightly remarked in its judgment over the inconsistency provision of the state regulation which is not in consonance with CRZ Regulation of 1991. Under the scheme of the constitution, the Central Governments power to regulate the problem of pollution has an over riding effect and to the extent of inconsistency the state law is held invalid. The judgment of the court is significant as the court sought the opinion of the expert body like NEERI (National Environmental Engineering Research Institute) to find the solution of the villagers and the Pollution Control board authorities were directed to perform their duty to protect environment and entrusted the responsibility to recover the cost of damage to environment by applying an international law principle of precautionary principle and polluter pays principle. The Court passed the order balancing the
environment protection over economic development. Even though the foreign exchange earning supported the economy, it cannot be at the cost of environment. The decision of the court opened up many constitutional issues and it could find solutions to the problem through constitutional mandate.

Another important judicial response to environment can be seen in a historical judgment passed by the Supreme Court in *M.C. Mehta Vs. Kamalnath & Others*.\textsuperscript{18}

The court in the instant case took notice of an article in a leading daily alleging ecological damage to Kullu Valley due to illegal construction of a motel (In 1995, Span Motels built a resort on the bank of Beas river, Kamal Nath, former Minister of Environment and Forests had links with the hotelier, who had encroached a Swath of forest land. The encroachment was validated in 1993-94 during Nath’s tenure as minister. During the 1995 monsoons, the river engulfed part of the land and threatened the resort. Span Motels carried out work to deflect the flow of the river which was causing environmental damage. An article to this effect was published in one of the leading dailies of which the court took notice.

The Supreme Court passed a significant order canceling the lease granted to Motel and prior approval granted by the Government of India, Ministry of Environment and Forest was set aside. The Court also directed the Himachal Pradesh Government to take over an area of 27 bighas and 12 biswas and restore to its original natural conditions.

The Supreme Court applied ‘Public Trust Doctrine’ in the judgment as part of the law of the land. The ancient Roman Empire developed a legal theory known as the “Doctrine of Public Trust.” It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by the government in trusteeship for the free use of the general public. Our
contemporary concern about the environment bears a very close conceptual relationship to this legal doctrine. Under the Roman law, these resources were either owned by no one or by everyone in common under the English common law, however the sovereign could own these resources but the ownership was limited.

The Doctrine of Public Trust primarily rests on the principle that certain resources like air, sea, water and the forest have such a great importance to the people as a whole that it would be wholly unjust to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than a permit their use for private ownership or commercial purposes.

The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and banks of River Beas has to be removed and reversed. The court directed NEERI [National Environmental Engineering Research Institute] through its Director to inspect the area, if necessary and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology in the area. NEERI may take into consideration the report by the Board in this respect.

The Court also directed to the Himachal Pradesh Pollution Control board not to permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels / institutions / factories in Kullu Manali area and in case any of them are discharging untreated effluents into the river, the Board shall take action in accordance with law.
Pursuant to Court order NEERI submitted the report and the Court also found that the Motel by constructing walls and bunds on the river banks and in the river bed, has interfered with the flow of the river. The only question before the Court was the determination of quantum of compensation and further, whether the fine in addition be imposed.

The court further directed the State of Himachal Pradesh to examine the report submitted by NEERI and also submit its own plan of action too. Pollution being a civil wing, 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. Unfortunately, notice for exemplary damages was not issued to M/s. Span Motel although it ought to have been issued. 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.

The court formed an opinion based on the relevant documents and technical report of the Central Pollution Control Board, enumerated the various activities of the span motel to be illegal and constituted ‘Callous interference with the natural flow of river Beas’ resulting in the degradation of the environment and for that purpose indicted them with having ‘interfered with the natural flow of the river by trying to block the natural spill channel of the river.’

The Court equally made the Himachal Pradesh government responsible for having committed patent breach of public trust by leasing the ecologically fragile land to the Motel. It is only on such findings, the “polluter pays” principle as interpreted by the court with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged ecology was held applicable to this case.
The various laws in force to prevent and control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which the Court consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. Rupees Ten Lakhs only. This amount the court fixed was keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The amount of special damages of Rs. 10 lakhs shall be remitted to the State Government in the Department of Irrigation and public health to the Secretary for being utilized only for the flood protection works in the area of Beas river affected by the action of Span Motels Pvt. Ltd.

Comment: The court once again sought the help of NEERI and Central Pollution Control Board through examination of report which made the Span Motels Pvt. Ltd. to pay the liability for causing serious damage to the environment. It is unfortunate to note from the facts of the case that the Minister for Environment and Forest himself was involved in the process of allotment of land on lease basis. The Court had to take cognizance of the newspaper report in the national daily. If the Minister joins hands with business entrepreneurs for their personal gain where can we get the people grievances redressed? The public authorities of late are not concerned about the need to preserve environment, instead they are party to the degradation of environment. Even though the Central Pollution Control Board authorities have adequate power to
control the pollution, it is because of lack of commitment and honesty that has made the Board ineffective. It is unfortunate that every now and then the courts should keep on monitoring the Pollution Control board authorities and keeping vigil over the functioning of these statutory bodies. Wherever greater damage is caused to the environment, it is purely because of the administrative apathy of the enforcement authorities have made the situation form bad to worst. It is time now to make the public authorities accountable for their lapses and personal liability shall be imposed on the concerned officer for being negligent and failure to take immediate steps to prevent pollution.

The Courts approach to find a solution to the problem of pollution is quite encouraging as it has applied the principle of environmental activism having more social concern to address the problem. More reliance on the court has become routine phenomena especially in the case of prevention of the pollution of water.

The decision of the Supreme Court is considered as a landmark in the history of judiciary because of the application of a novel public trust doctrine. The natural resources being the gift of nature, they should be made freely available to everyone irrespective of the status of life. The construction activities carried on by the Motel interfered with the flow of the river. Any artificial obstruction for free flow of river cannot be tolerated under the garb of development of the region. Natural flow of water always balance the ecology.

Another important milestone in the history of judicial development can be seen in one of the trend setting judgment of the Supreme Court in a celebrated case of Municipal Council, *Ratlam Vs. Sri Varadhichand & others*.19

*Justice Krishna Iyer and Justice Chinnappa Reddy* have contributed tremendously for laying down judicial principles for finding solution to the
problem of slum dwellers. The decision has opened up many legal and constitutional issues.

The residents of a prominent residential area (locality) of the Municipality in their complaint under Sec. 133 Criminal Procedure Code to the sub-divisional magistrate averred that the municipality had failed despite several pleas, to meet its basic obligations, like provision of sanitary facilities on the roads, public conveniences for slum dwellers who were using the road for that purpose, and prevention of the discharge from the nearby Alcohol plant of Malodorous fluids into public street, and that the Municipality was obvious to the statutory obligation envisages in Sec. 123 of M.P. Municipalities Act, 1961.

The Municipal Council contested the petition on the ground that the owners of houses had gone to that locality on their own choice, fully aware of the insanitary conditions and therefore they could not complain. It also pleaded financial difficulties in the construction of drains and provision of amenities. The argument of the municipality was untenable and the Magistrate found the facts proved and ordered the municipality to provide the amenities and to abate the nuisance by constructing drain pipes with flow of water to wash the filth and stop the stench and that failure would entail prosecution under Sec. 188 IPC.

The order of the Magistrate was found unjustified by the Sessions Court, but upheld by the High Court. The Court on the question whether it can by affirmative action compel a statutory body to carryout its duty to the community by constructing sanitation facilities at great cost and on time bound basis.

The Court held that whenever there is a public nuisance, the presence of Sec. 133 criminal procedure code must be felt and any contrary opinion is contrary to the law. The public power of the Magistrate under the code is a public duty to the members of the public who are victims of the nuisance and so he shall exercise, it when jurisdictional facts are present.
The Magistrate’s responsibility under sec. 133 Cr. P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by sec. 188 IPC.

The Municipal Commissioner or other executive authority bound by the order under Sec. 133 Cr. P.C shall obey the direction because disobedience, if causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety.

Public nuisance, because of pollutants being discharged by big factories to the detriment of the power sections, is a challenge to the social justice component of the rule of law. The imperative tone of Sec. 133 Cr. P.C. read with the punitive temper of Sec. 188 IPC make the prohibitory act a mandatory duty. The criminal procedure code operates against statutory bodies and other regardless of the cash in their coffers, even as human rights under Part III of the constitution have to be respected by the state regardless of budgetary provision.

Sec. 123 of the M.P. Municipality Act 1961 has no saving clause when the Municipal Council is penniless. Although the Cr. P.C. and IPC are of ancient vintage the new social justice imparted to them by the Constitution of India makes them a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Sec. 133 Cr. P.C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution.
A responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and a first charge on local self-governing bodies. Similarly, providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be evaded if municipality is to justify its existence.

The Court armed with provisions of the two codes and justified by the obligation under Sec. 123 of the Act, must adventure into positive directions as it has done in the present case. Sec. 133 of Cr. P.C. authorises the prescription of time limit for carrying out the order. The same provision spells out the power to give specific directives.

Where directive principles have found satisfactory statutory expression in Do’s and Don’ts the Court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process have a new enforcement dimension not merely through some of the provisions of the Cr. P.C. but also through activated tort consciousness. The officers incharge and even the elected representatives will have to face the penalty of the law if what the constitution and follow up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal.

The court approved a scheme of construction work to be undertaken by the municipality for the elimination of the insanitary conditions and directed that work be commenced within two months and the Magistrate inspect the progress of the work every three months and see that it is implemented.
If the centre of gravity of justice is to shift, as the preamble to the constitution mandates, from the traditional individualism of \textit{locus standi} to the community orientation of public interest litigation, these issues must be considered. The key question to be answered in the case is whether by affirmative action a court can compel a statutory body to carryout its duty to the community by constructing sanitation facilities at great cost and on time bound basis. At issue is the coming of age of that branch of public law bearing on community actions and the courts’ power to force public bodies under public duties to implement specific plans in response to public grievances.

The Municipality was obvious to this obligation towards human well being and was directly guilty of breach of duty and public nuisance and active neglect. The Sub Divisional Magistrate Ratlam was moved to take action under Sec. 133 Cr. P.C. to abate the nuisance by ordering the municipality to construct drain pipes with flow of water to wash the filth and stop the stench. The Magistrate found the facts proved, made the direction sought and scared by the prospect of prosecution under Sec. 188 of Indian Penal Code for violation of the order under Sec. 133 Cr. P.C.

Supreme Court appreciated the Magistrate, whose activist application of Sec. 133 Cr. P.C. for the larger purpose of making the Ratlam Municipality to do its duty and abate the nuisance by affirmative action. There are more dimensions to the environmental pollution which the Magistrate points out, a large area of this locality is having slums where no facility of lavatories is supplied by the municipality. Many such people live in these slums who relieve their lateral dirt on the bank of drain or on the adjacent land. This way an open latrine is created by these people. This creates heavy dirt and mosquitoes. The drains constructed in other part of the Mohalla, it does not flows water properly and creates the water obnoxious.
If the factual findings are good and the court do not re-evaluate them in the Apex Court except in exceptional cases one wonders, whether our Municipal bodies are functional irrelevance’s, banes rather than booms and ‘lawless’ by long neglect, not leaders of the people in local self-government. It may be a cynical obiter of pervasive veracity that municipal bodies minus the people and plus the bureaucrats are the bathetic vogue no better than when the British were here.

The public power of the Magistrate under the code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. “All power is a trust that we are accountable for its exercise, that from the people, and for the people, all springs, and all must exist.”

“Access to justice” must encompass both substantive and procedural compliance. The principle of rule of law is upheld by the Court in interpreting the provisions of the law against polluters. The judicial approach towards them should be harsh as their act may result in the degradation of environment. An order to abate the nuisance by taking affirmative action on a time bound basis is justified in the circumstances. The nature of judicial process is not purely adjudicatory nor is it functionally that of an umpire only.

The Court passed the judgment through issue of directions under;

The Municipality and the State government to carry out

1. To take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State government also shall take action to stop the pollution. The Sub Divisional Magistrate will also use his power under Sec. 133 Cr. P.C. to abate the nuisance so caused. Industries cannot make profit at the expense of public health.

276
2. The Municipal Council shall, within six months from the date of this order construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the municipality will furnish a report, at the end of six months term that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition.

3. The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward 12. The Sub Divisional Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.

4. The Municipality will not merely construct the drains but also fill up the cesspools and other pits of filth and use its sanitary.

The Stage Government should make available by way of loans or grants sufficient aid to the Ratlam Municipality to enable it to fulfil its obligations under this order. The State should realize that Art. 47 makes it a paramount principle to governance that steps are taken for the improvement of public health as amongst its primary duties.

Comment: After a detailed analysis of the facts of the case and the principle applied by the Court we can draw an inference that even though specific Water Act 1974 was in force to abate the public nuisance, the local court has exercised its power contemplated under Sec. 133 of Cr. P.C. and to award punishment under Sec. 188 of IPC. This is a classic case where the court awarded an effective remedy through the issue of series of orders for the municipal authorities and the State Government to perform the statutory obligation for ensuring public health & safety. The Government’s contention for financial inability to undertake welfare and health facilities to the community was rejected by the Court.
Even though the provisions contained in part of IV of the Constitution i.e. directive principles of state policy are not enforceable, they are fundamental in the governance of the state. Whenever, public policies and programmes are framed by the state, it cannot ignore the constitutional mandate. Nothing prevents the Court in reading the provisions of part IV with part III for providing meaningful constitutional remedy as part of the right to life. The attitude of the judiciary can be seen in the light of series of decisions in favour of the people to recognize various fundamental rights scope expanded through judicial activism. If judiciary feel that there is need for its intervention, it never hesitate in exercising and usurping the jurisdiction of the legislature and execute to protect the constitution and provide reasonable relief to the individuals. The present decision has opened up for a vital discussion on the role of the judges. The Court in most of the cases where it identifies that either Legislature or Executive have failed to perform their constitutional obligation, it has to step in and correct the mistakes. Mal-administration and inefficiency cannot be tolerated at the cost of public health and safety. Every individual in a society is to be provided with minimum civic facility. It is the bounden duty of the municipality to provide minimum sanitary facility especially for the people of slum area. Non-availability of financial resources to meet this demand cannot be accepted for failure to perform their public duty.

In the cases filed by the Lawyer M.C. Mehta relating to pollution of river Ganges, the Court passed comprehensive directions to the Central Government, the UP Pollution Control Board, district administration and even the polluting tanning industries in a petition under Art. 32 of the constitution, despite remedial mechanism available under the Water Act. However, it was first the High Courts which came up with direct and specific pronouncements on citizens fundamental right on environment.
The *M.C. Mehta Vs. Union of India*\(^{20}\) the Court heralded a new era in addressing the problem of Ganga water pollution due to establishment of tanneries in Kanpur. Justice Venkataramaiah & Justice K.N. Singh pronounced a landmark judgment upholding the constitutional right of the people for wholesome environment as part of Art. 21 of the constitution.

The case is popularly known as Ganga Water pollution case. The instant case focus on the responsibility of the Kanpur Municipal body to prevent water pollution due to entry of industrial effluents of Kanpur tanneries. The court issued certain directions with regard to the industries in which the business of tanning was being carried on near Kanpur on the banks of the river Ganga. On that occasion, the court had directed that the case in respect of the municipal bodies and the industries which were responsible for the pollution of the water in the river Ganga since it was found that Kanpur was one of the biggest cities on the banks of the river Ganga.

Under the laws governing the local bodies, the Nagar Mahapalika had not submitted its proposal for sewage treatment works to the State Board constituted under Water Act and directed that the Mahapalika should submit its proposals to the State Board within six months from the date of the judgment.

The nature of the direction issued by the Court to the Kanpur Nagar Mahapalika had far reaching effect to perform their duties as contemplated under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 or the relevant bye-laws made thereunder to prevent pollution of the water in the river Ganga by waste accumulated at the large number of dairies in Kanpur having about 80,000 Cattle. The court further directed that the dairies might either be shifted outside the city so that the waste at the dairies did not ultimately reach the river Ganga or in the alternative, the Mahapalika might arrange for the removal of the waste by motor vehicles, in which event the owners of the diaries
could not claim any compensation. The Mahapalika should immediately take action to prevent collection of manure at private manure pits inside the city.

The Kanpur Nagar Mahapalika should take immediate steps to increase the size of the sewers in the labour colonies so that sewage might be carried smoothly through the sewage system, and wherever sewerage line has not yet constructed, steps should be taken to lay it. Further, directed to take immediate action by Nagar Mahapalika to construct sufficient number of public latrines and urinals to prevent defecation by people on the open land. The proposal to levy any charge for use of such latrines and urinals shall be dropped as that would be a reason for poor people not to use the public latrines and urinals. The cost of maintenance of those latrines and urinals had to be borne by the Mahapalika.

The court was of the view that since the problem of pollution of the water in the river Ganga had become very acute, the court directed that the practice of throwing corpses and semi burnt corpses into the river Ganga should be immediately brought to an end. Steps should be taken by the Kanpur Nagar Mahapalika and the police authorities to ensure that the dead bodies or half burnt bodies were not thrown into the river Ganga. In future application for licenses to establish new industries should be refused unless adequate provision had been made for the treatment of trade effluents flowing out of the factories, and immediate action should be taken against the existing industries found responsible for the pollution of water.

Having regard to the grave consequences of the pollution of water and air and need for protecting and improving the natural environment, considered to be one of the fundamental duties under the constitution, it was the duty of the central government to direct all the educational institutions throughout India to teach atleast for one hour in a week lessons on the protection and improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes. The Central Govt. should get the text books written for the said
purpose and distributed to the educational institutions free of cost. Training of teachers who teach this subject, by the introduction of short term courses for such training shall also be considered. This should be done throughout India.

The above directions of the Court would apply mutatis mutandis to all other Mahapalikas and municipalities, having jurisdiction over the areas through which the river Ganga flows. The children should be taught about the need for maintaining cleanliness of the houses both inside and outside and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind.

Justice Venkatramaiah observed in the judgment that the tanneries at Jajmau, Kanpur cannot be allowed to continue to carry on the industrial activity unless they take steps to establish primary treatment plants. The court accordingly, directed closure of tanneries that were releasing effluents into Ganga without subjecting effluents to a pre-treatment process. Further, those tanneries, which did not appear before the Court, were told to stop running and discharging effluents into the Ganga until the effluents were subjected to a pre-treatment process.

The court observed: The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence, for the adverse effect on the public at large, which is likely to ensure by the discharging of the trade effluents from the tannery to the river Ganga, would be immense and it will outweigh any inconvenience that may be caused to the management and labour employed by it on account of its closure.

Further, the court held that in cases of this nature, the court may issue directions if it finds that the public nuisance or other wrongful act affecting or
likely to affect the public is being committed and the statutory authorities who are charged with the duty to prevent it are not taking adequate steps to rectify the grievance. For every breach of right there should be a remedy.

Since the problem of pollution of water in the river Ganga has become very acute, the High Courts should not ordinarily grant order of stay of criminal proceedings in such cases and even if such an order of stay is made in an extraordinary case, the High Court should dispose off the case within about two months from the date of institution of such case. The High Court requested to take up for hearing all cases where such orders have been issued under Sec. 482 Cr. P.C. staying prosecution under the Water Act within two months. The Court ordered a restriction on the practice of throwing corpses into the Ganga, directed that no industry shall be given a license for setting up of new industry unless adequate provision for effluent discharge is made.

The Kanpur Nagar Mahapalika established under the UP Nagar Mahapalika Act 1959 Sec. 14 of the Adhiniyam which incorporates the obligatory duties of the Mahapalika read as follows:

It shall be incumbent on the Mahapalika to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely, the collection and removal of sewage, offensive matter and rubbish and treatment and disposal thereof including establishing and maintaining farm or factory; The management and maintenance of all Mahapalika water works and the construction or acquisition of new works necessary for a sufficient supply of water for public and private purposes, guarding from pollution water used for human consumption and preventing polluted water from being so used.

The Uttar Pradesh Water Supply and Sewage Act 1975 imposes statutory duties on the authorities mentioned therein regarding the provision of water
supply to the cities and towns and construction of sewerage systems in them. The perusal of these provisions in the laws governing the local bodies shows that the Nagar Mahapalikas and the Municipal Boards are primarily responsible for the maintenance of cleanliness in the areas under their jurisdiction and the protection of their environment.

As long as the human population was small and communities were scattered over large areas of land, the disposal of human wastes created no problems. People could defecate in areas of land, the disposal of human wastes created no problems in areas surrounding villages and other habitations and leave it to nature to dispose of the waste by assimilation in the surrounding land and air. But as communities became more concentrated and villages and towns grew, such mode of disposal by natural agencies came to be replaced by organised disposal. The collection of human excreta and its disposal in earthen trenches was resorted to by many towns and adopted the basket privy system.

The introduction of a system of water borne sewage created new problems in the disposal of human wastes, as now along with the earlier problem of getting rid of solid wastes, i.e. human excreta, the problem of disposal of the organisms where only rather few are needed to infect someone, relative to the levels of pollution that readily occur. The two chief ones have a high mortality if untreated and are diseases which a community is very anxious to escape, typhoid and cholera. Both are relatively fragile organisms whose sole reservoir is man.

Although parliament and state legislature had thus enacted laws, imposing duties on public authorities to combat the problem of water pollution, the problem continues to prevail due to the lack of commitment on the part of the enforcement authorities.

Comment: the river Ganga being the most important river in India and has served as the cradle of Indian civilization and millions of people come to bathe
in the river during religions festivals, it also serves as the source of water supply to the towns of Kanpur, Allahabad, Patna and Calcutta. The Ganga is grossly polluted especially near the towns because of entry of industrial effluents and sewage entry.

The Supreme Court judgment in the instant case can be analyzed from the point of view of the public concern shown by a great lawyer M.C. Mehta who has been struggling to provide efficacious remedy through the intervention of the court in convincing the judges to pass strictures against the public authorities and forcing them to comply with the provisions of the Water (Prevention and Control of Pollution) Act 1974, Environment (Protection) Act 1986 and the Statutes passed by the UP Govt. in providing wholesome environment. Stoppage of discharge of sewage into river should reduce the pollution. In most of the major urban settlements on the Banks of the Ganga, trunk sewers have already been laid along the road side to intercept the drains, coming from the inhabited areas. The nature of directions given the court are considered to be effective. Wherever, the public authorities have not performed their legal duty, they have been pulled up by the Court and the courts are ready to exercise the power in imposing personal liability for fault. In spite of series of decisions to combat the problem of water pollution, the court has to time and again watch the development towards the honest application of Water Act and Environment Protection Act provisions.

_Vellore Citizens Welfare Forum Vs. Union of India_\(^2^1\) is another landmark judgment of the Supreme Court in which Justice Kuldip Singh applies an international environmental principle of ‘Sustainable development.’

The petition was directed against pollution being caused by enormous discharge of untreated effluent by the tanneries and other industries in Tamilnadu. It was claimed that the tanneries were discharging untreated effluent into agricultural fields, roadsides, waterways, open lands into Palar river, which was the main source of water supply to the residents. Further, it was alleged that
pollution of ground water by percolation was resulting in environmental
degradation with land becoming unfit for cultivation due to change in psycho-
chemical properties of soil.

The traditional concept that development and ecology are opposed to each
other is no longer acceptable. Between the two ‘Sustainable Development’ has
come to be accepted as a viable concept to eradicate poverty and improve the
quality of human (being) life while living within the carrying capacity of the
supporting eco-systems. ‘Sustainable Development’ means development that
meets the needs of the present without compromising the ability of the future
generations to meet their own needs.’ The Court did not hesitate in holding that
‘Sustainable Development’ as a balancing concept between ecology and
development has been accepted as a part of the customary international law.

Further, the Court held that the precautionary principle’ and ‘polluter
pays’ principle are essential features of sustainable development. The court
while explaining the concepts observed; the precautionary principle in the
context of municipal law means;

i) Environmental measures – by the State Government and the statutory
authorities must anticipate, prevent and attack the causes of
environmental degradation.

ii) Where there are threats of serious and irreversible damage, lack of
scientific know-how certainty should not be used as a reason for
postponing measures to prevent environmental degradation and

iii) The onus of proof is on the actor of the developer / industrialist to show
that his action is environmentally benign.

Recognizing the right to clean environment, the court explained the
constitutional and statutory provisions protect a person’s right to fresh air, clean
water and pollution free environment, but the source of the right is the
inalienable common law right of clean environment, our legal system having been founded on the British Common law, the right of a person to pollution free environment is a part of the basic jurisprudence of the land.

The Court issued directions for setting up of an authority under sec. 2(3) of Environment (Protection) Act 1986 to deal with polluting industries in the State of Tamilnadu and directed the Madras High Court to constitute a ‘Green Bench’ to deal with this case and other environmental matters. The logical conclusion drawn by the apex court is laudable because the court has an open mind to accept the solutions from different direction. The problem could be effectively solved provided the judges apply holistic principles.

Tanneries are significant to the Indian Economy, due to the export earnings that they generate and the employment opportunities they provide to the people of the economically weaker sections of the society. However, sustenance of tanneries is becoming increasingly difficult because of the alarming levels of environmental pollution caused by various operations and practices, the leather industry has no right to destroy the ecology. It cannot be permitted to expand or even continue with the present production process unless the problem of pollution caused by the said industry is addressed and remedied. The task set out for the Supreme Court is to play a vital role in curbing environmental pollution caused by tanneries. The tanneries are major agents of pollution of rivers and other water sources and are also annoying sources of public nuisance.

According to the preliminary survey made by the Tamilnadu Agricultural University Research Centre (Vellore) nearly 35,000 hectares of agricultural land in the tanneries belt, had become either partially or totally unfit for cultivation. This was the effect of about 170 types of chemicals in the chrome based tanning process. Nearly 35 litres of water was used per 1 kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in
the open by the tanning industry. The effluents spoilt the physicochemical properties of the soil and contaminated ground water by percolation. It was revealed that 350 wells out of a total of 467 used for drinking and irrigation purposes had been polluted as a result of which women and children had to walk miles to get drinking water.

There were more than 900 tanneries that were operating in 5 Districts of Tamilnadu. Some of them had been polluting the environment for over a decade and in some cases even for a longer period. The Supreme Court had in various orders indicated that these tanneries were liable to pay pollution fine and to compensate the affected persons as also pay the cost of restoring the damaged ecology.

Kuldip Singh J. speaking on behalf of the Court held that traditional concept of development and ecology being opposed to each other was no longer acceptable and that the balance had to be found in ‘sustainable development.’ The court explained that the “precautionary principle” and the “polluter pays” principle were essential features of ‘sustainable development.’ These principles were part of the law of the land by the operation of Art. 21, Art. 47, Art. 48A and 51(A)(g) of the Constitution of India. They could also be derived from the Water (Prevention & Control of Pollution) Act, 1974, the Air act 1981 and the Environment Protection Act 1986. Since these principles were accepted as part of the customary international law, there could be no difficulty in accepting them as part of the domestic law. Lastly, the source of the right against pollution stemmed from the inalienable common law right of a clean environment, which itself drew source from the common law right against ‘nuisance.’

An industry irrespective of whether it had set up the necessary pollution control device, would be liable to pay for the past pollution generated by it, if it resulted in the environmental degradation and sufferings to the residents of the area. Fines that were collected were to be accredited to an “Environment
Protection Fund” which was to be utilized for compensating the affected persons and also for restoring the damaged environment.

The Supreme Court acknowledged the urgency required to be shown in matters of environmental damage. The Court not only ordered the compensation of the affected parties, but also directed the creation of a fund in order to reverse the damage already caused by polluting tanneries. The fund was intended to restore status quo, as regards the condition of the environment, which would have further deteriorated in the absence of intervention by the Supreme Court. The crucial question is not whether developing countries can afford measures for the control of environmental pollution, but it is whether they can afford to neglect them. The importance of the latter is emphasized by the fact that in the absence of adequate measures for the prevention or control of pollution, a nation would eventually be confronted with far more onerous burdens, such as to secure wholesome and adequate supplies of water. It is unfortunate that the importance of controlling pollution is generally not realized until considerable damage has already been done. There are immense benefits which result from the prevention of pollution. These include a general improvement in the standard of health of the population and possibility of restoring stream waters to their original beneficial state.

Comment: One of the serious problems faced by the people in recent time is the problem in not getting sufficient potable water. Under the garb of economic development, we are not very much concerned about the priority of use of water. Once the major source of drinking water is damaged through industrial effluents, we cannot find alternative source of drinking water. Now, it is the concern of the state to provide sufficient and safe drinking water. Uncontrolled entry of industrial waste into natural course of water virtually alter the status of water as polluted permanently. In most of the cases, Pollution Control Board authorities apathy has made the whole problem more complicated and perennial. It is expected that in the future all process industries will have
water recycling plants and coastal industries may adopt sea water desalination plants either using process waste heat or effluent waste water. Domestic water requirement would be met with natural resources, while industrial requirements may have to be supplemented by desalination. The judiciary, in their quest for innovative solutions to environmental matters within the framework of Public Interest Litigation, looked the constitutional provisions to provide the court with the necessary jurisdiction to address specific issues. Art. 142 afforded the Supreme Court considerable power to mould its decisions in order that complete justice could be done. As the Supreme Court is the final authority as far as matters of constitutional interpretation are concerned, it assumes a sort of prima facie position in the Indian Environmental legal system. The Supreme Court, in its interpretation of Art 21, has facilitated the emergence of an environmental jurisprudence in India. There are numerous decisions wherein the right to a clean environment, drinking water, a pollution free atmosphere etc, have been given the status of inalienable human rights and therefore, fundamental rights of Indian citizens. There have also been occasions when the judiciary has prioritised the environment over development, when the situation demanded an immediate and specific policy structure.

The Courts have not hesitated in directing the closure of operations of any industry polluting the rivers. Thus, in a case where a sugar company was discharging effluents in lagoons which were carried to river Bhavani through a drain despite the directions of Tamilnadu Pollution Control Board, the Supreme Court directed the closure of the company noting that remedial steps had not been taken to prevent pollution of the river.

In Re: Bhavani River – Shakti Sugar Ltd,\textsuperscript{22} Hon’ble Judges of the Supreme Court A.S. Anand, B.N. Kirpal and V.N. Khare JJ pronounced the trend setting judgment highlighting the importance of protection of environment through prevention of water pollution. A writ was filed under Art. 226 against discharges of objectionable effluents from Distillery
of the Industry into Bhavani river. The High Court was bound to examine the question in detail and was not justified in disposing of the petition on the consent given by Pollution Control Board only. The High Court examined the reason for consent given by the Board and a report submitted by NEERI [National Environmental Engineering Research Institute].

During the pendency of the proceedings certain directions were given for closure of the industry and ordered for inspection of the industry and site adjacent by NEERI. The report was submitted by NEERI after inspection report. The High Court also examined the question of restitution of the area damage on account of pollution of river water caused and the cost of restitution shall be borne by the respondent company and the State of Tamilnadu.

The Tamilnadu Pollution Control Board issued certain directions in exercise of the powers conferred under Sec. 33A of the Water (Prevention & Control of Pollution) Act 1974 as amended in 1988. These directions inter alia aimed at ensuring proper storage of effluent lagoons and for proper treatment and disposal of the treated effluent. It is also stated that during the inspection of the industrial site, it was noticed that the seepage of effluent from lagoon had entered the drain and ultimately it reached river Bhavani thereby contravening the conditions imposed in the directions by the Board. The notice sought the explanation by the industry as to why penal action cannot be taken under Sec. 44 read with Sec. 45(a) of the Act for violating the conditions imposed by the Board.

The direction of the Tamilnadu Pollution Control Board suggests that company shall give progress report on the disposal of accumulated effluent in lagoon every fortnight and fortnightly progress report on the actions taken to comply with the conditions stipulated in the consent order issued by the Tamilnadu Pollution Control Board.
According to the Board inspection report it was found that the seepage from the unlined lagoon effluent has been stored joins the drain and ultimately reaches river Bhavani, the effluent polluting the river water. The Board considered the matter seriously and remedial measures were not taken to prevent pollution and contamination of river water. The industry has obviously failed the unabated pollution, which has become a health hazard. Enough time was given for remedial measure, but the industries failed to comply with the direction. The court had no option but to direct the closure of the operation of the industry and directed Tamil Nadu Pollution Control Board shall submit a report regarding compliance of direction by the industry within 10 days.

Comment: It is pertinent to mention here the significant role played by the Court in ordering for closure of the industry for unabated pollution of river water. Under the garb of industrial development the occupier cannot take it for granted that he has the right to make profit at the cost of damage to environment. Even though the consent order given by the State Pollution Control Board it is always subject to the conditions stipulated therein. There is need to stress the importance of social accountability. The owners of the industry had to pay heavily for not complying with directions towards the measures to be initiated to prevent entry of effluent to the Bhavani River. The decision of the court is highly commendable for reason of social concern and preservation of quality of river water which is the life line of the community.

The State High Courts are no way lagging behind to find solution to the problem of water pollution while exercising its power to invoke the provisions of the Constitution of India under Art. 21, 48A and 51A. One such decision was made by the High Court of Rajasthan in Vijay Singh Punia Vs. Rajasthan State Board for the Prevention and Control of Water Pollution and others.23

A public interest litigation was filed seeking direction against Rajasthan Pollution Control Board to take immediate steps against unauthorised factories
and restrain them from discharging toxic wastes and effluents into canal and land, secondly to direct the concerned authority to check the raising of unauthorized construction of factories without compliance of the statutory provisions of Sec. 25 of the Act of 1975 and impose penalties on the factories found violating statutory provisions.

In the petition it was contended that several unauthorised factories / industries carrying on business of dyeing and printing of cloth were set up and effluents produced by these industries were reaching the dam through canal and causing serious health hazards and irreparable injury to the environment, man and animals etc.

Pursuant to the notice issued the Rajasthan State Pollution Control Board asserted that due to untiring efforts of the Board a Common Effluent Treatment Plant [CETP] was constructed which was to take care of 10 million gallons of effluent from various textile units of Pali which was the most problematic area according to Board’s opinion. The Board conducted a survey in Sanganur where 240 dyeing and printing units were working and none of the industries had installed an effluent treatment plant.

The Court issued an order directing the respondent to obtain permission from the Pollution Control Board within 45 days from the passing of the order, in case the factories set up failed to get the permission shall be restrained from operating the factories. The respondent contended that these units are home industries which were established hundreds of years back and are providing jobs to lakhs of people. It was found that 86 units operating without the consent of the Pollution Control Board to whom they have issued notice under sec. 25 of the Act directing to forthwith apply for consent application. On receiving the application, the Board rejected the application of 42 units situated in the polluted area on the ground that none of the units had pollution control plant for treating the effluents.
The demand for CETP (Common Effluent Treatment Plant) was considered due to inadequacies of spaces and cost factor in setting up of individual effluent treatment plants. The Pollution Control Board suggested to conduct of survey by NEERI [National Environmental Engineering Institute] to study the level of pollution in the area and an environmental policy be formulated for future. The report suggested to build a pukka drain and a CETP be constructed by the state government. The pollution caused by the said industrial units affected the quality of drinking water and the vegetables produced by the farmers, using the water of the canal for irrigation purposes. The vegetables so produced were consumed by human beings resulting into a number of health hazards and it was destroying the environment.

The Court made an emphatic observation that it is the fundamental right of the citizens to have pollution free environment. Though Art 19(1)(g) of the constitution of India, ensures the right of freedom to trade and commerce, at the same time this freedom is not an absolute one and is subject to reasonable restrictions. Any trade, or business, which is destructive of health of the citizens, cannot be allowed to be carried on, under the banner of fundamental right.

The Court pointed out Six wholesome principles that can be culled out from Art. 21, 48A and 51(A)(g) of the constitution and various judicial pronouncements.
1. All human beings have the fundamental right to unpolluted environment, pollution free water and air.
2. That state is obligated to preserve and protect the environment.
3. It is mandatory for the state and its agencies, to conceive, anticipate, prevent and attack the causes of environmental degradations.
4. The industry cannot be permitted to continue, as a matter of right, in case it creates pollution.
5. The polluter must meet the cost of repairing environment and ecology and pay reparation to those, who have suffered be caused of the pollution, caused by him.

6. Considerations of economy cannot prevail over concerns for environment and ecology.

Keeping in view of the legal position the Court directed as under:
1. The RIICO [Rajasthan Industrial Infrastructure Corporation] shall develop an industrial area for dyeing and printing industry, within 8 months.
2. The owners and proprietors of the present industrial outfits shall be given plots in the industrial area, for which they shall pay the price at no profit – no loss basis.
3. Each of the printing and/or dyeing units shall pay the pollution fine as prescribed by the Court.
4. Each unit shall deposit minimum pollution fine of Rs.20,000/-. In case the pollution fine is not paid within time, the defaulting unit shall be sealed by the respondents.

Comment: The decision of the Rajasthan High Court is significant for the reason that the State Pollution Control Board had to get series of directions from the Court for the Board not being active in enforcing the provisions of the Water Act, 1974.

The nature of direction given by the Court is to assist the State Pollution Control Board through recommendations made by NEERI. The contemplation of the Court order imposing pollution fee on each unit is highly commendable. The funds generated through such fine could be used for the establishment of Central Effluent Treatment Plant. There is need to strike a balance between economic cost and social cost in relation to environment. Even though these industries offer potential job opportunities to the local people, there shall not be a compromise for environmental degradation, which ultimately result in water
pollution. The drinking water source should not be damaged under the garb of economic development. The price the people have to pay for water pollution is incomparable and cannot be compromised at any cost. The case highlights the importance of the application of an international environmental law principle of polluter pays and precautionary principle. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystems.

The High Court of Andhra Pradesh passed an unique judgment relating to the prevention of water pollution relating to a great city lake of Hyderabad.

The judgment of S.B. Sinha C.J. and S.R. Nayak J. has opened up many issues for consideration for preservation of lake of Hyderabad in Forum for a better Hyderabad (Confederation of voluntary organizations of Hyderabad) and another Vs. Government of Andhra Pradesh.24

The question involved in the case was whether any constructions should be allowed to be raised in and around Hussain Sagar situated within the twin cities of Hyderabad and Secunderabad built in 1562. The lake in question is one of the oldest fresh water lakes. It was fed by Bulkapur Canal which was a tributary which is about 32 miles from Hyderabad. It is not in dispute that supply of potable water to the people living in the residential area now called Secunderabad was the prime purpose for which it was originally built. Two rest houses built on the banks of Hussain Sagar were converted into Hyderabad and Secunderabad sailing club. The water of the lake was not only being used for maintenance of public gardens, Sanjeevayya Gardens, but also for Railways and industry. Industrial pollution found its way in the lake in 1964. Although the lake is now said to be free from industrial pollution, it still suffers from bacterial
pollution due to increasing quantity of human and animal waste. Studies were made by several authorities as regards the nature and extent of pollution of the lake affecting environment and ecosystem. Some of evil effects of the lake are as under.

1. The fish from the fish kills may be collected and sold to the unsuspecting public. The consumption of fish would lead to problems like skin cancer, gastro enteritis, fluorosis and serious effects on the central nervous system of children in particular.

2. The emission of poisonous gases such as chlorine, hydrogen sulphide, iodine etc, from waters of the lake may be inhaled by the early morning exercisers on the tank bund, leading to respiratory problems.

3. The percolation of the Hussain Sagar water into the ground water is quite extensive and the water in the borewells in Somajiguda, Damalguda, Ashok Nagar, Himayatnagar is already polluted.

4. The buffaloes bathing in the lake consume the polluted water and the pollutants end up in the milk of these cattle.

5. Any person in contact with the waters of the lake for a period of time stands the risk of skin cancer and other skin related problems.

6. The lake is likely to become a eutropic one, meaning that the growth of algae and other aquatic plants may become so great that swimming, boating and sport fishing will not be possible and this condition may support the breeding of insects and parasites that may carry diseases.

The research conducted in the year 1973 found silt in the lake as also the water being highly polluted. The sediment in the silt contains toxic heavy metals. The water-spread area of Hussain Sagar was said to be 1250 acres. The lake area and its surrounding areas are shown in the zonal development Plan as Water
Body and Recreational Area. As part of the Zoning Regulations notified by the Hyderabad Urban Development Authority the various uses permitted under recreational uses are;

All public and semi-public, recreational use including playgrounds, parks, exhibition and fair grounds, parking, special recreational areas like picnic spots, botanical gardens, museums, aquarium, water fronts and areas of scenic interest and regional parks. Other uses that are permissible on approval from Urban Development Authority are Open Air Theatres, drive-in Cinemas, Restaurants, Hotels, and Public utilities incidental to main usages.

The developmental activities will have a negative impact on the quality of water. The constructional activity around the lake area had a slight negative impact on the water environment during operational phase. Liquid waste generated due to food courts, from the water sports and recreational activities, public toilets are to be disposed off properly, and ground water depletion due to usage of ground water to the proposed water sports activities, parks, food courts will have negative impact.

Additional number of jetties proposed in the Hussain Sagar may have a negative influence on the quality of water. Precautions have to be taken to control leakage’s and spillage’s in food courts, by regular monitoring and adaptive corrective measures. Water bodies play an important role in the matter of maintenance of ecology. They act as a benefactor to the society. Any encroachment on the water bodies may be found to be detrimental to the society. The considerations for construction being allowed on or near the water bodies would depend upon many factors. Some of the important factors are:

1. The purposes for which such water are used or created.
2. The extent of pollution caused to the water bodies
3. The extent of ecological imbalance which may be caused to the water bodies if constructions are allowed in and around water bodies.

The Hyderabad Urban Development Authority (HUDA) had amended the master plan in the year 1997. The amendment was looked from different angles viz., that every person has a fundamental right to have potable water. In terms of the provisions of the Hyderabad Municipal Corporation Act, the Municipal Corporation has a statutory duty not only to supply potable drinking water to the inhabitants of the twin cities but also have a statutory duty to see that the water bodies remain unpolluted.

In view of the damage caused to Hussain Sagar Lake because of development of the area by HUDA, the Court considered that fresh lakes and other water bodies couldn’t be allowed to be polluted. Essence of ecology has undergone a sea change, will result for deposit of sewage and garbage.

The benefit to the society cannot be weighed on mathematical nicety so as to take note of the requirement of the society. What is required today may not be a relevant consideration in the immediate future, therefore, it cannot really be assessed to what amount of nature’s bounty is required for the proper maintenance of environmental equilibrium. It cannot be measured in terms of requirement and as such, the court of law cannot, in fact decry the opinion of the environmentalists in that direction. Law courts exists for the benefit of the society and for the purpose of giving redress when called for and it must rise above all levels so that justice is meted out and society thrives thereunder.

Hussain Sagar is also required to be protected for preventing flood and in the event of water logging of the city as the rain water normally would be deposited in the lake only when the main water cannot find its way in the water bodies, a flood like situation may arise. The water of Hussain Sagar by reason of immersion of the idols or otherwise is also being polluted although it has
become free from industrial effluents coming to it. Pollution in the lake is
admitted, the court opined that no further permanent structures including those
involving commercial activities may be allowed to be raised on or near water
spread or catchment area. The construction of an amusement park was allowed,
but prior thereto A.P. Pollution Control board must go into all aspects of the
matter including the questions raised for the purpose of encouraging tourism
which would result only in sustainable development which would not create any
ecological imbalance.

Comment: The Pollution Control Board authorities should take
appropriate action against the polluters through exercise of their power under the
Water Act. The Board has the responsibility to set standards for pollution of
water in respect of industrial effluents and wherever necessary to establish
effluent treatment plant to comply with tolerance limits. The Board authorities
also have public duty to make the corporation authorities to establish sewage
treatment plants in every town to address the problem of sewage entry into water
bodies. Even though, laws have been made for the protection of environment,
the enforcement, of the same has been tardy, to say the least. With the
governmental authorities not showing any concern with the enforcement of the
said Acts and with development taking place for personal gains at the expense of
environment and with disregard to the mandatory provisions of law, some public
spirited persons have been initiating public Interest Litigation’s. The legal
position relating to the exercise of jurisdiction by the courts for preventing
environmental degradation and thereby, seeking to protect the fundamental
rights of the citizens, is now well settled by various dimensions of the court. The
primary effort of the court, while dealing with the environmental related issues,
is to see that the enforcement agencies, whether it be the state or any other
authority, take effective steps for the enforcement of the laws. The Courts in a
way, as the guardian of the people’s fundamental rights but in regard to many
technical matters, the courts may not be fully equipped. Per force, it has to rely
on outside agencies for reports and recommendations whereupon orders have
been passed from time to time. Even though, it is not the function of the court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.

5.5. Conclusion

In considering how a legal system might respond to protect the environment against degradation, a substance may be known which causes pollution. Environmental problems are complex, not only in their causes and effects, but also in how they relate to each other. Eliminating pollution from one medium often transfers it to another. Elimination of pollution from one medium often transfers it to another. For example, when we protect the air and human health by not burning toxic chemical wastes, our alternative is usually to bury the waste, thereby risking eventual contamination of the soil and ground water. It is these complexities and interdependencies that make environmental problems so obstinate. The problem we face is how to strike a balance between the benefits of a rising standard of living, and its costs in terms of determination of the physical environment and the quality of life. In the past the danger of air, water and land was not fully recognized, but now there is no doubt that it is a matter of great concern. The problem which has often to be faced is, not how to stop pollution altogether, but how far it should be reduced.

Our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Polluting a river is dangerous because a river is the primary source of drinking water for towns and cities of downstream of the point of pollution. Municipal water treatment
facilities in India at present do not remove traces of heavy metals. Given the fact that heavily polluted rivers are the major sources of municipal water for most towns and cities along their courses. Indian towns and cities have grown in an unplanned manner over the years due to huge population increase in these settlements. The direct result on the rivers, which receive untreated sewage, is that the concentrated sewage flow has increased. Carcasses of cattle and other animals disposed of in the so-called ‘holy’ rivers add to the pollution load. In keeping with ancient rituals, the deads are still cremated on riverbanks. Spiraling wood prices also have resulted in partially burnt bodies of holy men, infants and those who succumb to contagious diseases, into rivers, has given the issue of population in Indian rivers an unhealthy social dimension. Mass bathing in a river during religious festivals is another environmentally harmful practice.

The active interpretation of the provisions of the Water Act by the higher courts while using public interest litigation to maximum effect have been discussed. The fundamental right to pollution free environment have drawn support from important jural principles and strategies laid down by the apex court. The polluter pays principle, precautionary principle, intergeneration equity principle and sustainable development principles have drawn the attention of the Apex Court in making the decision on water pollution in India. The Courts have distinctly approached the problems of environment by adopting a scientific method strategies. The courts have relied on the wisdom of the state more often and considered that as a question of policy not to be interfered with. The case on nuisance and environment protection denote that even today common law principles can be utilized in a far better way for protecting our environment.

The present approach to dealing with environmentally unacceptable behaviour in India has been largely based on criminal processes and sanctions. Although criminal sanctions, if successful, may create a deterrent impact, in reality they are rarely fruitful for a number of reasons. Civil law, on the other hand, offers flexibility, and its sanction can be more effectively tailored to
particular situations. The evidentiary burden of civil proceedings are less daunting than those of criminal law. It also allows for preventing policing through orders and injunctions to restrain prospective pollution.

A judicious mix of civil and criminal processes and sanctions is the need of the hour in the legal regime for enforcement. Conservation of environment requires the participation of multiple stakeholders, who may bring to bear their respective resources, competencies and perspectives, so that the outcomes of partnerships are superior to those of each acting alone. Implementing and policy making agencies of the government at Central, State, Municipal and panchayat levels; the legislatures and judiciary, the public and private corporate sectors, financial institutions, industry, associations, academic and research institutions, independent professionals and experts, the media, community based organizations may each play important roles in partnerships for the formulation, implementation and promotion of measures for environmental conservation.
END NOTES


15. AIR 1999 SC 812.


